IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
RONALD KAY BARKER,	)	**Supreme Court #SC92044**
	)	
Respondent.	)	

INFORMANT'S BRIEF

ALAN D. PRATZEL #29141
CHIEF DISCIPLINARY COUNSEL

KEVIN J. ODROWSKI #40535
Special Representative, Region IV
4700 Belleview, Suite 215
Kansas City, MO 64112
(816) 931-4408
(816) 561-0760 (fax)
kevinodrowski@birch.net

ATTORNEY FOR CHIEF
DISCIPLINARY COUNSEL

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

Rules

STATEMENT OF JURISDICTION

This action is one in which the Chief Disciplinary Counsel is seeking to discipline an attorney licensed in the State of Missouri for violations of the Missouri Rules of Professional Conduct. Jurisdiction over attorney discipline matters is established by this Court's inherent authority to regulate the practice of law, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMo 2000.

STATEMENT OF FACTS

OVERVIEW OF RESPONDENT'S PROFESSIONAL MISCONDUCT

In December of 2006 and February of 2007, Respondent made two deposits totaling $287,500 into his trust account. **App. 86 (Tr. 43); App. 185-188.** The deposits were settlement proceeds belonging to a client, Hank Medlin, who had been seriously injured in a motor vehicle accident. **App. 85-86 (Tr. 38-41).** Respondent did not provide the client with a settlement distribution statement nor any other written accounting of the settlement proceeds. **App. 89 (Tr. 55-56)**.

Respondent disbursed the settlement proceeds as follows: approximately $98,000 for attorney fees and litigation expenses; approximately $57,000 to the client; and payments to third-party creditors on the client's behalf of approximately $39,000. **App. 192-208; 262**. From April 2007 to April 2008, Respondent removed the remaining $93,500 of the settlement proceeds without written consent from the client. **App. 216-240; 262; 329**. On twenty-five separate instances Respondent wrote about $91,000 in checks drawn from the trust account to himself. **App. 216-240; 262**. On two occasions, Respondent used Mr. Medlin's settlement proceeds to refund about $2,500 in fee deposits paid by other clients. **App. 104 (Tr. 114); 262; 303-304**.

The settlement proceeds were fully depleted by April 2008. **App. 105 (Tr. 119); 246.** Respondent made sporadic attempts to pay back some of the $93,500 removed from the trust account. **App. 263-273**. Hank Medlin died unexpectedly in September 2008. **App. 110 (Tr. 139); 295**. An attorney for Mr. Medlin's probate estate requested an accounting of the

settlement proceeds. **App. 277**. At that point, Respondent needed to repay a principal sum of over $81,500. **App. 110 (Tr. 138-140); 262; 263-273**. Respondent had no money left in the trust account, and no money in his business operating account. **App. 110-111 (Tr. 140-142)**. Respondent quickly borrowed $38,000 from a friend. **App. 110 (Tr. 140)**. Respondent deposited the $38,000 loan proceeds into the trust account. **App. 110-111 (Tr. 140-141)**. A few days later Respondent delivered a $38,000 trust account check to the probate attorney. **App. 256-261**. Respondent provided no explanation as to the source of the $38,000 nor an accounting of the settlement proceeds. **App. 256-261**. Respondent promised to pay the balance as soon as the estate provided a tax identification number. **App. 256**. The attorney for the estate made a second request for an accounting. **App. 278-279**. In response thereto, Respondent provided a partial accounting of the settlement proceeds. **App. 252-255**. The purported accounting was incomplete and contained inaccurate information. It did reveal a substantial shortfall of approximately $41,000. **App. 255**. The documents provided by Respondent to the estate (e.g. the two letters from Respondent and the trust account check itself) masks the actual disposition of the client's funds. **App. 252-261**.

Mr. Medlin's probate estate sued Respondent. **App. 296-300**. In June of 2010, the estate recovered a final judgment against Respondent in the principal amount of $43,791.06 plus $16,000 in interest**. App. 283-285**. The probate court judgment against Respondent found that "The Defendant Ronald K. Barker could not produce any writing wherein James H.D. Medlin consented or agreed to the borrowing of his monies by Ronald K. Barker." **App. 284**. Likewise, at the disciplinary hearing, there was no written evidence of a

consensual borrowing. **App. 118 (Tr. 170); 325-326**.

The disciplinary hearing panel found that Respondent was guilty of professional misconduct, as follows:

A. Rule 4-1.15(f) (2008):[1] Misappropriation of client funds and failure to promptly deliver such property upon request;

[1] From the time the first settlement proceeds were deposited in the trust account in December 2006 until the time of the disciplinary hearing in June 2011, Rule 4-1.15 has been revised five times. In some instances, the applicable section of the rule has been renumbered. For instance, in January 2007, the obligation to promptly deliver client funds was set forth as 4-1.15(b). Effective July 1, 2007, this provision was renumbered 4-1.15(d). Effective January 1, 2008, this provision was renumbered 4-1.15(f). It is now located at Rule 4-1.15(i). The misappropriation of funds occurred at various times in 2007 and 2008. Nearly half of the funds owed by Respondent still has not been repaid. The Information alleged a violation of Rule 4-1.15(f). The disciplinary hearing panel permitted the Information to be amended to conform to the evidence, so as to more precisely reflect the ongoing nature of the misappropriation throughout various revisions to the applicable rule. **App. 329**.

B. Rule 4-1.15(f) (2008) and Rule 4-1.15(c) (2008):[2] Failure to render a full accounting of the settlement proceeds and failure to maintain accurate and complete records of such funds;

C. Rule 4-1.15(c) (2008): Failure to keep client property separate from Respondent's own property and by commingling such funds; and

D. Rule 4-8.4(c) and (d): Engaging in acts of dishonesty, fraud, deceit, and misrepresentation; and engaging in conduct prejudicial to the administration of justice, based upon Respondent's dealings with the probate estate. **App. 329-331**.

The disciplinary hearing panel recommended disbarment for Respondent. The Office of Chief Disciplinary Counsel concurs in this recommendation that Respondent be disbarred. **App. 337**.

As of this brief, Informant is not aware of any attempt by Respondent to satisfy the judgment in whole or in part. **App. 113 (Tr. 150)**. Respondent still needs to repay the probate estate nearly $70,000 with accumulated interest. **App. 293**.

---

[2] The Information was amended to allege misconduct involving Respondent's failure to keep complete records of trust account transactions. **App. 329**. Respondent's professional obligation to maintain complete records of Medlin's settlement funds as deposited into the trust account spans from 2007 to 2008, and exists even up to the present. The obligation to keep complete trust account records is now found at 4-1.15(d), but was previously found at Rule 4-1.15(c) in 2008 and 4-1.15(a) in 2007.

DETAILED FACTUAL STATEMENT

Respondent was licensed as an attorney in Missouri in 1976. **App. 84 (Tr. 34)**. He is not licensed in any other state. **App. 84 (Tr. 35)**. Since 1990, Respondent has operated a law practice as a sole practitioner in Jackson County, Missouri incorporated as Ronald K. Barker, P.C. **App. 84 (Tr. 35); 93 (Tr. 72).**

James H.D. "Hank" Medlin was a commercial truck driver. **App. 85 (Tr. 38)**. On July 6, 2003, Hank Medlin was seriously injured in an automobile/truck collision on Interstate 70 near Independence, Missouri. **App. 181**. The motor vehicle accident rendered Mr. Medlin unable to work as a truck driver. **App. 85 (Tr. 38)**. In August 2005, Mr. Medlin hired Respondent for legal representation regarding claims arising out of the collision. **App. 181-182**. Mr. Medlin signed an "Attorney's Fee Contract" provided by Respondent. **App. 181-182.** The scope of the representation included a claim against the driver who caused the accident, Linda Harris, as well as a claim under Mr. Medlin's private disability insurance policy issued by Old Republic Insurance. **App. 181**.

A civil lawsuit was filed in Jackson County, Missouri by Respondent on Mr. Medlin's behalf. **App. 85 (Tr. 40)**. The portion of the lawsuit involving Ms. Harris was settled in December of 2006. **App. 86 (Tr. 41)**. The remaining portion of the lawsuit under the disability insurance policy was settled a few weeks later, in February 2007. **App. 86 (Tr. 41)**. The total settlement amount was $287,500, consisting of a payment of policy limits of $100,000 by Country Mutual Insurance on behalf of Linda Harris and a payment of $187,500

by Old Republic Insurance under the disability policy issued to Hank Medlin. **App. 86 (Tr. 41-43)**.

