IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
LYDIA MARIE CARSON,	)	**Supreme Court No. SC96484**
4004 Washington Street	)	
Kansas City, MO 64111	)	
	)	
Missouri Bar No. 30639	)	
	)	
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 - Telephone
(816) 561-0760 - Fax
kevinodrowski@birch.net

ATTORNEYS FOR INFORMANT

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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

I. Overview

In this attorney disciplinary matter, an Information was initiated against Lydia M. Carson ("Respondent") in December 2015. **App. 2-12**. The Information alleged multiple violations of the Rules of Professional Conduct, including Rules 4-3.3(a)(1) (candor toward tribunal); 4-3.3(d) (candor toward tribunal in *ex parte* proceeding); 4-8.4(b) (criminal conduct); 4-8.4(c) (conduct involving dishonesty); 4-1.7(a) (conflict of interest); 4-8.4(d) (conduct prejudicial to the administration of justice); 4-7.2 (advertising); and 4-8.1(c) (lack of cooperation with disciplinary investigation). **App. 9-12**.

The matter was heard by a disciplinary hearing panel over two days in October 2016 and November 2016 upon six of the eight counts alleged in the Information, with the remaining two counts of the Information having been dismissed by stipulation of the parties. **App. 22-24; 142-144**. On the record at the hearing and by post-hearing submission, Respondent admitted a violation of Rule 4-8.4(d) by failing to promptly report public discipline to another licensing jurisdiction as required by local rule and a violation of Rule 4-7.2(f) by failing to include a mandatory disclosure statement in her advertising, but she continued to deny the other charges, including denials of misconduct involving dishonesty. **App. 528-529; 96 (Tr. 286-289); 103 (Tr. 315); 119 (Tr. 379)**.

A written decision of the Disciplinary Hearing Panel was issued in April 2017, finding Respondent guilty of misconduct with respect to a majority of the alleged violations submitted to the panel, including violations of Rules 4-3.3(a)(1) and 4-8.4(c) by knowingly making false statements of fact to two separate bankruptcy courts in written documents,

including a sworn affidavit; Rules 4-3.3(d), 4-8.4(c) and 4-8.4(d) by knowingly disobeying an obligation to report public discipline to the federal court clerk; and Rule 4-7.2 regarding omitted disclosures in advertising. **App. 455-457**. The panel found that a preponderance of evidence did not support the charges regarding a conflict of interest (Rule 4-1.7), a failure to cooperate in the disciplinary investigation (Rule 4-8.1) and criminal conduct (Rule 4-8.4(b)). **App. 457-458**.

After the conclusion of the evidence at the hearing, Informant requested a disciplinary sanction of disbarment. **App. 459**. Respondent sought either an admonition or a reprimand. **App. 460; 532-533**. Based upon the misconduct and aggravating and mitigating factors, the disciplinary hearing panel recommended that Respondent's law license be suspended for an indefinite period of at least three years. **App. 458**. OCDC accepted the panel's recommendation, but Respondent rejected it. **App. 466-467**.

II. Background

Respondent has been licensed as an attorney in Missouri since 1983. **App. 2, 13**. Respondent's license is currently active and in good standing. **App. 2, 13**. Respondent has practiced law in Kansas City, Missouri for over thirty years. **App. 28 (Tr. 31)**. Respondent's disciplinary history consists of a reprimand issued by the Missouri Supreme Court in February 2013 (*In Re: Lydia M. Carson*, SC93063) for a violation of Rule 4-1.4(a) and four previous admonitions**. App. 179-180; 183-189; App. 3, 13**. Respondent is a sole practitioner and has incorporated her law practice as Carson Law Center, P.C. **App. 3, 13**.

Respondent is a frequent practitioner in the federal district and bankruptcy courts in

the Western District of Missouri. **App. 3, 13**. Respondent has substantial experience in bankruptcy law. **App. 3, 13**. One witness testified that Respondent was a brilliant bankruptcy attorney who was very knowledgeable about bankruptcy statutes and rules. **App. 54 (Tr. 135)**. Respondent also handles divorce cases. **App. 75 (Tr. 218); 81 (Tr. Tr. 234).**

The underlying legal proceedings involve three related Chapter 11 bankruptcies, two in Missouri and one in Louisiana, for companies engaged in the lodging and motel industry. **App. 3-5**. Respondent was lead counsel of record in the Missouri bankruptcy cases and admitted *pro hac vice* in the Louisiana case. **App. 470**; **34 (Tr. 54)**; **34 (Tr. 60); 396-399.** Devan Pardue, Esq. (an attorney in Louisiana) was identified as "general counsel" for a company called Satnam Lodging, LLC which operated a motel in Kansas City, Missouri. **App. 249; 281; 34 (Tr. 55-56)**. However, Mr. Pardue had not been retained for the Missouri bankruptcy. **App. 249**. Mr. Pardue was not co-counsel for the Missouri bankruptcy and received no fees for the Missouri bankruptcies. **App. 249; 252**.

On June 26, 2012, Respondent filed a Chapter 11 bankruptcy proceeding on behalf of Satnam Lodging LLC ("Debtor" or "Satnam") in the United States Bankruptcy Court for the Western District of Missouri, Case No. 12-42607 (the "2012 Bankruptcy"). **App. 3, 13**. In a Chapter 11 bankruptcy, the attorney for the debtor does not represent the individual owners of the company, but rather represents the legal interests of the entire bankruptcy estate. **App. 37 (Tr. 66)**. In a Chapter 11 bankruptcy, the debtor's selection of counsel and the attorney fee arrangements are subject to disclosure requirements and court approval after inquiry into potential conflicts of interest. **App. 37-38 (Tr. 68-70)**.

In the Chapter 11 bankruptcy context, one source of potential conflict of interest for debtor's counsel involves whether or not counsel has any connections with insiders and affiliates of the debtor who may be creditors of the debtor or who may have received pre-bankruptcy preferential transfers[1] from the debtor. **App. 40 (Tr. 79)**. A potential preferential transfer exists where an unsecured creditor receives payment or other property from the debtor during a defined period prior to the bankruptcy. **App. 45 (Tr. 98); 497**. In the case of payments or transfers to an "insider," [2] the preference period reaches back one year prior to the date of the bankruptcy filing. **App. 45 (Tr. 98); 497**. An insider is a defined term in bankruptcy to include those persons or entities closest to the debtor, including partners, owners, and affiliated entities. **App. 45 (Tr. 98)**. A party in interest may require that the preferential transfer be paid back to the debtor. **App. 45 (Tr. 100)**. Once a company files bankruptcy, then a year's worth of transactions between the debtor and any affiliated company or insider can be examined. **App. 45 (Tr. 100)**.