Upon receipt of the settlement payments, Respondent deposited both checks into his trust account at Country Club Bank, identified as Account No. 636058. **App. 86 (Tr. 43-44)**. Respondent did not provide a written accounting of the settlement proceeds to Mr. Medlin. **App. 89 (Tr. 55-56)**. Respondent claims that he offered to provide a settlement distribution statement to Mr. Medlin, but Mr. Medlin declined. **App. 89 (Tr. 56)**. Respondent could not locate a copy of any such statement prepared for his own records. **App. 89 (Tr. 56)**.

At the time the first settlement payment of $100,000 was deposited into the trust account on December 27, 2006, Respondent's existing trust account balance was $8.90. **App. 183**. Examination of monthly trust account statements and cancelled checks drawn from the trust account shows exactly how the $287,500 was paid from the trust account. **App. 262**. Through a series of trust account checks written from January of 2007 to May of 2008, Mr. Medlin's settlement money was fully depleted. **App. 262**. On May 19, 2008, the balance in Respondent's trust account was $5.72. **App. 246**.

Under the Attorney's Fee Contract, Respondent was entitled to a fee of 33.333% of the gross amount of the settlement. **App. 181**. Respondent subtracted $96,500 from the settlement proceeds as attorney fees.[3] **App. 92 (Tr. 68)**. The attorney fees should have been

[3] Of the $96,500 paid in attorney fees, exactly one-third of such fee was paid to Lance Lefevre, an attorney with whom Respondent shared office space. In the Information,

$95,833.33. Respondent overpaid attorney fees in the amount of $666.66. Respondent testified that when he discovered this error, he reached a verbal agreement with Hank Medlin allowing him to keep the extra money in lieu of an actual itemization of expenses for copies, mileage, postage and the like. No documentation of this alleged agreement nor any itemization as to these incidental expenses was offered or admitted into evidence at the disciplinary hearing. Under the Attorney's Fee Contract, Respondent was entitled to be reimbursed for litigation expenses. Respondent and his co-counsel were reimbursed $1,209.51 for litigation expenses. **App. 195; 200; 262**. Additionally, there was testimony that Respondent represented Mr. Medlin in defense of a traffic matter. **App. 95 (Tr. 77)**. Respondent paid himself $830.94 out of the settlement proceeds for the traffic matter. **App. 197**.

Mr. Medlin directed Respondent to pay certain third party creditors (i.e credit card companies with substantial account balances owed by Hank Medlin) out of the settlement proceeds. **App. 193-194; 196; 262**. These payments on behalf of Mr. Medlin total $38,730.99. **App. 262**. Furthermore, Respondent paid $57,250 directly to Hank Medlin in

---

Informant alleged that payment of exactly one-third of the attorney fees to co-counsel in a separate firm was a prohibited division of attorney fees in violation of Mo.Sup.Ct.R. 4-1.5(e). **App. 14-15**. The disciplinary hearing panel did not find a violation of Rule 4-1.5(e) (2007). **App. 331-332**. In light of the seriousness of the other misconduct found by the panel, OCDC does not challenge the hearing panel's findings and conclusions in this regard.

several installments over a fourteen-month period in checks drawn from the trust account. **App. 262**. These checks included a notation on the memo portion of "Settlement Distribution." **App.192-208**.

Without the benefit of testimony from Hank Medlin, it is difficult to fully understand why the settlement proceeds were paid in a sporadic, piecemeal fashion instead of a lump-sum distribution. However, the hearing panel found that Mr. Medlin directed the amount and timing of the distributions, at least until May of 2008**. App. 321-322**. Hank Medlin did not have a bank account. **App. 98 (Tr. 89-91); 131 (Tr. 213)**. Most of these payments from Respondent to Hank Medlin were between $1,500 and $4,000, and were promptly cashed at a bank. **App. 192-208; 322**. None of the payments exceeded $9,500 (presumably because cash transactions over $10,000 are reported to the IRS). **App. 131 (Tr. 213); 192-208; 322**. Two witnesses testified that Mr. Medlin did not want to disclose receipt of these funds to the Internal Revenue Service and the Social Security Administration. **App. 131 (Tr. 213-214); 156 (Tr. 314); 321.** Mr. Medlin was receiving government assistance and had not filed income tax returns for several years. **App. 157 (Tr. 320)**.

Respondent did not place the remaining settlement proceeds into a separate non-IOLTA interest-bearing account. **App. 98 (Tr. 92)**. Respondent testified that Hank Medlin would not disclose his social security number, which would be needed to set up an account in Mr. Medlin's name. **App. 98 (Tr. 89-91)**. Respondent further testified that he did not want to set up an account under Respondent's own social security number, allegedly because the interest paid by the bank would have been taxable to Respondent. **App. 98 (Tr. 89-90)**.

At the time of the settlement and thereafter, Respondent was aware that Hank Medlin had a tax liability problem of a significant but undetermined amount. **App. 131 (Tr. 213-214)**. Respondent believed that Mr. Medlin would need to use a portion of the settlement proceeds to satisfy the tax liability, possibly through the process of an offer-in-compromise. **App. 131 (Tr. 213-215)**. On the other hand, Hank Medlin was more concerned about having money for his retirement and being able to give his daughter money upon her graduation from college. **App. 131 (Tr. 214); 163 (Tr. 341)**. Either way, Hank Medlin was not a wealthy man. **App. 159 (Tr. 328)**. He depended upon having access to the remaining settlement proceeds for some or all of these purposes. **App. 131 (Tr. 214)**.

Respondent's representation of Hank Medlin did not conclude with the settlement in January of 2007. **App. 132-133 (Tr. 219-221)**. Although no written engagement agreement existed, Respondent continued to involve himself in the evaluation of Hank Medlin's tax problem. Respondent performed some preliminary work to evaluate what needed to be done as far as tax compliance. **App. 132-133 (Tr. 219-221)**. Respondent retained a box of Hank Medlin's records for that purpose. **App. 132-133 (Tr. 219-221)**. The evidence showed an ongoing attorney-client relationship between Respondent and Hank Medlin, at least up through April 2008 when all of the settlement funds had been depleted from the trust account.

Of the $287,500 settlement proceeds, approximately $194,000 is accounted for as follows:

$57,250.00 PAYMENTS DIRECTLY TO HANK MEDLIN

(13 checks: 1193; 1215; 1220; 1221; 1225; 1236; 1237; 1242; 1262; 1270; 1282; 1293; 1310)

$95,833.33 1/3rd CONTINGENCY FEE

(6 checks: 1194; 1195; 1207; 1209; 1210; 1212)

$ 830.94 ATTORNEY FEE FOR TRAFFIC MATTER

(1 check: 1206)

$ 1,209.51 CASE EXPENSES

(4 checks: 1200; 1201; 1219; 1228)

$ 38,730.99 PAYMENTS TO 3rd PARTIES ON BEHALF OF MEDLIN

(5 checks: 1196; 1197; 1198; 1204; 1205)

= $193,854.77. **App. 262**.

There is no dispute as to the ownership of the settlement funds in the trust account. **App. 86-88 (Tr. 43-52); 95 (Tr. 77-80); 97 (Tr. 85-86)**. For instance, as of February 15, 2007, there was about $141,319 in Respondent's trust account. **App. 88 (Tr. 51)**. Respondent testified that all but about $9 belonged to Hank Medlin. **App. 88 (Tr. 52)**. Until the end of April 2008 when the settlement funds were fully depleted, Respondent was fully aware that virtually all of the money in the trust account at any given time belonged to Mr.

Medlin. **App. 86 (Tr. 43); 95 (Tr. 80); 97 (Tr. 86)**. Respondent testified that he understood that he was the trustee of the money in the trust account and that he was required to handle the money in a fiduciary capacity. **App. 87 (Tr. 45-46)**. Respondent testified that he was familiar with Rule 4-1.15. **App. 87 (Tr. 47)**.

The remaining $93,645 was taken by Respondent beginning April 2, 2007,[4] summarized as follows:

$ 91,120.00	25 INSTANCES OF BARKER'S REMOVAL OF FUNDS FROM TRUST ACCOUNT FROM 4/07 TO 4/08 TO PAY HIMSELF FOR SOMETHING OTHER THAN ATTORNEY FEES OR CASE EXPENSES	**App. 262** **App. 216-240**

[4] Respondent received about $64,000 in attorney fees between January 4 and February 13, 2007. **App. 93 (Tr. 70)**. Yet by April 2007, Respondent found himself in a situation where he resorted to taking money from a client. These transactions exceed $93,000 during a one-year period beginning April 2007. Respondent's financial troubles have been chronic. **App. 93 (Tr. 71)**. He is still in a financial hole, with over $100,000 in outstanding judgments against him. **App. 292-293; 306-308**. About two-thirds of that debt has already been declared non-dischargeable in the event of a bankruptcy. **App. 143 (Tr. 263); 293**. ***Cf***. 11 U.S.C. § 523(a)(4) (excepting any debt arising from fraud or defalcation while acting in a fiduciary capacity from the scope of a bankruptcy discharge).