Satnam was owned by three individuals, Daljeet ("Dee") Mann, Jagtar Otal, and Harjindar Ladhar. **App. 281; 34 (Tr. 54)**. These three owners collectively held ownership interests in twelve other companies that operated motels in eight states. **App. 281-283; 264**. The three owners and their affiliated motel companies arranged their finances based upon intercompany payments. **App. 45 (Tr. 99)**. In an e-mail from Mr. Pardue to Respondent, Mr. Pardue expressed his concern that Satnam "has commingled funds from

[1] Preferences are addressed in 11 U.S.C. § 547.

[2] "Insider" is defined in 11 U.S.C. § 101(31).

each property to pay debts and expenses of all others." **App. 335**. Respondent represented the legal interests of some of these other "insider" companies. **App. 56-57 (Tr. 143-145)**. For instance, Respondent was also engaged to represent two affiliated companies, GS Hospitality and BABA Lodging, in separate bankruptcy proceedings in Louisiana. **App. 56 (Tr. 144); 307**. BABA Lodging was identified in the 2013 Missouri Bankruptcy as being a creditor of Satnam who had received pre-bankruptcy payments. **App. 497**.

In connection with the 2012 Bankruptcy, Respondent disclosed to the court her receipt of a $4,039 payment directly from the client in connection with the bankruptcy ($1,039 for the filing fee and $3,000 for attorney fees). **App. 314**. In addition to the $4,039 payment, Respondent also received two additional payments totaling $10,746 ($5,650 in July 2012 and $5,096 in October 2012) from third parties for representation of the Debtor in connection with the 2012 Bankruptcy. **App. 326**. These two additional payments were not disclosed to the bankruptcy court while the 2012 Bankruptcy was pending. **App. 326**.

In a Chapter 11 bankruptcy, attorney fee bills have to be turned in and approved by the court prior to disbursement of the fee payments. **App. 114. (Tr. 359)**. Respondent admits that the 2012 Bankruptcy fee payments were not approved by the bankruptcy court. **App. 15**. No authorization from the bankruptcy court was sought or obtained in connection with the distribution of any portion of the $14,785 in fees received prior to the dismissal. **App. 315**. The 2012 Bankruptcy was voluntarily dismissed by Debtor on December 2, 2012. **App. 3, 13**.

Respondent understood Mr. Pardue's rule that no money for payment of attorney fees should be paid directly from the Debtor's funds. **App. 116 (Tr. 367); 342; 59 (Tr.**

155). On July 9, 2012, Respondent submitted a billing statement to the client, Debtor Satnam, regarding the 2012 Bankruptcy. **App. 347**. In connection with this billing, a procedural question was raised by Mr. Pardue and directed to Respondent with respect to attorney fees paid by third parties: "I know the bankruptcy rules require authorization for payment in most instances, I am not sure how it works when the fee is paid by a third party." **App. 347-348**. The issue of disclosure and approval of attorney fee payments from third parties arose again a few months later on February 20, 2013, wherein a Department of Justice attorney in a related bankruptcy requested disclosure from Respondent of "all compensation arrangements for both of you with the client or third parties." **App. 337**.

Respondent had an opportunity throughout the latter half of 2012 to obtain information regarding the ownership structure of the Debtor and its various affiliated companies. **App. 61 (Tr. 163-164)**. Respondent and her paralegal spent a total of approximately 85 hours of billed legal work prior to the 2013 Missouri Bankruptcy on behalf of the Debtor. **App. 42 (Tr. 86); 433-439**. During the course of such legal work, the subject of preferences and liability for receiving preferential transfers came up. **App. 42 (Tr. 87-88); 435; 84 (Tr. 246-247)** ("So those questions were asked, although there wasn't answers prior to January 24th").

Respondent had an understanding prior to the 2013 Missouri Bankruptcy that there were issues with monetary transfers between the Debtor and its various affiliated entities. **App. 42 (Tr. 87)**. In a handwritten note created by Respondent in August 2012 in

connection with the initial bankruptcy filing, Respondent noted that "The Trustee's office[3] wants to identify preferential payments to insiders. . . . I emailed an initial preferential treatment list from Nan for January through July 2012, reflecting $23,650." **App. 338-339; 61 (Tr. 162)**.

Respondent testified that these issues with preferences had been settled, but there was no written agreement to document the settlement. **App. 42 (Tr. 88)**. Approximately two weeks after the bankruptcy was refiled, by e-mail dated February 3, Mr. Pardue stated to Respondent: "We know that preferential payments are a problem, and if they are still occurring there is a bigger problem. I say this out of concern with the anticipation of inquiries from creditors and the trustee." **App. 346**. Respondent and Mr. Pardue were "trying to get an understanding of what's going on so that we can deal with the preferential payments." **App. 62 (Tr. 166)**.

On January 10, 2013, Respondent re-filed a Chapter 11 bankruptcy proceeding on behalf of the Debtor, Satnam, in the United States Bankruptcy Court for the Western District of Missouri, Case No. 13-40100-abf11, the Hon. Arthur B. Federman presiding (the "2013 Missouri Bankruptcy"). **App. 3, 13**. Respondent acknowledged that the problem with preferential transfers remained an issue during the 2013 Missouri Bankruptcy. **App. 45 (Tr. 97-98)**. The concern over preferences never went away. **App. 63 (Tr. 170)**. Preferential payments and conflict of interest issues were "heightened issues" in the re-filed bankruptcy. **App. 63 (Tr. 171)**. Within two weeks after the petition in the

[3] The local designee of the United States Trustee is Sherri Wattenbarger. **App. 340-341**.

2013 Missouri Bankruptcy was filed, Respondent was having discussions with Mr. Pardue and the local United States Trustee regarding preferential transfers **App. 61 (Tr. 161-162); 84 (Tr. 248)**. The issue of preferential transfers was also raised by the US Trustee and counsel for the largest creditor on March 15, 2013 during a teleconference between the judge and Respondent. **App. 254**.

Respondent signed the bankruptcy petition in the 2013 Missouri Bankruptcy as lead counsel under her own Missouri bar number. **App. 39 (Tr. 74-75)**; **60 (Tr. 158); 470**. According to documents prepared by Respondent and filed with the bankruptcy court, Respondent "has experience in matters of this character and is well-qualified to act as attorney for the Debtor." **App. 246; 306**. According to documents prepared by Respondent and filed with the bankruptcy court, the Debtor selected Respondent to be its counsel "based on her expertise[4] and knowledge of Bankruptcy Procedures." **App. 246; 306**.

Southern Host is a lodging management company owned by the three individual members of the Debtor, and provides services to Satnam and the other motel operations.

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[4] In her sworn testimony during the disciplinary hearing, the following testimony was given by Respondent:

> Q. Can the panel rely upon your statements about what is required in a Chapter 11 bankruptcy from a statutory and local rule perspective?
>
> A. No, I'm not an expert, and so they would be doing that. So anybody would be looking at me as an expert witness and I am not.
>
> **App. 107 (Tr. 331)**.