(25 checks: 1218; 1222; 1229; 1235; 1238; 1240; 1241; 1244; 1253; 1256; 1258; 1260; 1261; 1264; 1265; 1267; 1268; 1273; 1275; 1281; 1287; 1289; 1294; 1297; 1311)

$ 2,525.23	2 INSTANCES OF USING MEDLIN'S MONEY TO REFUND RETAINERS TO OTHERS (2 checks: 1251; 1257)	**App. 262** **App. 303-304**

= $93,645.23

When later confronted by an opposing attorney about the shortfall from the settlement proceeds, Respondent admitted that he knew that it was wrong to remove the money from the trust account. **App. 143 (Tr. 261)**. Each of the twenty-five checks identified above contained a notation on the memo line as "Atty fees & expenses" or something nearly identical. **App. 216-240**. Respondent admitted that every such notation is false. **App. 100 (Tr. 98)**. There is no dispute that these payments **were not** for attorney fees or expenses, since all fees and expenses from the representation had been fully paid prior to April 1, 2007. **App. 100 (Tr. 98)**. Each of these twenty-five trust account checks were deposited into Respondent's office/business operating account. **App. 101 (Tr. 102-104)**. Respondent paid both office overhead (including payroll) and personal expenses (such as residential mortgage and insurance) out of the office operating account. **App. 101 (Tr. 103-104)**.

Once the trust account was fully depleted in May 2008, Respondent did begin to make payments back to Hank Medlin. Respondent is able to document ten checks[5] totaling about $12,000 in repayment directly to Mr. Medlin. **App. 250-251; 264-273**. Between May 2008 and September 2008, Respondent wrote eight checks totaling $5,950 to Hank Medlin from the office operating account. **App. 264-273**. Most of these checks contained a false notation on the memo line indicating the payment was a "settlement distribution." **App. 264-273**. As the settlement proceeds had already been fully distributed, the payments from the office account did not have a direct relationship to the settlement money paid by the two insurance companies over eighteen months earlier.

Two checks, totaling $6,000, were paid from Respondent's trust account to Mr. Medlin. **App. 250-251**. Respondent testified that in July and August of 2008, he left $6,000 earned from other clients in his trust account so that he could make two payments to Hank Medlin. **App. 108-110 (Tr. 132-137).** Again, while these checks bore a notation of "settlement distribution" on the memo line of the check, the actual source of the payments was not Medlin's settlement proceeds. **App. 108-110 (Tr. 132-138)**. Likewise, Respondent testified that on another occasion he deposited $38,000 received from a personal loan into the trust account to make a payment to Mr. Medlin's estate. **App. 110 (Tr. 140); 261**.

[5] Respondent also claims credit for a few thousand dollars in cash allegedly given directly to Mr. Medlin. Respondent does not have receipts for any cash transactions.

Hank Medlin died unexpectedly on September 27, 2008. **App. 110 (Tr. 139); 295**. Hank Medlin's brother, Bill Medlin, took on the role of personal representative for the estate. **App. 159 (Tr. 327)**. Bill Medlin hired an attorney, John Allinder, to obtain information about the settlement on behalf of the probate estate. **App. 141 (Tr. 255)**. By letter dated October 20, 2008, Mr. Allinder requested a "complete accounting" of the settlement proceeds and a "certified check" of any money still due Hank Medlin. **App. 277**. Mr. Allinder's letter stated: **"Hopefully the money due Mr. Medlin is in your trust account. If it is not, please provide an explanation of why not."** (emphasis added). **App. 277**.

On November 3, 2008 Respondent delivered to Mr. Allinder a trust account check for $38,000. **Ap. 261**. The memo portion of the check falsely indicated that the payment was a "settlement distribution." **App. 261**. Respondent provided no other explanation as to the source of the $38,000 payment. **App. 111-112 (Tr. 144-145); 256; 261**. The source of the $38,000 payment was actually the proceeds of a loan obtained by Respondent a few days earlier from a long-time friend, Lowell Miller.[6] **App. 110-111 (Tr. 140-141); 306-308; 317**. Respondent deposited the $38,000 loan proceeds into his trust account, which gave the false

[6] Respondent asked Miller to loan him about $80,000 to cover the entire outstanding debt, but Miller would agree only to loan slightly less than half of the requested amount. **App. 112 (Tr. 145)**. Respondent failed to repay the loan to Mr. Miller, ultimately resulting in a judgment against Respondent in the principal amount of $33,000 plus interest. **App. 306-308**.

impression that the money had been in the trust account all along. **App. 111 (Tr. 141-142)**.

Respondent provided no accounting of the settlement proceeds with the check. **App. 256-261**. However, the payment was accompanied by a letter from Respondent dated November 3, 2008 indicating that a balance of approximately $38,000[7] was still owed. **App. 256**. Respondent's letter suggested that the balance would be paid once the estate completed a tax form. **App. 256-257**. Respondent was able to make the $38,000 payment to the estate without any tax information from the estate. In reality, Respondent did not have access to another $38,000 to satisfy Mr. Allinder's demand even if the tax form had been provided. **App. 111 (Tr. 143-144)**. At the time of Hank Medlin's death in September, there was no

[7] Respondent subsequently re-calculated the outstanding balance and acknowledged that the estate was actually owed about $41,000. **App. 252-255**. The actual judgment against Respondent fixed the principal amount owed by Respondent at $43,791.06. **App. 283-285**. Informant is not entirely sure how the estate arrived at this precise number. The calculation would not have materially differed from the following: $287,500 total settlement proceeds minus $193,854.77 in undisputed settlement distributions leaves a balance of $93,645.23 taken by Respondent. Crediting the balance of $93,645.23 with $11,950 in ten documented repayments directly to Mr. Medlin plus the $38,000 payment to the estate would leave a balance owed to the estate of $43,695.23. Since the slightly higher judgment amount is conclusive as against Respondent, OCDC defers to whatever calculation was utilized in preparation of the judgment.

money left in the trust account and next to nothing left in the business operating account. **App. 111 (Tr. 142)**. Respondent's request for a tax identification number presented an opportunity for Respondent to gain more time to find additional money to pay back the estate. **App. 111-112 (Tr. 144-145)**.

By letter dated November 6, 2008, Mr. Allinder again requested an accounting from Respondent. **Ap. 278-279**. By letter dated November 13, 2008, Respondent provided what purported to be an accounting of the settlement proceeds titled "Litigation Expenses/Distributions Paid After Settlement." **App. 252-255**. The document combines payments from the trust account from January 2007 to April 2008 (when the settlement proceeds had been fully exhausted) with payments made thereafter, characterizing all such payments as "distributions." **App. 252-255**. The disciplinary hearing panel found that the document "was not a full accounting because Respondent failed to identify any of the checks that Respondent wrote to Ronald K. Barker P.C." **App. 324**. Moreover, the document does not attempt to calculate interest owed by Respondent on money removed from the trust account. **App. 139 (Tr. 246-247); 252**. The November 13, 2008 letter promises an accounting of interest owed on the money, but no such accounting was ever provided by Respondent. **App. 139 (Tr. 246-247); 252**. The document contains other types of inaccurate information (e.g. compare notation for Check #10368 in Exhibit 19 **(App. 255)** to Check #10368 in Exhibit 23 **App. 266)**). The document makes no mention that there was a mistake in the calculation of attorney fees resulting in an overpayment of $666, or that Medlin and Respondent supposedly came to an agreement on that issue in lieu of an itemization of

mileage, postage, copies and other soft costs of the litigation. **App. 92-93 (Tr. 68-69); 252-255**. By November 13, 2008, Respondent was aware that there was a shortfall of at least $41,000 owed to Mr. Medlin's estate. **App. 252-255**. By letter dated November 18, 2008, John Allinder requested payment of this sum. **App. 280**. Respondent failed to satisfy this outstanding obligation. In May 2009, the probate estate brought an action against Respondent. **App. 296-300**. A final judgment was entered against Respondent on June 16, 2010 in the principal amount of $43,791.06 plus $16,000 in prejudgment interest. **App. 291-293**. The judgment was declared to be nondischargeable in bankruptcy. **App. 293**.

The disciplinary hearing in this matter was held one year later in June 2011. **App. 78 (Tr. 1)**. As of the hearing, Respondent had made no payment in partial satisfaction of the judgment. **App. 113 (Tr. 150)**. As of this brief, Informant is not aware of any such payment by Respondent towards the judgment amount. Respondent appears to be judgment proof, meaning that it is doubtful that he has any assets (outside of assets held jointly with his wife) from which to satisfy either judgment against him. **App. 122 (Tr. 186-187); 146 (Tr. 274)**. With post-judgment interest, the pair of judgments against Respondent collectively exceeds $100,000. **App. 291-293; 306-308**.

Hank Medlin left behind very little money after his death. **App. 159 (Tr. 328)**. A few days after his death, Hank's brother, Bill Medlin, went to Respondent's office to find out if there was sufficient money to pay for Hank's burial. **App. 160 (Tr. 329)**. Respondent was unable to pay any money back to the estate at that time. Bill Medlin had to finance his

brother's burial because the settlement proceeds were gone and Respondent was unable to make a payment. **App. 162 (Tr. 340)**.

Hank Medlin's surviving daughter and sole heir is Ila Medlin. **App. 152 (Tr. 298)**. At the time of her father's death, Ila Medlin was a college student. **App. 152 (Tr. 297)**. Money received from her father's estate would have helped Ms. Medlin pay for education expenses as well as daily living expenses. **App. 152 (Tr. 300); 155 (Tr. 309)**. In the years since her father died, Ila Medlin has experienced financial harm as a result of Respondent's misconduct. **App. 152-155 (Tr. 300-310)**. Ms. Medlin testified as follows:

> Q. (By Mr. Odrowski) Has Mr. Barker caused any harm to your family?
>
> A. The fact that that money is no longer available has made it so that I have to really scrape by. I haven't been able to find a job in my field yet. I work at a tobacco store, and I work five days a week. And I go to work everyday. I go to work when I'm sick. I go to work when I'm depressed, and I work hard all the time. Everybody else at my work has had a vacation in the last year, and I haven't because I can't afford to take one.

> Everything -- I feel like it would just be a little bit easier if I could have some of the money that was my father's to use well.

App. 152 (Tr. 299-300).

She further testified as follows:

> Q. What would it mean to you personally if the judgment were paid in full?
>
> A. I would pay off my college debt and I would go and get my doctorate, maybe not in painting but in maybe art history and be a teacher, college professor or a conservationist of painting and paper. Save culture for future generations.

App. 152 (Tr. 298).

The probate lawsuit against Respondent caused the estate to incur $11,300 in attorney fees. **App. 143 (Tr. 264); 288-290**. Respondent's Answer to the Petition for Accounting and to Recover Money and Money Damages requested dismissal of the estate's action. **App. 301-302**. The estate took Respondent's deposition and engaged in a substantial amount of discovery. **App. 144 (Tr. 265-267)**. Respondent filed no offer of judgment. The matter was contested up to the time of judgment. **App. 294**. Thus, the litigation against Respondent

further depleted the assets of Hank Medlin's estate by over $11,000. **App. 288**.

RESPONDENT'S DEFENSES

Respondent attempted to raise two defenses. First, Respondent claims that in 2007 and 2008 he was in such a financial hole that his only way out was to borrow money from a private source, such as Mr. Medlin. Respondent blames his predicament on (then) Jackson County Circuit Court Judge Stephen Nixon (and apparently by extension, the Missouri Supreme Court). **App. 75-76**. Paragraph 35 of Respondent's Answer alleges that the situation "was a direct result of the Supreme Court of Missouri's failure to monitor cases for disposition within a reasonable time." **App. 75**. According to Respondent, Judge Nixon failed to timely enter judgment in a civil action.[8] **App. 75-76**. Respondent claims that if Judge Nixon had entered judgment in a timely fashion in favor of Respondent's client and against one of the defendants in the litigation, Respondent would have received a large attorney fee award and that Respondent would not have needed to take Mr. Medlin's money.

[8] The litigation involves a claim by a homebuilder, Bob Dulin, against a property owner, Kent Desselle, captioned on appeal as ***Olathe Millwork Co. v. Dulin***, 189 S.W.3d 199 (Mo. App. 2006). Respondent estimated the amount of the *quantum meruit* claim against Desselle is at least $250,000. **App. 174 (Tr. 385)**. The money judgment on the *quantum meruit* claim against Desselle has yet to be entered. **App. 174 (Tr. 386)**. Ironically, Kent Desselle himself became suspended from the practice of law in Missouri in 2008 and Desselle was ultimately disbarred in 2009 by this Court.

App. 75-76; 173-174 (Tr. 384-387).

Second, Respondent claims that each of the twenty-seven instances where he removed money from the trust account by a check written to himself was an actual, consensual loan from Mr. Medlin to Respondent, documented by a series of purported promissory notes. **App. 322; 325-326**.

The hearing panel did not accept either one of these defenses. The hearing panel found that "none of these payments from Respondent's trust account using Medlin's settlement proceeds was authorized or known by Medlin." **App. 322**. Hank Medlin was not aware that Respondent was using the settlement proceeds for Respondent's own personal use. In other words, the panel found that Respondent's testimony concerning alleged consensual loans was not credible. **App. 326**. The probate court judgment against Respondent found that "The Defendant Ronald K. Barker could not produce any writing wherein James H.D. Medlin consented or agreed to the borrowing of his monies by Ronald K. Barker." **App. 284**. Likewise, at the disciplinary hearing, there was no written evidence of a consensual borrowing. **App. 118 (Tr. 170); 325-326**.

None of the twenty-five checks whereby Respondent removed the settlement money from the trust account for deposit into his business account contain any notation indicating the checks were loan proceeds. **App. 216-240**. Likewise, none of the ten checks written from May of 2008 to September of 2008 to pay back Hank Medlin contain any notation that they were repayment of a loan. **App. 263-273**. The $38,000 payment made on November 3,

2008 does not state that it is a loan payment. **App. 261**. Rather it is reflected as a "settlement distribution." **App. 261**.

Respondent had three phone conversations with John Allinder in or around October and November of 2008. **App. 142-143 (Tr. 260-261)**. Respondent never mentioned the existence of loans or promissory notes to Mr. Allinder. **App. 142-143 (Tr. 260-261)**. Further, Respondent's letters to Mr. Allinder dated November 3, 2008 and November 13, 2008 do not provide any details about a loan or series of loans from Hank Medlin to Respondent. **App. 252-261**. The "accounting" provided with the letter of November 13, 2008 provides no indication of a loan or series of loans nor or a series of payments to repay a loan. **App. 254-255**.

Respondent first articulated his position that he "borrowed" the settlement proceeds in March of 2009, in response to the disciplinary complaint. **App. 114 (Tr. 154); 143 (Tr. 261); 145 (Tr. 270)**. Respondent claimed each time he removed money from the trust account, he created a corresponding promissory note. **App. 116 (Tr. 162-163); 118 (Tr. 170)**. The panel found Respondent's testimony regarding the timing and purpose of the promissory notes not to be credible.[9] **App. 326**.

[9] Because they lacked trustworthiness and probative value, the promissory notes were not offered or admitted into evidence at the disciplinary hearing. **App. 117 (Tr. 168)**. Arguably, Rule 4-3.3(a)(3) may have prevented counsel from offering the promissory notes into

None of the promissory notes were signed by Hank Medlin nor ever presented to Hank Medlin. **App. 118 (Tr. 169-170)**. Respondent kept the notes in his exclusive physical possession. **App. 114 (Tr. 154)**. The promissory notes were back-dated, meaning that they were not signed on the date of the instrument. **App. 116-118 (Tr. 163-170)**. Respondent largely admits these facts. **App. 116-118 (Tr. 163-170)**. Respondent also admits that some of the notes were signed after Medlin's death. **App. 116-118 (Tr. 164-169)**.

Respondent received notice of this disciplinary complaint in February 2009. Respondent could not produce any document at the disciplinary hearing suggesting that the promissory notes were created prior to February 2009. **App. 114 (Tr. 154); 116 (Tr. 163)**. The computer file "properties" history for the documents shows the promissory notes were created on February 24, 2009, shortly after Respondent received notice of this disciplinary complaint. **App. 167-168 (Tr. 359-363)**. Respondent submitted his response along with the promissory notes to OCDC on March 2, 2009. **App. 114 (Tr. 154)**.

Had the promissory notes been authentic and valid instruments, they would have been property of the probate estate. **App. 114 (Tr. 154-155); 150 (Tr. 290)**. Respondent would have been required to turn the instruments over to Mr. Allinder. **App. 114 (Tr. 154-155)**. Respondent still retains possession of the original promissory notes. **App. 114 (Tr. 154)**. The claim in the probate court against Respondent was not based upon liability for repayment

---

evidence. If the Court desires to examine the promissory notes, they are attached to the Information as Exhibit M. **App. 38-65**.

of the promissory notes. **App. 291-302**. The promissory notes have never been raised in defense to civil litigation. **App. 301-302**. They have never been offered to a tribunal as evidence. **App. 117 (Tr. 168)**. The promissory notes have never been adjudicated in any fashion, except as questioned in this proceeding.