App. 264. Southern Host Lodging employed Mr. Pardue "to handle the legal work of Satnam Lodging LLC." **App. 249**. The Voluntary Petition listed four creditors who received pre-bankruptcy transfers, including Southern Host. **App. 497**. Southern Host was ultimately determined to be an "insider" or "affiliate" of the Debtor. **App. 320**. The Voluntary Petition omitted any identification of "creditors who are or were insiders." **App. 497**. In January 2013, Respondent received a $6,500 payment drawn from the account of Southern Host Lodging LLC. Respondent knew the payment was for the Satnam 2013 Missouri Bankruptcy. **App. 58 (Tr. 151)**.

The evidence was conflicting as to when this check was received by Respondent in relation to the timing of the filing of petition and related documents.[5] **App. 81 (Tr. 236)** (payment received on Sunday, January 13, 2013); **App. 311** (payment received on Saturday, January 12, 2013); **App 307** (payment received on Saturday, January 12, 2013). **App. 58 (Tr. 151)** (payment received on Sunday the 13th or Monday the 14th). However, the bankruptcy court found that the $6,500 payment was received by Respondent on Wednesday, January 9, 2013 because a portion of it was used to pay the filing fee of $1,213

[5] The Voluntary Petition was dated Thursday, January 10, 2013 and filed on the 10th at 7:41 p.m. **App. 468**. The Application, discussed below, was dated January 10, 2013, but was not filed until Sunday, January 13, 2013 at 2:29 p.m. **App. 246**. The record does not identify the specific reason as to why these documents were not filed on the same day. However, the second bankruptcy had to be re-filed on short notice due to an impending foreclosure. **App. 36 (Tr. 63); 43 (Tr. 91)**.

on the evening of Thursday, January 10, 2013. **App. 327** ("As it turned out, she actually received $6,500 on the day before this case was filed."); **App. 191** (01/10/13 docket entry: "filing fee paid in the amount of 1213 dollars"). The check itself was dated January 9, 2013 and the check stub indicated: "01/09/2013 Filing and Attorney Fees." **App. 432**.

III. Statements and Intentional Nondisclosure in the Missouri Bankruptcy Filings

Although the prior bankruptcy itself was disclosed by reference to the case number and venue in the re-filed Voluntary Petition, Respondent made no affirmative disclosure in the Petition or in related filings that she had previously represented the Debtor in a prior bankruptcy. **App. 82 (Tr. 238); 469**. The Petition prepared, signed and filed by Respondent stated that no payments had been made by or on behalf of the Debtor to any attorney for consultation regarding bankruptcy relief within one year preceding the bankruptcy. **App. 470; 499; 253**. However, there was actually $21,285 in payments to Respondent made by or on behalf of the Debtor for bankruptcy work in the year preceding the 2013 Missouri Bankruptcy, including $11,596 paid by Southern Host, who ultimately was identified as the fourth largest unsecured creditor to the estate. **App. 535; 307; 497**.

The Voluntary Petition prepared, signed and filed with the Western District of Missouri bankruptcy court by Respondent on January 10, 2013 contained a section known as the "Disclosure of Compensation of Attorney for Debtors." **App. 471**. The form as prepared and completed by Respondent states:

> "1. Pursuant to 11 U.S.C. § 329(a) and Rule 2016(b), I certify that . . . compensation paid to me within one year before filing of the petition in bankruptcy, or agreed to be paid to me,

for services rendered or to be rendered on behalf of the debtors in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept	$0
Prior to the filing of this statement I have received	$0
Balance Due	$0

2. $0 of the filing fee has been paid

3. The source of the compensation paid to me was:

X Debtor __ Other (specify):

4. The source of the compensation to be paid to me is:

X Debtor __ Other (specify):

* * *

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

/s/ Lydia M. Carson."

App. 471.

At the time of filing of this document on the evening of January 10, 2013, Respondent had either already received a $6,500 (instead of $0) retainer payment or had agreed to receive a $6,500 (instead of $0) retainer payment and the source of compensation was known to be from a third party because (a) the fee agreement prepared by Respondent (but unsigned and undated) stated: "Prior to the filing of the bankruptcy case, the Carson

Law Center has received a retainer of $6,213 for fees . . . and expenses to be rendered to the Debtor in this proceeding. . . . The parties acknowledge that the retainer has been paid by a third party to render services to the debtor and not by the debtor"; and (b) the check / check stub reflected that the $6,500 retainer was paid by Southern Host Lodging on January 9, 2013. **App. 355; 432**. The disciplinary hearing panel found that the above statements in the Voluntary Petition regarding the amount and source of the retainer were "materially false and misleading when they were filed." **App. 445**.

On January 13, 2013, Respondent filed a document in the 2013 Missouri Bankruptcy seeking approval of her representation of Satnam, titled "Application for Employment of Attorney for Debtor and Preliminary Approval of Fee Arrangement" (the "Application"). **App. 3, 13**. The Application recites that it was submitted pursuant to 11 U.S.C. § 327.[6] **App. 246**. The Application requested the "Court's order approving the employment of Carson Law Center. P.C. and its members on the basis set forth above." **App. 247**. In order to get court approval for the employment of Respondent and her law firm, the bankruptcy judge would review the content of the Application to determine if there was any basis not to approve it. **App. 39 (Tr. 76)**. In order to exercise its discretion whether or not to approve the debtor's choice for employment of counsel, the judge needed

[6] 11 U.S.C. § 327 provides: "(a) . . . the trustee, with the court's approval, may employ one or more attorneys . . . that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee . . . ." In a Chapter 11 bankruptcy, the debtor in possession is considered to be a "trustee." 11 U.S.C. § 1107(a).

to be informed about compensation arrangements and any potential conflicts of interest the attorney may have. **App. 40 (Tr. 78)**. Respondent acknowledged that it was important that the information in the Application be truthful and accurate. **App. 40 (Tr. 77)**.

From June 2012 to February 2013, Respondent received $31,285 for the representation of Satnam and affiliated companies as follows:

Date	**Amount**	**Source**	**Affiliate / Debtor**	**Purpose**
06/22/12	$4,039	Satnam	Debtor	2012 Mo. Bankr.
07/10/12	$5,650	Akaal[7]	Affiliate of Satnam	2012 Mo. Bankr.
10/18/12	$5,096	Southern Host[8]		2012 Mo. Bankr.
		Affiliate of Satnam with transfers during preference period		
01/09/13	$6,500	Southern Host		2013 Mo. Bankr.
		Affiliate of Satnam with transfers during preference period		
02/20/13	$10,000	Guru	Affiliate of Satnam	2013 La. Bankr. (GS Hospitality and BABA Lodging[9])

[7] Akaal held a claim of $39,000 owed by Satnam. **App. 535**. By e-mail dated July 10, 2012, Respondent and Mr. Pardue determined that the $5,650 attorney fee payment should come from Akaal, noting "this money cannot come from Satnam." **App. 342**.

[8] Southern Host was owed $47,000 by Satnam. **App. 535**; **132-133 (Tr. 433-434)**; **229**.