Respondent made no attempt to calculate interest on the money he needed to pay back until March of 2009, even though the purported notes provided for interest to be paid at 9% per annum. **App. 135 (Tr. 229); 137 (Tr. 237-238); 139 (Tr. 247-248); 252**. In other words, Respondent did not intend the partial repayments of about $12,000 made from May 2008 through September 2008 to be applied towards accrued interest on any of the notes. **App. 135 (Tr. 229)**. The payments were not accompanied by any computations or written instructions for reconciling the payment with reference to any particular promissory note or correlating the payment to outstanding principal or accrued interest on any of the respective notes. Respondent admits that these computations were not made until late February/early March 2009, just before submitting the notes to OCDC in response to the bar complaint. **App. 135**. Respondent never obtained Mr. Medlin's social security number. **App. 99 (Tr. 94)**. Without a social security number, income paid to Medlin in the form of interest could not be reported to the IRS by means of a Form 1099 statement. **App. 133 (Tr. 222)**.

Hank Medlin's adult daughter, Ila Medlin, was unaware of any alleged loan extended to Respondent:

> Q. Did your father ever tell you he was loaning money to his lawyer?

A. No. My dad didn't loan money to anybody.

Q. He wouldn't loan you money for your education?

A. No. I was supposed to pay off my own education, even my car. He bought me a car. He expected me to pay it back once I got out of college and had the money to pay him back. He was keeping note on the interest and everything. And he thought about it long and hard. We had long conversations before he even did that for me.

App. 152 (Tr. 298-299).

Likewise, Hank Medlin's girlfriend. Brenda Ford, testified she was unaware that Hank had agreed to loan the settlement proceeds to Respondent. **App. 156 (Tr. 314-315)**. Ms. Ford accompanied Hank Medlin to meet with Respondent at least eight times. **App. 156 (Tr. 314)**. The subject of a loan was never mentioned during these meetings. **App. 156 (Tr. 314-315)**.

POINTS RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT FOR HIS MULTIPLE VIOLATIONS OF THE RULES OF PROFESSIONAL CONDUCT IN THAT:

A. RESPONDENT MISAPPROPRIATED CLIENT FUNDS ON TWENTY-SEVEN SEPARATE OCCASIONS OVER A ONE-YEAR PERIOD AND, THUS, FAILED TO PROMPTLY DELIVER CLIENT PROPERTY UPON REQUEST IN VIOLATION OF RULE 4-1.15(f) (2008);

B. RESPONDENT FAILED TO PROVIDE A FULL ACCOUNTING OF CLIENT PROPERTY UPON REQUEST IN VIOLATION OF RULE 4-1.15(f) (2008) AND FAILED TO MAINTAIN ACCURATE AND COMPLETE TRUST ACCOUNT RECORDS IN VIOLATION OF RULE 4-1.15(a) (2007) AND 4-1.15(c) (2008);

C. RESPONDENT COMMINGLED NON-TRUST FUNDS WITH TRUST FUNDS IN VIOLATION OF RULE 4-1.15(c) (2008); AND

D. RESPONDENT FAILED TO PROMPTLY REPAY THE

DECEASED CLIENT'S PROBATE ESTATE AND DELIBERATELY ATTEMPTED TO CONCEAL THE MISCONDUCT FROM THE ESTATE AND THE OCDC, THEREBY ENGAGING IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE AND CONDUCT INVOLVING DECEIT, DISHONESTY, FRAUD AND MISREPRESENTATION IN VIOLATION OF RULE 4-8.4(c) AND (d).

Lappe & Associates, Inc. v. Palmen, 811 S.W.2d 468 (Mo. App. 1991)

Rule 4-1.8(a)

Rule 4-1.15(a) (2007)

Rule 4-1.15(b) (2007)

Rule 4-1.15(c) (2008)

Rule 4-1.15(f) (2008)

Rule 4-8.4(c)

Rule 4-8.4(d)

II.

DISBARMENT IS THE APPROPRIATE SANCTION IN THIS CASE BECAUSE RESPONDENT KNOWINGLY CONVERTED AND MISAPPROPRIATED OVER $93,000 IN CLIENT MONEY AND THERE ARE NO COMPELLING OR SUBSTANTIAL MITIGATING FACTORS IN THIS CASE.

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

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

In re Donaho, 98 S.W.3d 871 (Mo. banc 2003)

In re Griffey, 873 S.W.2d 600 (Mo. banc 1994)

Rule 4-1.15

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT FOR HIS MULTIPLE VIOLATIONS OF THE RULES OF PROFESSIONAL CONDUCT IN THAT:

A. RESPONDENT MISAPPROPRIATED CLIENT FUNDS ON TWENTY-SEVEN SEPARATE OCCASIONS OVER A ONE-YEAR PERIOD AND, THUS, FAILED TO PROMPTLY DELIVER CLIENT PROPERTY UPON REQUEST IN VIOLATION OF RULE 4-1.15(f) (2008);

B. RESPONDENT FAILED TO PROVIDE A FULL ACCOUNTING OF CLIENT PROPERTY UPON REQUEST IN VIOLATION OF RULE 4-1.15(f) (2008) AND FAILED TO MAINTAIN ACCURATE AND COMPLETE TRUST ACCOUNT RECORDS IN VIOLATION OF RULE 4-1.15(a) (2007) AND 4-1.15(c) (2008);

C. RESPONDENT COMMINGLED NON-TRUST FUNDS WITH TRUST FUNDS IN VIOLATION OF RULE 4-1.15(c) (2008); AND

D. RESPONDENT FAILED TO PROMPTLY REPAY THE DECEASED CLIENT'S PROBATE ESTATE AND DELIBERATELY ATTEMPTED TO CONCEAL THE MISCONDUCT FROM THE ESTATE AND THE OCDC,

THEREBY ENGAGING IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE AND CONDUCT INVOLVING DECEIT, DISHONESTY, FRAUD AND MISREPRESENTATION IN VIOLATION OF RULE 4-8.4(c) AND (d).

A. Misappropriation

Conversion is the unauthorized assumption of the right of ownership over the personal property of another to the exclusion of the owner's rights. ***Lappe & Associates, Inc. v. Palmen***, 811 S.W.2d 468, 471 (Mo. App. 1991) (stockbroker who diverted client's special purpose check for stockbroker's personal benefit is guilty of conversion). In the present case, conversion, theft and misappropriation are synonymous terms to describe Respondent's conduct of removing client funds from the trust account to pay his personal and business expenses. There is no dispute as to the ownership of the settlement funds in the trust account. Respondent testified that all but about $9 belonged to Hank Medlin. Until the end of April 2008 when the settlement funds were fully depleted, Respondent was fully aware that virtually all of the money in the trust account at any given time belonged to Mr. Medlin.

Each of the twenty-seven times when Respondent removed a portion of the settlement proceeds from the trust account and deposited them into his general office account, there was a separate instance of misappropriation. The misappropriation started in April 2007. By the end of August 2007, Respondent had misappropriated about $50,000. By the end of April 2008, a total of $93,500 had been taken. Although about $12,000 was repaid to Mr. Medlin

from May 2008 to September 2008, this was not even enough to cover the first four instances of misappropriation that took place more than a year earlier. Similarly, the $38,000 delivered to the estate in early November 2008 replaced funds taken from Mr. Medlin as early as May 2007, eighteen months earlier. In other words, when money was delivered to Mr. Medlin or his estate, there was a delay of twelve to eighteen months in replenishing the first $50,000 of misappropriated settlement proceeds. Finally, the remaining sum of about $43,500 has never been delivered to the estate, despite entry of a final judgment against Respondent. In short, there has been no prompt delivery of funds. The conversion by an attorney of client funds would necessarily establish a violation of Rule 4-1.15(b) (2007)/Rule 4-1.15(f) (2008), which requires a lawyer to promptly deliver funds to the client. Respondent did not promptly deliver the settlement proceeds to his client or to the client's estate.

B. Incomplete Accounting and Trust Account Records

The panel found, and the evidence shows, that a full accounting of the settlement proceeds was not promptly provided by Respondent to the estate, despite repeated requests from Mr. Allinder. Clearly, Respondent's two letters to Mr. Allinder did not disclose the true disposition of the settlement proceeds. The sheet describing "Distributions Paid After Settlement" **(App. 254)** does not reveal any of the 25 trust account checks written to Ronald K. Barker, P.C. **(App. 216-240; 262)**. Moreover, the use of the trust account to pay back $38,000 to the estate undermines the reliability of the partial accounting provided by Respondent. The panel essentially found that the documents provided to Mr. Allinder were incoherent and incomplete. In failing to promptly provide a full accounting of the proceeds

upon request by Mr. Allinder, Respondent violated Rule 4-1.15(f) (2008).

Respondent admitted to his failure to maintain accurate trust account records:

> Q. Do you acknowledge any instance of failure to keep, maintain accurate trust account records?
>
> A. Yes.

The panel found that "Respondent failed to maintain any accurate or correct records of Medlin's funds" and thereby violated 4-1.15(c). There is no real dispute that Respondent violated Rule 4-1.15(c) (2008) which requires a lawyer to keep trust account records in accordance with generally accepted accounting practices. See Comment 1 to Rule 4-1.15(c) (2008). The statement attached to Respondent's letter of November 3, 2008 would not satisfy even the most lenient accounting standards with respect to identifying the distribution of the settlement proceeds.

C. Commingling

Additionally, there is clear evidence of commingling of trust funds and non-trust funds. In late July and early August of 2008, Respondent paid $6,000 to Mr. Medlin from his trust account. **(App. 250-251)**. The source of these funds was not from Mr. Medlin's settlement. Respondent purposefully left funds derived from attorney fees received in unrelated legal matters in his trust account to pay back money owed to Mr. Medlin. Likewise, there is no dispute that the source of the $38,000 payment to the estate was the proceeds from a $38,000 loan obtained from Respondent's friend, Lowell Miller. In other

words, Respondent commingled personal, non-trust funds in his trust account to pay back an obligation owed to Mr. Medlin. Respondent admitted to commingling:

> Q. Do you acknowledge any instance of commingling your personal funds with trust funds?
>
> A. Yes.

Accordingly, there is no real dispute that the evidence supports a finding of a violation of Rule 4-1.15(c) (2008), which requires a lawyer to segregate trust funds from the lawyer's own funds; and violations of Rule 4-1.15(a) (2007), which requires a lawyer to keep and preserve complete records of trust account funds.

D. Dishonest and Prejudicial Dealings with the Probate Estate

Respondent appears to be judgment-proof. His inability and failure to satisfy the obligation to the probate estate has been extremely prejudicial to the administration of the estate. There was not even enough of Medlin's money left to pay up-front for his funeral. After the funeral and burial expenses were finally paid, another large chunk of the $38,000 Respondent paid to the estate in November 2008 was used to pay for the lawsuit against Respondent. Mr. Medlin died more than three years ago, and there still is little money to distribute to his heir.

Respondent has had over three years to make things right. He has not. Instead, Respondent has made one excuse after another. Initially, he claimed the rest of the money would be paid as soon as the estate obtained a tax identification number. That was just a stall

tactic. Respondent knew he had no money to pay back the estate. Respondent went to great lengths to make it appear as though there was sufficient money to pay the balance. The use of a trust account check for $38,000 was a deliberate attempt to make Allinder think the money was still sitting in the trust account. Respondent also claims that he will pay the money back just as soon as he collects a judgment against Kent Desselle, another lawyer who disgraced the profession by stealing money.

The content of the two letters Respondent sent to Allinder are deceptively sparse as to an explanation as to the disposition of the $287,500 in settlement proceeds. The letters place the focus on relatively unimportant details (e.g. an AT&T billing, a $1,500 loan to the daughter of a former girlfriend, the return of a box of unusable documents provided by Mr. Medlin, and concerns about unfiled tax returns and various tax matters).

The two-page attachment to Informant's Exhibit 19 **(App. 254-255)** intentionally obscures the significant difference between those payments made to Mr. Medlin from the trust account and those payments made to Mr. Medlin from the business account. In hindsight, it is not difficult to recognize the abrupt changes that occurred after April 25, 2008, when the money in the trust account became fully depleted. For the most part, the payment amounts sharply decreased and the checks switched to a different numerical series. However, in November 2008, the true distribution of the settlement proceeds was not known and copies of trust account checks were not provided. In other words, none of the twenty-five checks compiled in Exhibit 12 **(App. 216-240)** nor the 2 checks from Exhibit 38 **(App. 303-304)** are identified anywhere in Exhibit 19 **(App. 252-255)**, which is a purported

accounting of the $287,500 in settlement proceeds. In sum, Respondent's tactics in dealing with the estate were uncooperative and lacked forthrightness. The payment of $38,000 on November 3, 2008 was a promising gesture. However, in the three years since then, there has been no further attempt by Respondent to reduce the harm sustained by the estate and its sole beneficiary, Ila Medlin.

Respondent increased the tangled web of deception by fabricating promissory notes and submitting them to the OCDC as purported evidence of a series of loan transactions. Respondent has kept the notes in his physical possession. He did not even turn them over to the estate, despite the fact that original documents with intrinsic value would be property of the estate. Stealing from a client is egregious. Trying to cover it up with misleading and fabricated documents elevates the misconduct to a different level.

Based upon these facts, the Court should conclude that Respondent engaged in conduct involving dishonesty, fraud, deceit and misrepresentation and conduct that was prejudicial to the administration of justice, in violation of Rule 4-8.4(c) and (d).

E. Respondent's Defense of a Consensual "Borrowing" of Client Money

Respondent claims that each of the twenty-seven instances where he removed money from the trust account was an actual, consensual loan from Mr. Medlin to Respondent, documented by a series of purported promissory notes. This claim should be rejected, as there is no credible evidence to support it. The hearing panel found that "none of these payments from Respondent's trust account using Medlin's settlement proceeds was authorized or known by Medlin." In other words, the panel found that Respondent's testimony concerning alleged consensual loans was not credible.

The probate court judgment against Respondent found that "The Defendant Ronald K. Barker could not produce any writing wherein James H.D. Medlin consented or agreed to the borrowing of his monies by Ronald K. Barker." Likewise, at the disciplinary hearing, there was no written evidence of a consensual borrowing. The written evidence suggests the exact opposite.

None of the twenty-five checks whereby Respondent removed the settlement money from the trust account contained any notation indicating the checks were loan proceeds. Likewise, none of the ten checks written from May of 2008 to September of 2008 to pay back Hank Medlin contain any notation that they were repayment of a loan.

Despite the estate's repeated requests for an accounting, the notion that Hank Medlin lent $93,500 dollars to Respondent was not communicated directly to Mr. Allinder. Respondent had three phone conversations with John Allinder in or around October and November of 2008. Respondent never mentioned the existence of the promissory notes to

Mr. Allinder. Respondent's letters to Mr. Allinder dated November 3, 2008 and November 13, 2008 do not mention anything about a loan or series of loans from Hank Medlin to Respondent. The "accounting" provided with the letter of November 13, 2008 provides no indication of a loan or series of loans nor a series of payments to repay a loan. Respondent first articulated his position that he "borrowed" the settlement proceeds in March of 2009, in response to the disciplinary complaint.

Respondent claimed each time he removed money from the trust account, he created a corresponding promissory note. The promissory notes were not a contemporaneous record of instances where Respondent removed money from the trust account. None of the promissory notes were signed by Hank Medlin nor were they ever presented to Hank Medlin. Respondent kept the notes in his possession. The promissory notes were back-dated, meaning that they were not signed on the date of the instrument. Respondent largely admits these facts. Respondent could not produce any document at the disciplinary hearing suggesting that the promissory notes were created prior to February 2009 when Respondent received notice of this disciplinary complaint.

Had the promissory notes been authentic and valid instruments, they would have been property of the probate estate. Respondent would have been required to turn the instruments over to Mr. Allinder. Respondent still retains possession of the original promissory notes.

Since the claim in the probate court against Respondent was not based upon liability for repayment of the promissory notes, the judgment does not give cognizance to Respondent's defense herein.

Hank Medlin's adult daughter, Ila Medlin, was unaware of any alleged loan extended to Respondent. Likewise, Brenda Ford (Hank Medlin's girlfriend) testified she was unaware that Hank had agreed to loan the settlement proceeds to Respondent. Ms. Ford accompanied Hank Medlin to meet with Respondent at least eight times. The subject of a loan was never mentioned during these meetings.

The utter lack of loan documentation in this case leads to the inescapable conclusion that when Respondent took money from the trust account, he was stealing it, not borrowing it. A reasonably competent lawyer with more than thirty years' experience most assuredly would have insisted on some sort of loan agreement or other loan documentation to demonstrate the lender's consent and the *bona fides* of the transaction before borrowing over $93,000 from anyone. Furthermore, the attention to detail would have been even higher where the purported loan transaction is between a lawyer and his client. If a lawyer were bold and foolish enough to borrow money from a client, the lawyer surely would anticipate a much higher level of scrutiny of the transaction. There is no evidence of an attempt by Respondent to comply with the requirements of Rule 4-1.8(a), which would have applied to any business transaction between Respondent and Hank Medlin.