[9] BABA Lodging was later identified as one of Satnam's largest unsecured creditors. Satnam owed $42,000 to BABA Lodging. **App 535**; **132-133 (Tr. 433-434)**; **229.**

App. 431-432; 307; 311; 320. Akaal, BABA Lodging and Southern Host were later identified as three of Satnam's largest unsecured creditors, and they collectively held claims against the Debtor totaling $128,000. **App 535**; **132-133 (Tr. 433-434**); **229**. In other words, Respondent accepted attorney fee payments from creditors (Akaal and Southern Host) to represent the Debtor, and also accepted an attorney fee payment to represent another bankruptcy debtor (BABA Lodging) who was also a creditor of Satnam. **App. 307; 535**.

In the Application, Respondent made an affirmative representation to the bankruptcy court that she had been paid no retainer. **App. 4, 14.** The Application stated "The firm has not received a retainer in this matter." **App. 4, 14**; **246-248**. The $6,500 attorney fee payment received on or about January 9, 2013 from Southern Host Lodging was not disclosed by Respondent to the bankruptcy court in the Application nor in the Voluntary Petition nor at any other time in January, February or March 2013. **App. 246-248 (Application); 468-504 (Petition); 190-212 (Docket Entries); 534 (amended Disclosure filed April 14, 2013)**. The representation made by Respondent with respect to no retainer payment as submitted to the bankruptcy court in the Application were found by the bankruptcy court to have been false. **App. 314 – 330**. The disciplinary hearing panel found that Respondent's statement in the Application was "materially false and misleading" and that Respondent knew that the statement was materially false and misleading when it was filed. **App. 445**.

Respondent understood that she was under a duty to supplement both the disclosures regarding payments received and disclosures regarding connections to the debtor (such as

representation of potentially adverse creditor interests). **App. 129 (Tr. 421)**; **128 (Tr. 414)**. The $6,500 payment was not disclosed within the 14-day period set forth in Bankr. R. 2016(b). **App. 534; 259**. Respondent did not amend or supplement the disclosures in a timely manner. **App. 131 (Tr. 427)**.

In 2013, Respondent understood the importance of the disclosure obligations in a Chapter 11 bankruptcy. **App. 115 (Tr. 364)**. Respondent conceded that the nondisclosure regarding $6,500 retainer payment was intentional, but claims to have been under a belief that disclosure was not necessary when the source of the funds is from third parties other than the debtor. **App. 328**; **App. 131 (Tr. 426-427)**. The pertinent sections of both the Voluntary Petition and the "Form 203" disclosure indicate selection of one of two boxes as to the source of payment, as follows:

> "3. The source of the compensation paid to me was:
>
> __ Debtor __ Other (specify):
>
> 4. The source of the compensation to be paid to me is:
>
> __ Debtor __ Other (specify): "

App. 534; 471. According to Respondent, the $6,500 retainer payment was not disclosed to the bankruptcy court because she "did not receive funds from the Debtor, but a third party." **App. 249**.

Amongst other omissions, the Application failed to disclose Respondent's prior representation of the Debtor in the dismissed 2012 Missouri Bankruptcy. **App. 266**. Respondent's Answer to the Information asserts that she did not believe she was required to disclose payments received from the 2012 bankruptcy in connection with the

Application for the 2013 bankruptcy. **App. 15**.

Additionally, the Application contained representations that Respondent had no connection to the Debtor nor any other party in interest other than as counsel for the Debtor. **App. 4, 14**; **246-248**. Respondent declared in the Application that she was "disinterested" and that she represented "no interest adverse to the Debtor or the Debtor's estate on the matters upon which they are to be engaged . . . ." **App. 246**. Respondent declared in the Application that she "has not represented any creditors of the Debtor in connection with any matters related or adverse to the Debtor." **App. 247**. In the Application, Respondent further declared that she had not been engaged "in any capacity in which confidential knowledge of a creditor has been acquired where such knowledge would bear on the Debtor's ability to retain Carson Law Center as its counsel." **App. 247**.

The bankruptcy court approved the Application on February 11, 2013. **App. 4, 14**. On March 15, 2013, the bankruptcy judge entered an order, served by electronic notice as a text docket entry following a telephone hearing, directing Respondent to "file applications to be employed, disclosures of compensation, along with required Rule 2014[10]

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[10] Rule 2014, Employment of Professional Persons, provides:

> "(a) Application for and Order of Employment. . . . The application shall state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's

verified statements showing such counsel's connections to the debtor, its affiliates and other interested parties." **App. 211**.

Respondent did not comply with the order. **App. 255**. Respondent did not disclose the $10,000 payment received by wire transfer on February 20, 2013 from Guru Lodging, an affiliated company of the Debtor, and thus she did not disclose this connection to the Debtor. **App. 431; 282; 307**.

Respondent did not respond at all to the March 15, 2013 order. **App. 122 (Tr. 393)**. She testified this was because she had not "caught" that part of the order and instead noticed only the part of the order dealing with production of the debtor's financial records and use of cash collateral and because she had determined that she had already filed the disclosure and application described in the March 15th text entry. **App. 211; 122 (Tr. 393)**. The disciplinary hearing panel found this testimony regarding her explanation not to be

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knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee. The application shall be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee."

credible. **App. 446**.

On April 1, 2013, Judge Federman issued a show cause order to Respondent regarding dismissal of the bankruptcy and disgorgement of fees. **App. 255**. On April 13, 2013, Judge Federman "reminded [Respondent] that she needed to amend the Disclosure of Compensation." **App. 318**. In response to an order to show cause, on April 14, 2013, Respondent disclosed in writing that in January 2013 she had been paid a $5,000 attorney fee plus $1,213[11] for a filing fee, but identified the source of the payment as "Dee Mann Personally." **App. 256; 534**.

The actual source of the $6,500 payment was Southern Host Lodging. **App. 432**. Respondent knew that the payment was not from Dee Mann personally because she examined the checks close enough to see who the payor was. **App. 116 (Tr. 367-369)** ("I knew the payors were different than the name Dee Mann"). Upon receipt of the funds, Respondent knew that the payments were not funds from Mr. Mann's personal account. **App. 116 (Tr. 369); 124 (Tr. 401)**. The payments were randomly pulled in and out of various available company accounts to comply with Mr. Pardue's rule that no payments were to come directly from the debtor. **App. 116 (Tr. 367-369); 58 (Tr. 151); 59 (Tr. 153)**. Respondent told the bankruptcy judge, "Now, as to where [Mr. Mann] gets his checks from, that's his issue." **App. 293**. The DHP found Respondent's statement that

[11] The discrepancy between $6,500 and $6,213 is not addressed in the Information, nor in the evidence nor in the DHP Decision. Respondent subsequently corrected the amount of the payment to $6,500 in a supplemental filing three months later. **App. 311**.

"Dee Mann personally" was the source of the payment was not a true statement. **App. 450**.