F. Alternate Grounds for Discipline

Counts I (misappropriation) and II (prohibited business transaction with a client) of the Information against Respondent were submitted to the panel in the alternative. The disciplinary hearing panel found that there was nothing consensual about the manner in which Respondent received money from Hank Medlin, and thus did not reach a determination of whether the "transactions" would have created a prohibited conflict of interest between Respondent and his client, Hank Medlin. The evidence demonstrated an ongoing attorney-client relationship between Respondent and Hank Medlin, primarily surrounding a lingering concern about Medlin's tax liability.

To the extent that this Court were to find that Respondent's "borrowing" of money from Hank Medlin was consensual, the Informant alternatively alleged that the "loans" would be prohibited by Rule 4-1.8(a) because none of the safeguards against business transactions with a client had been observed by Respondent. To the extent that Respondent entered into series of consensual business transactions with Hank Medlin, Respondent would be subject to discipline for creating and allowing a conflict of interest in violation of Rule 4-1.8(a) by engaging in prohibited transactions with a client.[10]

[10] The "transactions" spanned from April 2007 to April 2008. Effective July 1, 2007, Rule 4-1.8(a) underwent slight revisions. OCDC contends that these revisions are not material here, because Respondent failed to meet either version of the rule.

II.

DISBARMENT IS THE APPROPRIATE SANCTION IN THIS CASE WHERE RESPONDENT KNOWINGLY CONVERTED AND MISAPPROPRIATED OVER $93,000 IN CLIENT MONEY AND THERE ARE NO COMPELLING OR SUBSTANTIAL MITIGATING FACTORS IN THIS CASE.

Respondent converted over $93,000 of his client's money on twenty-seven occasions over a one-year period. Without question, this should result in disbarment, particularly conversion of the magnitude and duration unequivocally established by this record. Disbarment is warranted because (a) the overwhelming weight of precedent from the Missouri Supreme Court establishes a bright line rule that disbarment is the baseline sanction in cases of misappropriation; (b) there are no compelling mitigating factors such as the mental disorder raised in ***Belz***; (c) the misconduct is coupled by other acts of dishonesty and deception primarily designed to conceal and cover up the misappropriation; and (d) the result is supported by consideration of the ABA Standards.

A. Missouri Supreme Court Precedent

Historically, the Missouri Supreme Court has been unwavering in its view that disbarment is warranted where an attorney misappropriates client money, at least absent compelling evidence that the theft was caused by a mental disorder. ***In re Robison***, 519 S.W.2d 1 (Mo. 1975) (personal use of $1,200 of client's money was cause for disbarment); ***In re Simmons***, 576 S.W.2d 324 (Mo. banc 1978) (misappropriation of $3,400 warranted

disbarment); ***In re Witte***, 615 S.W.2d 421 (Mo. banc 1981) (lawyer disbarred for forging client's name on settlement documents and then depositing $1,500 in settlement proceeds into business account)[11]; ***In re Mentrup,*** 665 S.W.2d 324 (Mo banc 1984) (lawyer disbarred for misappropriating $24,000 from probate estate entrusted to his care and then filing numerous false and fraudulent reports in connection with the estate); ***In re Mendell***, 693 S.W.2d 76 (Mo. banc 1985) (intentional misappropriation of $336 of client's settlement money warranted disbarment); ***In re Lechner***, 715 S.W.2d 257 (Mo. banc 1986) (lawyer disbarred for converting $1,300 of settlement proceeds needed to satisfy claim of client's health care provider); ***In re Murphy,*** 732 S.W.2d 895 (Mo. banc 1987) (lawyer disbarred for failing to return $198 to client which had been earmarked for filing fees and then deceiving client about status of lawsuits); ***In re Adams***, 737 S.W.2d 714 (Mo. banc 1987) (lawyer disbarred for misappropriating client funds totaling about $2,100); ***In re Fenlon***, 775 S.W.2d 134 (Mo banc 1987); (lawyer disbarred for signing client's name to settlement release, depositing

[11] In ***Witte***, the attorney raised a defense similar to that raised by Respondent here. Witte claimed that he kept the settlement money at the request of the client, and then disbursed it to himself. Witte claimed that he "secured" the use of the client's money by putting some type of note or written notation of the transaction in his safe along with some commemorative silver coins of roughly equivalent value. Other than the lawyer's testimony, there was no evidence in ***Witte*** that there was a consensual borrowing or that the client was aware of the "security" for the loan.

settlement check into operating account without client's endorsements and then lying to client about status of settlement); ***In re Staab***, 785 S.W.2d 551 (Mo. banc 1990) (lawyer misappropriated client's settlement money earmarked to satisfy claim of third party); ***In re Schaeffer***, 824 S.W.2d 1 (Mo. banc 1992) (deposit of $3,400 in settlement money into operating account and failing to deliver such funds to client warranted disbarment); ***In re Griffey***, 873 S.W.2d 600 (Mo. banc 1994) (lawyer disbarred because he deceived and defrauded client by failing to safeguard their funds and deprived them of their money).

B. ***Belz*** Mitigating Factors Not Present in this Case

Misappropriation does not automatically result in disbarment. ***In re Belz***, 258 S.W.3d 38 (Mo banc 2008). However, ***Belz*** does not point to a sanction less severe than disbarment in this case. None of the circumstances found to constitute a compelling mitigating circumstance in ***Belz*** are present here. Respondent presented no evidence of a mental illness, such as the bipolar condition raised in ***Belz***.

None of the circumstances found to constitute other substantial mitigating factors in ***Belz*** are present here. Respondent did not self-report the misconduct. In fact, Respondent did the opposite and attempted to conceal the actual distribution of the settlement proceeds. Furthermore, unlike ***Belz***, there was no timely good faith effort to make restitution. Although Respondent did return $38,000 to the estate within five weeks of Mr. Medlin's death, the attending circumstances demonstrate Respondent merely spread the harm to two families rather than just one. Borrowing money from a friend without an honest and good faith plan for repayment falls well short of the type of mitigation envisioned in disciplinary cases.

Moreover, in the three years since that payment on November 3, 2008, Respondent has made absolutely no further attempt to make restitution to Medlin's estate. In fact, Respondent has actually increased the harm to the estate since November of 2008 by causing $11,000 in attorney fees to be expended on behalf of the estate in pursuing a judgment against Respondent.

Where the mitigating factors present in ***Belz*** are not at issue, ***In re Ehler***, 319 S.W.3d 442 (Mo. banc 2010), demonstrates that the Court still adheres to the traditional approach to discipline in cases involving misappropriation of money. Thus, a sanction of disbarment in this case is consistent with the most recent opinion on misappropriation of client funds from the Missouri Supreme Court. ***Id***. at 451 ("disbarment is appropriate for misappropriation of client funds.").

C. The Misappropriation Was Coupled with

Other Acts of Deceit and Dishonesty

While the principles underlying this disciplinary axiom may be well known, they bear repetition. "Honesty . . . is an all important quality for an attorney. Situations in which a dishonest attorney could deceive a trusting client arise far too often." ***In re Mendell***, 693 S.W.2d 76, 78 (Mo. banc 1985). Protection of the public is the primary purpose of the disciplinary system. ***In re Harris***, 890 S.W.2d 299, 302 (Mo. banc 1994). "Certainly where an attorney misappropriates a client's funds, protection of the public is uppermost in our minds." ***In re Williams***, 711 S.W.2d 518, 522 (Mo. banc 1986). "The privilege to practice

law is only accorded those who demonstrate the requisite mental attainment and moral character and, absent mitigating circumstances, an attorney who betrays the trust reposed in him for personal financial gain demonstrates he no longer possesses the requisite moral character." ***In re Maier***, 664 S.W.2d 1, 2 (Mo. banc 1984).

While the presence of mitigating factors can sometimes justify leniency, leniency is *never warranted* when the misappropriation is attended by other acts of dishonesty and deception, such as Respondent's attempt here to cover up the misconduct. ***See e.g. In re Mentrup,*** 665 S.W.2d 324 (Mo. banc 1984); ***In re Fenlon***, 775 S.W.2d 134 (Mo. banc 1987); ***In re Griffey***, 873 S.W.2d 600 (Mo. banc 1994) (lawyer's attempt to cover up the improper conduct compounds the seriousness of the deeds and belies his argument of mistake); ***In re Witte***, 615 S.W.2d 421 (Mo. banc 1981). ***See also In re Donaho***, 98 S.W.3d 871 (Mo. banc 2003) (lawyer created falsified documents to send to disciplinary committee). Misconduct involving subterfuge, failing to keep promises, and untrustworthiness undermines public confidence in not only the individual but in the bar. ***In re Ehler,*** 319 S.W.3d 442, 451 (Mo. banc 2010). In those circumstances, substantial discipline must be imposed. ***Id***.