On April 14, 2013, Respondent filed with the court an amended Disclosure of Compensation (known as a Form 203 disclosure). **App. 256**; **534**. The form states: "Pursuant to 11 U.S.C. § 329(a) and Rule 2016(b), I certify that . . . compensation paid to me within one year before filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtors in contemplation of or in connection with the bankruptcy case is as follows: . . . ." **App. 534**. Respondent signed the certification at the bottom of the page, which stated: "I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding. /s/ Lydia M. Carson." App. 534.

The form did disclose the $6,500 payment received in January 2013 (but was slightly underreported at $6,213). **App. 534**. The amended disclosure did not disclose the $11,185 in payments received by or on behalf of the Debtor in connection with the 2012 Bankruptcy, which had been received within a year prior to the re-filed bankruptcy petition. **App. 534**. These payments were not revealed to the bankruptcy court until June 7, 2013 when the local US Trustee's office filed a Motion to Disgorge Fees.[12] **App. 263-276**.

On May 14, 2013, the bankruptcy judge (The Hon. Arthur B. Federman) held that

[12] Ms. Wattenbarger obtained a full accounting of payments from an attorney in Springfield, Missouri involved in a separate, but related, bankruptcy proceeding for an affiliated motel company. **App. 267**.

the previous nondisclosure of the $5,000 retainer was intentional. **App. 260**. Judge Federman described the lack of disclosure as the "problem of greatest significance." **App. 258**. He noted that the potential disqualification "compounds the seriousness of the lack of disclosure." **App. 261**. Judge Federman stated: "the Court finds that Ms. Carson failed to comply with the disclosure requirements of § 329 and Rule 2016, and Local Rule 2016-1.[13] The Court further finds that disgorgement of all fees paid in this case is an appropriate

[13]Rule 2016 provides:

> "(b) Disclosure of Compensation Paid or Promised to Attorney for Debtor. Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 14 days after the order for relief, or at another time as the court may direct, the statement required by §329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 14 days after any payment or agreement not previously disclosed." **App. 324**.

Local Rule 2016-1 provides:

sanction for such failure particularly considering Ms. Carson's response that the lack of disclosure was intentional due to the source of the fees." **App. 261**.

In May 2013, the bankruptcy court raised a concern that Respondent may have a conflict of interest under bankruptcy law in connection with fee arrangements and the simultaneous representation of the Debtor and its affiliates and insiders, some of whom were also creditors faced with potential liability for receipt of preferential transfers. **App. 14; 261** (noting hearing to be held on May 30, 2013 to determine whether Ms. Carson is disqualified as counsel); **App. 303** (transcript of July 1, 2013 hearing where judge

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> "Pursuant to § 329 and Fed. R. Bankr. P. 2016(b), the attorney for the debtor shall file with the petition a disclosure of the amount and source of all retainers received by the attorney. . . . All professionals shall: (1) deposit all retainers (with the exception of earned on receipt retainers), whether received from the debtor or any other source, in the attorney's trust account pending an order of the court; and (2) with respect to all retainers and other payments made or fees sought, file an application seeking approval of such retainers, payments, and fees pursuant to § 330 and Fed. R. Bankr. P. 2016(a) . . . . Until the case is closed by final decree, debtor's attorney is under a duty to disclose all subsequent payments by filing a supplemental statement as required by Fed. R. Bankr. P. 2016(b)." **App. 325**.

expresses doubt that Respondent was qualified to represent Satnam under a "disinterested" standard). Before the judge made a determination on the conflict of interest issue, the client terminated the attorney-client relationship with Respondent. **App. 41 (Tr. 82-83)**. Substitute counsel entered an appearance on behalf of Satnam on May 21, 2013. **App. 217-218; App. 4, 14**.

Thereafter, following additional investigation by the US Trustee's office, it was discovered that Respondent had actually been paid a total of $21,285 from both the Debtor and from companies affiliated with the Debtor in a seven-month period prior to the 2013 Missouri Bankruptcy, including payments for the 2012 Bankruptcy. **App. 320**. In other words, Respondent received (a) $14,789 for the 2012 Bankruptcy instead of the $4,039 previously disclosed; and (b) $6,500 for the 2013 Missouri Bankruptcy instead of the $0 payment initially stated at the time of the Petition in January 2013. **App. 320**. Additionally, the United States Trustee uncovered an additional $10,000 payment received by Respondent on February 20, 2013 in connection with a companion bankruptcy filed in Louisiana, styled as *In re GS Hospitality LLC*, Case No. 13-10392, in the Western District of Louisiana (the "2013 Louisiana Bankruptcy"), which had not been previously disclosed. **App. 320**.

On June 7, 2013, the local United States Trustee filed a motion requesting disgorgement of all fees received by Respondent. **App. 263-276**. Respondent did not file a written response to the motion. **App. 220-227**. A hearing on the motion was held on July 1, 2013. **App. 284-305**. Respondent appeared in person. **App. 286**. Respondent continued to assert that she was not required to disclose the source of fee payments to her.

App. 323. Judge Federman rejected this argument because he said that disclosure of the source of payments is necessary to determine whether an attorney for the debtor's estate could be disinterested or whether the attorney would advance interests adverse to the estate. **App. 323**. The court stated that it needed to know if the payment of fees by insider affiliates should be considered a capital contribution on behalf of the debtor or if the payment is made to benefit the interests of a creditor of the estate. **App. 323**.

In a subsequent written ruling, the bankruptcy judge further explained why timely and accurate disclosure is material:

> To reiterate what I said in the May 14 Order requiring Ms. Carson to disgorge the $5,000, in order to be employed as counsel in this Chapter 11 bankruptcy case, Ms. Carson must not hold or represent an interest adverse to the estate, and must be a disinterested person pursuant to § 327(a) of the Bankruptcy Code. . . .
>
> In order for the Court to make the determination required under § 327(a), the Court must be fully informed of all actual or potential conflicts of interest. Rule 2014(a) requires the professional to file an application disclosing "to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any party in interest, their respective attorneys and accountants, the United States trustee, or any person employed by the office of the United States trustee."

> The application must be filed along with a verified statement setting forth "the person's connections with the debtor, creditors, or any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee."
>
> The requirements of § 327(a) are mandatory and cannot be waived.

App. 320-322.

Near the conclusion of the July 1, 2013 hearing, Judge Federman stated:

> She [Respondent], more importantly, failed to disclose all of her connections to the other entities which had common ownership with the debtor. Her failure to do that is in violation of Section 329 and Rule 2014. And she should have known better than to think that she was not obligated to disclose those - - her representation of those other entities which were related to the debtor. It's the most blatant case of non-disclosure and failure to disclose that I've ever seen. Certainly, as Ms. Carson argues, it may have been that had she disclosed those connections, the Court would have determined that she was qualified to represent the debtor. I doubt that, but in any event, had you disclosed those connections, we all could have had the opportunity to judge for ourselves whether you're qualified to represent the

debtor."

App. 302-303. The judge concluded the hearing by advising: "And I will send a copy of my order to the Missouri Bar for any action that they deem appropriate." **App. 304**.

On July 9, 2013, Respondent filed a Supplemental Disclosure of Compensation of Attorney for Debtors. **App. 310**. This disclosure amended a similar disclosure document filed on April 14, 2013. **App. 310; 534**. The document, known as a 203 Form, contained the same certifications of completeness and accuracy set forth above as the previous iterations. **App. 210; 128 (Tr. 416); 107 (Tr. 333); 534; 471**. It corrected the amount of the payment for legal services and filing fees from $6,213 to $6,500. **App. 310; 534**. However, Respondent still continued to show that the source of the compensation was "Dee Mann Personally" rather than Southern Host Lodging who was the actual payor of the funds. **App. 310**.

Accompanying this July 9, 2013 disclosure statement was another document filed by Respondent[14] that disclosed receipt of the $10,000 payment for the Louisiana bankruptcies for GS and BABA, asserting that neither GS nor BABA were creditors of Satnam. **App. 307**. This disclosure also identified the two previously undisclosed

[14] The document was titled Supplemental Application of Employment of Attorney and Preliminary Approval of Fee Arrangement. **App. 306**. At the time of filing in July 2013, Respondent was not actually seeking approval of professional representation because she had already been fired as counsel and substitute counsel had already entered the case. **App. 65 (Tr. 178)**; **217-219** (entry of appearance and approval of substitute law firm).

payments received from Akaal and Southern Host for the 2012 Bankruptcy, but likewise asserted that neither Akaal Lodging nor Southern Host were creditors of Satnam. **App. 307**. One week later, on July 15th, substitute counsel filed an amended list of unsecured creditors showing that Akaal, Southern Host and BABA were all in the top six of the largest unsecured creditors of Satnam, owed a combined total of $128,000 from Satnam. **App. 535**.

After the July 1, 2013 hearing on the motion to disgorge, Judge Federman ruled in favor of the United States Trustee and against Respondent in its "Amended Order Directing Debtor's Bankruptcy Counsel to Disgorge Fees" (the "Amended Order"), which was dated July 16, 2013. **App. 314-330**. In the Amended Order, the bankruptcy court noted that Respondent made an affirmative statement regarding payment that was not true. **App. 328**. In the Amended Order, the bankruptcy court held that Respondent improperly failed to disclose $10,746 in payments from the Debtor's prior bankruptcy "even after she had been ordered to disclose the first $5,000." **App. 329**. As a result, Respondent was ordered to disgorge $10,746 from the 2012 Bankruptcy based upon intentional nondisclosure. **App. 327-328**.

Moreover, with respect to the 2013 Missouri Bankruptcy, in the Amended Order dated July 16, 2013, the bankruptcy court reaffirmed its prior finding that there was an intentional nondisclosure with respect to the receipt payment of $6,500 (with $1,213 properly used for the bankruptcy filing fee). **App. 5; 15**. Again, Judge Federman was troubled by intentional nondisclosure attributed to Respondent. **App. 5; 15.** Judge Federman found that $5,287 ($6,500 minus the $1,213 filing fee) should be disgorged in

connection with the 2013 Missouri Bankruptcy on the grounds that the $6,500 payment was never disclosed despite multiple opportunities for disclosure. **App. 5; 15; 327**.

In his Amended Order dated July 16, 2013, Judge Federman stated:

> As I said previously, not only did Ms. Carson fail to disclose that she had received the majority of the fees discussed above, the documents filed early in this case, most notably the Application to Employ, made affirmative statements that she had not received a retainer. Indeed, Ms. Carson's response to the Order to Show Cause conceded that the lack of disclosure was intentional, based upon her contention that disclosure was not necessary since the funds were from a source other than the Debtor. However, the fact that the source of the funds might have caused Ms. Carson's disqualification only compounds the seriousness of the lack of disclosure. In addition, at the hearing held on July 1, 2013, Ms. Carson said that even though she knew that the Debtor here and the debtor in Louisiana have common ownership and are affiliates, she decided not to disclose the $10,000 fee, or her representation of the affiliate in Louisiana, because she determined it was a different entity in a different jurisdiction. As I stated at the hearing, however, it is not up to the attorney to decide whether a particular relationship is disqualifying – that is why disclosure is so important.

App. 5; 15; 328-329.

In reading the judge's written decision describing her conduct as being intentional, Respondent testified that she was ashamed and horrified. **App. 110 (Tr. 345)**. Respondent testified that she had never seen the judge that angry. **App. 111 (Tr. 346)**.

At the July 1, 2013 hearing with Judge Federman, Respondent was placed under oath. **App. 296**. Respondent suggested that she should receive a lesser monetary sanction because she paid "quarterly fees" to the US Trustee as part of the court costs of the bankruptcy. **App. 303**. Respondent testified as follows:

Respondent: That wasn't a retainer. That was just money that I accepted and then paid back over to the trustee.

Court: So, how much were those?

Respondent: That had to be the $5,096.

. . .

Court: Okay. Well, do you have proof that, do you have checks?

Respondent: Oh, yes, yeah. The trustee has the money in the-

Court: Well, I know, but do you have copies of the checks coming out of your account for payment of those trustee fees?

Respondent: Yes.

Court: Okay. So, if you'll supply those to the trustee within seven days, and if she's satisfied, then I'll

reduce the amount of the award by the amount of those fees.

Respondent: Yes, your honor.

App. 304.

Respondent did not submit proof of payment and instead filed an accounting indicating no credits were due for payment of quarterly trustee fees. **App. 132-133 (Tr. 432-435); 230; 536; 312.**

The total disgorgement amount ordered to be repaid by Respondent for the pair of Missouri bankruptcies was $16,033. **App. 5; 15**. The judge found this amount to be "an appropriate sanction" in light of the intentional nondisclosure. **App. 5; 15**. On September 9, 2013, the judge converted the Amended Order into a judgment. **App. 334**. On September 18, 2013, the 2013 Missouri Bankruptcy was dismissed but the court retained "authority to enforce the judgment against Lydia Carson." **App. 7; 15**. The Amended Order dated July 16, 2013 and judgment entered thereon have become final. **App. 7; 15**. They were not appealed. **App. 7; 15.** Respondent had an opportunity to litigate the issues that were before the bankruptcy court. **App. 15**; **63-67 (Tr. 172-186)**.

Judge Federman deferred to the jurisdiction of the Louisiana bankruptcy court to determine whether the undisclosed $10,000 payment received February 20, 2013 by Respondent should be disgorged in connection with the 2013 Louisiana Bankruptcy. **App. 5; 15**. On September 25, 2013, the United States Bankruptcy judge in the 2013 Louisiana Bankruptcy issued an "Order on United States Trustee's Motion to Examine Attorney Transactions and Disgorge All Undisclosed Fees From Lydia Carson and the Carson Law

Firm" (the "Louisiana Disgorgement Order"). **App. 8; 16**. In the Louisiana Disgorgement Order, the judge ordered Respondent to repay the $10,000 received in February 2013 due to nondisclosure and failure to satisfy filing requirements for employment of counsel. **App. 8-9; 16**. The Louisiana Disgorgement Order did not address any instance of intentional nondisclosure or dishonest conduct on Respondent's part. **App. 384-386**. The Louisiana Disgorgement Order has become a final judgment. **App. 9; 16**. Respondent agreed to the disgorgement. **App. 16**.