D. Consideration of ABA Standards Points to Disbarment

The Missouri Supreme Court looks to the ABA's Standards for Imposing Lawyer Sanctions (1991 ed.) for guidance when imposing discipline. **In re *Ehler***, 319 S.W.3d 442, 451 (Mo. banc 2010). Accordingly, it is appropriate to examine the ABA Standards, as set forth below. Consistent with the analytical framework set forth in the ABA Standards, this Court considers the ethical duty violated, the attorney's mental state, the extent of actual or potential injury caused by the attorney's misconduct and any aggravating or mitigating factors. ***Id***. Where there are multiple instances of misconduct, the ultimate disciplinary sanction imposed should be consistent with the sanction for the most serious instance of misconduct. ***Id***.

The most important ethical duties are those obligations which a lawyer owes to clients. ***In re Ehler,*** 319 S.W.3d at 451. Safekeeping client property is the most important ethical duty owed to the client. This case presents a violation of the most important obligation of an attorney. As a result, the most severe sanction is warranted.

The evidence in the present case suggests that Respondent knew it was wrong to take his client's settlement money, but did it anyway. Respondent's actions were not "rookie" mistakes, nor mathematical errors, nor a matter of oversight, nor even a momentary lapse of poor judgment. Respondent did the same thing on twenty-seven separate occasions over a one-year period. Respondent testified that he understood that he was the trustee of the money in the trust account and that he was required to handle the money in a fiduciary capacity. Respondent testified that he was familiar with Rule 4-1.15. In fact, every Missouri

lawyer certifies to this on an annual basis when renewing his or her license. Respondent knew that the twenty-five trust account checks deposited into his business account was not for attorney fees, yet he purposefully put a false notation to that effect in the memo portion of each check. Mr. Allinder's letter to Respondent expressed the expectation that the settlement proceeds would have remained in the trust account until distributed, so Respondent delivered a trust account check to Allinder for $38,000. Respondent knew the money came from a personal loan, not Mr. Medlin's settlement. Yet he purposefully wrote "settlement distribution" as the notation on the memo line. Respondent's deception demonstrates a deliberate and knowing mental state. To add insult to injury, Respondent believed that Hank Medlin had a tax liability problem and that Medlin would need some of the settlement proceeds to pay taxes. Yet, Respondent proceeded to remove every last dime of Medlin's settlement proceeds from the trust account.

The harm resulting from this misconduct is obvious. Respondent caused actual harm to at least two families. First, Respondent now owes his former friend, Lowell Miller, $33,000 plus interest and cannot pay it back. He never would have had to borrow money from Miller in the first place if Respondent had kept his hands off the remaining portion of his client's money. More importantly, Mr. Medlin's estate suffered the greatest amount of harm. Ila Medlin, the sole heir of her father's estate, is barely scraping by because there is no money to distribute to her from her father's estate.

Respondent's conduct has also resulted in non-financial harm. Respondent has injured the profession as a whole. The circumstances of this case have had a profound effect on Ila

Medlin:

Q. Does the actions of Mr. Barker in taking money that belonged to your father affect your opinion about the integrity of the legal profession?

A. It makes me a little more hesitant toward trusting anybody, really. Like, I like to think the best of people, and I just don't know because I can't imagine just taking outright from somebody and expecting no repercussions. I just can't.

Q. Do you have any concerns for the general public out there that might some day ask Mr. Barker in the future to handle their money?

A. I would scream from the rooftops never to let anybody give him money that was theirs, not his again, like not ever. Nobody should let Ron Barker take care of their money.

As stated above, Respondent made no real attempt to put on evidence of mitigating factors. He expressed no remorse for the situation. He did not self-report his actions. He has not made full restitution. His restitution was impure and not in good faith. He suffers from no mental disorder that caused him to steal money. He raised no emotional problems. His only personal problems appear to derive from financial troubles. This situation has not been rectified since 2008. There was no evidence of his good character or solid reputation in the community. Other than the existence of non-collectable judgments entered against him, Respondent has suffered no real consequences from this situation.

In stark contrast, the aggravating factors are plentiful:

Prior Disciplinary Offenses

Respondent had received two admonitions since 2000, i.e. two admonitions within the seven years prior to the misconduct at issue. One of the admonitions was received in February 2008, contemporaneous with several instances of misappropriation.

Dishonest or Selfish Motives

Respondent's motives were dishonest and selfish. The money removed from the trust account was deposited into his business account, from which Respondent paid office expenses, payroll and even his household mortgage. After the settlement money was received, Respondent had little regard for Medlin's best interests. Respondent never paid interest to Medlin. What's worse, Respondent was concerned about Medlin's tax liability, but nevertheless took all of Medlin's money that could have been used to help Medlin make an offer-in-compromise to the government.

Pattern of Misconduct

It is undisputed that the misappropriation occurred on twenty-seven separate occasions over a one-year period.

Multiple Offenses

Respondent had little regard for the sanctity of the trust account. Not surprisingly, his misconduct violated several cardinal rules of handling a trust account. It is also not terribly surprising that the misappropriation was attended by other acts of dishonesty and conduct prejudicial to administration of the probate estate. Stealing and lying seem to go hand in hand. In short, Respondent has engaged in multiple disciplinary offenses.

Submission of False Evidence/Deceptive Practices

During the Disciplinary Process

Respondent's written response to the OCDC which attached the purported "promissory notes" was an attempt by Respondent to fabricate a defense to the misappropriation. The promissory notes are highly suspect. Respondent admits they were backdated to coincide with each check drawn from the trust account.

Refusal to Acknowledge Wrongful Nature of Conduct

While Respondent did acknowledge some problems in his handling of the trust account, Respondent simply would not acknowledge that it was wrong to have taken money from the trust account in this manner:

Q. Do you acknowledge the wrongful nature of the manner in which you have handled Mr. Medlin's settlement proceeds?

A. I don't think I handled it wrongly. I gave him what he asked for.

Q. But do you acknowledge any instance of misappropriating client money?

A. No.

Q. (By Mr. Odrowski) Do you acknowledge guilt as to any of the five counts alleged in the information?

A. I don't admit guilt to misappropriation of settlement proceeds and coverup.

MR. SULLIVAN: Speak up, please.

A. I don't agree to misappropriating settlement funds in Count I. I don't agree that I stole, converted or

misappropriated my client's settlement money.

Substantial Experience in the Practice of Law

Respondent was admitted to practice law in Missouri in 1976. At the time of the misconduct, Respondent had practiced law for over thirty years. He incorporated his law firm in the early 1990's, and thus had operated his own law firm for at least fifteen years prior to the misconduct.

Indifference to Making Restitution

Certainly, Respondent made some initial attempts to pay back the money. He did pay back about $50,000 in the first year and a half. Then, however, Respondent gave up. He has made no restitution in three years. Clearly, he was "robbing Peter to pay Paul" which is not the honorable way of making restitution. For instance, on March 22, 2009, Respondent elected to make a $5,000 payment on the loan to Lowell Miller. For whatever reason, Respondent made no commensurate payment to the probate estate.

Illegal Conduct

Although no criminal investigation has been initiated yet, Respondent's action of taking money that did not belong to him could be viewed as criminal conduct.

ABA Standard 4.11 provides that "Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client." In the absence of compelling mitigating factors or substantial mitigating factors, this baseline

sanction is warranted in this case. This is buttressed even further by the presence of several aggravating factors. The ABA Standards strongly point towards disbarment for Respondent.

CONCLUSION

For the reasons set forth above, the Chief Disciplinary Counsel respectfully requests that this Court:

(a) find that Respondent violated Rule 4-1.15 in multiple respects and Rules 4-8.4(c) and (d);

(b) disbar Respondent; and

(c) tax all costs in this matter to Respondent, including the $2,000 fee pursuant to Rule 5.19(h).

Respectfully submitted,

ALAN D. PRATZEL, MO #29141
CHIEF DISCIPLINARY COUNSEL

By:_____

Kevin J. Odrowski #40535
Special Representative, Region IV
4700 Belleview, Suite 215
Kansas City, MO 64112
kevinodrowski@birch.net
(816) 931-4408
(816) 561-0760 (fax)

ATTORNEY FOR CHIEF
DISCIPLINARY COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of November, 2011, two copies of Informant's Brief and a CD containing the brief in Microsoft Word format have been sent via First class, United States Mail, postage prepaid, to Respondent:

Ronald K. Barker
211 NW Executive Way, Suite J
Lee's Summit, MO 64063-1842

_____
Kevin J. Odrowski

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(c);
3. Contains 11,323 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and
4. That Trend Micro software was used to scan the disk for viruses and that it is virus free.

_____
Kevin J. Odrowski

APPENDIX – VOLUME I

TABLE OF CONTENTS

APPENDIX - VOLUME II

TABLE OF CONTENTS

APPENDIX – VOLUME III

TABLE OF CONTENTS