Based upon a preponderance of evidence in the record, the disciplinary hearing panel found that "Respondent violated Rules 4-3.3(a)(1) and 4-8.4(c) by knowingly making the following false statements of fact to the bankruptcy court in the 2013 Missouri Bankruptcy: (i) Respondent falsely represented that she had not received any payments from Debtor (including affiliated companies or individuals); (ii) Respondent falsely represented that she had no agreement regarding payment of fees; and (iii) Respondent falsely represented that she had no connections to the debtor or other interested parties other than as counsel for the Debtor." [15] **App. 455**.

IV. Delay in Reporting of Reprimand to Missouri Federal Court

On February 28, 2013, Respondent received a copy by certified mail of the

[15] Since the panel made this finding on its own based upon the documents and testimony, the panel concluded that it was not necessary to address the issue of offensive, non-mutual collateral estoppel raised in ***In re Caranchini***, 956 S.W.2d 910 (Mo. banc 1997). **App. 456**.

reprimand Order issued by the Missouri Supreme Court in *In Re Lydia M. Carson, Respondent*, SC93063. **App. 7; 16**. She set the Order aside on her desk. **App. 67 (Tr. 187)**. She understood that the document was an order of discipline from the Missouri Supreme Court. **App. 67 (Tr. 188)**. Because the reprimand was issued in connection with a stipulation filed in this Court, Respondent anticipated receipt of the reprimand document in or about February of 2013. **App. 68 (Tr. 189-190)**. Respondent understood the reprimand was a public record. **App. 68 (Tr. 189)**. Respondent understood that the $750 cost assessed with the reprimand needed to be promptly paid. **App. 68 (Tr. 190)**. Respondent understood that a reprimand was not to be taken lightly and that it was "pretty serious stuff." **App. 68 (Tr. 190)**. The reprimand was not something she was likely to forget about. **App. 68 (Tr. 191)**.

Pursuant to W.D. Mo. Bankr. Local Rule 2090-1 and W.D. Mo. Local Rule 83.6, Respondent was required to affirmatively and promptly report the reprimand to the court clerk for the federal courts in the Western District of Missouri. **App. 7; 16**. She knew that she was required to notify the federal court about the state court reprimand. **App. 97 (Tr. 291)**. Respondent did not report the reprimand to the clerk of the United States District Court for the Western District of Missouri in 2013. **App. 73 (Tr. 211)**.

Respondent testified that she thought she had taken care of her reporting obligation by delegating to a staff member the task of sending the reprimand by e-mail to the federal court clerk. **App. 97 (Tr. 292-293); 100-101 (Tr. 305-306)**. The only staff member to testify at the disciplinary hearing testified that he was not made aware of the reprimand or any other form of discipline imposed upon Ms. Carson until he was asked to testify,

although he was given similar tasks in March 2013 of inquiring from a court clerk whether disciplinary information needed to be disclosed on a *pro hac vice* motion and obtaining a certificate of good standing from the Missouri federal court. **App. 120 (Tr. 384-385)**. Respondent claimed that she did not realize that the reprimand had not been sent to the federal court until February 2016. **App. 98 (Tr. 294)**.

In January 2014, Respondent received a letter from a disciplinary representative. **App. 429**. The letter stated in part:

> You were reprimanded by the Missouri Supreme Court by Order dated February 26, 2013. Please advise whether you reported this public discipline to the Western District of Missouri federal court under W.D. Mo. Bankr. Local Rule 2090-1 and W.D. Mo. Local Rule 83.6. If you did make a report of the public discipline to t[h]e clerk's office, please provide proof of compliance and detailed information about the current status of any such disciplinary matter.

App. 429. Respondent did not provide a written response to the letter. **App. 101**. Respondent did not report the reprimand to the federal court at any time in 2014, either before or after the above letter. **App. 73 (Tr. 211)**. Respondent did not report the reprimand to the federal court at any time in 2015. **App. 97 (Tr. 293)**. Respondent did not report the reprimand to the federal court prior to receipt of the Information or the filing of her Answer herein in February 2016. **App. 19; App. 409**. Respondent claims that she "made it right" by the report made in February 2016. **App. 119 (Tr. 379)**.

The disciplinary hearing panel found that Respondent violated Rules 4-3.3(d), 4-8.4(c) and 4-8.4(d) by "knowingly disobeying an obligation under the rules of a tribunal in that Respondent failed to timely report the Missouri Supreme Court reprimand to the federal court clerk as required of all practitioners in the courts of the U.S. Western District of Missouri who have received public discipline." **App. 457**.

V. Reprimand and Louisiana Pro Hac Vice Affidavit

Respondent represented the debtor in a companion bankruptcy filed in Louisiana, styled as *In re GS Hospitality LLC*, Case No. 13-10392, in the Western District of Louisiana (the "2013 Louisiana Bankruptcy"). **App. 378-380; App. 360-377**. On March 19, 2013, Respondent signed an affidavit under oath that she had never been the subject of any disciplinary proceeding and submitted the affidavit to the court in connection with an "Ex Parte Motion to Enroll Co-Counsel Pro Hac Vice" in the 2013 Louisiana Bankruptcy. **App. 378-383**. Respondent was admitted to represent the debtor in the 2013 Louisiana Bankruptcy by court order on May 13, 2013. **App. 8; 16; 396-399**.

Respondent prepared the *pro hac vice* motion and the order approving her retention as counsel for the debtor. **App. 69 (Tr. 195); 378; 399**. Respondent also obtained a Certificate of Good Standing dated March 19, 2013 from the Western District of Missouri federal court, which stated that Respondent had not been disciplined by the federal court. **App. 381**.

The Affidavit accompanying the *pro hac vice* motion was signed by Respondent in Jackson County, Missouri after having been administered an oath by the notary. **App. 69-70 (Tr. 196-197); 382-383**. Paragraph 5 of the Affidavit "deposes and states" "that she

[Respondent] is not and have (sic) never been the subject of any disciplinary proceedings or criminal charges, as per the attached certificate." **App. 382**. Respondent understood that paragraph 5 of the Affidavit was a statement under oath just like the oath administered to her at the disciplinary hearing and that she had sworn to tell the truth with regard to the Affidavit. **App. 70 (Tr. 197)**. The statement in the Affidavit was false, in that Respondent had been the subject of a disciplinary proceeding related to the Missouri Supreme Court reprimand from Case No. SC93063 received by certified mail nineteen days earlier. **App. 179-182**.

The local court rule in Louisiana requires the applicant attorney "to state under oath whether any disciplinary proceedings or criminal charges have been instituted against applicant, and if so, shall disclose full information about the proceedings or charges and the ultimate determination, if any." **App. 454**. The Affidavit contains a specific oath made by Respondent that "I do solemnly swear that I have read the . . . Uniform Local Rules of the United States District Court for the Western District of Louisiana, and that I am fully prepared to use and abide by them in my practice before this Court." **App. 383**.

There was testimony that Ms. Carson and her paralegal contacted the office of the clerk of the bankruptcy court in Louisiana and asked whether the court needed disciplinary information in connection with a *pro hac vice* motion. **App. 120 (Tr. 383-384)**. Respondent claims that she was told that the court only wanted to know if there were any issues in Louisiana. **App. 120 (Tr. 384)**. The panel found that "Respondent's contentions that her affidavit was accurate or that she believed her affidavit was accurate are simply not credible," and noting that 'It is inconceivable that any representative of the Louisiana

Bankruptcy Court would tell Respondent to do anything but what the clear, unambiguous language of the local rules require." **App. 453-454**.

The Affidavit was preceded by Respondent's signature on two preliminary drafts of *pro hac vice* documents. **App. 400-408**. These documents were prepared before Respondent had a conversation with the court clerk in Louisiana regarding the extent of required disclosure of disciplinary proceedings. **App. 71 (Tr. 202-204)**. One draft was typed and the other draft was handwritten from a form. **App. 400-408**. These forms were not submitted to the court. However, the typed form signed beneath a "Verification" by Respondent contained the following: "9. Have you ever been publicly disciplined by any lawyer disciplinary committee, state or federal court, or lawyer disciplinary agency in any other jurisdiction[16]? NO" **App. 400-402**. The handwritten version of this *pro hac vice* application contained the following:

> "9. Have you ever been publicly disciplined by any lawyer disciplinary committee, state or federal court, or lawyer disciplinary agency in any other jurisdiction[17]?
>
> ___ yes X no
>
> If you answered affirmatively, as to each such discipline, please provide the

[16] Item 8 of the Application dealt with disciplinary matters occurring "in this state" of Louisiana. **App. 400**.

[17] Again, item 8 of the Application dealt with disciplinary matters occurring in "in this state" of Louisiana. **App. 404**.

following:

A summary of the allegations against you_____

_____

The name of the state or federal authority bringing such proceedings:_____

The date the discipline was imposed:_____

The style of the proceedings:_____

The findings made and discipline imposed in connection with the proceedings:_____

_____

(A copy of the public Order of lawyer discipline imposed against the applicant shall be appended to this Application)"

App. 405.

The disciplinary hearing panel found that Respondent violated Rules 4-3.3(a)(1) and 4-8.4(c) by knowingly making a false statement of fact to a tribunal in the 2013 Louisiana Bankruptcy in that, on March 19, 2013, Respondent made a false representation under oath "That she is not and have (sic) never been the subject of any disciplinary proceedings. . . ." **App. 456**.

W.D.Mo. Local Rule 83.6(b) establishes a show cause procedure for reciprocal discipline and Rule 83.6(d) authorizes an investigation and prosecution of a formal disciplinary proceeding. **App. 357**. W.D.Mo. Local Rule 83.6(b)(5) states: "In all other respects, a final adjudication in another court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in the

Court of the United States." **App. 357**. If, as Respondent testified to, she thought that the reprimand was promptly sent to the clerk in the Western District of Missouri in March 2013, then Respondent would have been subject to a reciprocal federal court disciplinary action or investigation at the time of the March 19, 2013 Affidavit in accordance with the court procedures set forth in W.D.Mo. Local Rule 83.6. **App. 357; 453**.

VI. Craigslist Advertising

In 2013, Respondent frequently posted written advertisements on Craigslist advertising representation for legal matters such as traffic tickets, divorces and bankruptcy. **App. 9; 17**. The advertisements did not contain the disclosure required by Rule 4-7.2(f) advising that "the choice of a lawyer is an important decision and should not be based solely upon advertising." **App. 75 (Tr. 218); App. 420-424**. Respondent acknowledged that she was responsible for the content and compliance of these advertisements. **App. 75 (Tr. 218)**. There was no limitation imposed by Craigslist to prohibit the inclusion of the disclosure. **App. 76 (Tr. 223)**. Respondent testified that the Craigslist postings for her professional services are considered to be advertisements. **App. 116 (Tr. 366)**. Respondent has admitted that the Craigslist advertisements do not comply with the Rule. **App. 103 (Tr. 315)**. Respondent admitted that she violated Rule 4-7.2(f) by disseminating advertisements without the required disclosure. **App. 12; 119 (Tr. 380)**.

VII. Panel's Disciplinary Recommendation

In making a recommendation that the appropriate disciplinary sanction is an indefinite suspension of at least three years, the hearing panel found that disbarment was excessive. **App. 459-4560**. It found that Respondent's conduct did not cause a significant

or potentially significant adverse effect on the bankruptcy. **App. 460**. The hearing panel concluded that Respondent's conduct did not cause serious or potentially serious injury to her client or other interested parties. **App. 460**. It also noted that while Respondent was guilty of multiple offenses demonstrating a pattern of misconduct, such misconduct spanned a period of just one year in a legal career of over thirty years. **App. 459**.

The panel found that Respondent did not act with the intent to deceive. **App. 460**. The panel determined that Respondent's conduct was knowing and intentional, not simply negligent. **App. 460**. After considering Respondent's evidence suggesting that her conduct arose from confusion, emergency proceedings and problems resulting from dealing with a difficult client, the panel found that such circumstances are not recognized as mitigating factors by the ABA Standards. **App. 461**.

The panel found that evidence of personal and emotional problems experienced by Respondent in late 2012 and early 2013 did not present mitigating circumstances. **App. 462**. The panel took note of Respondent's substantial experience in the practice of law and her disciplinary history, which included a reprimand by this Court. **App. 463**. The panel also noted that Respondent had already incurred a significant penalty in connection with the judicial orders to pay back $26,000 in attorney fees. **App. 463**.

POINT RELIED ON

I.

RESPONDENT IS SUBJECT TO DISCIPLINE BECAUSE THE PREPONDERANCE OF EVIDENCE, INCLUDING ADMISSIONS, ESTABLISHES THAT RESPONDENT IS GUILTY OF NUMEROUS INSTANCES OF PROFESSIONAL MISCONDUCT, AS FOLLOWS:

(A) RESPONDENT VIOLATED RULES 4-3.3(a)(1) AND 4-8.4(c) IN THAT SHE KNOWINGLY MADE FALSE STATEMENTS OF FACT TO THE MISSOURI BANKRUPTCY COURT REGARDING THE SOURCE AND AMOUNT OF COMPENSATION AND HER "CONNECTIONS" AND KNOWINGLY FAILED TO CORRECT FALSE STATEMENTS OF MATERIAL FACT PREVIOUSLY MADE TO THE TRIBUNAL, AND SUCH CONDUCT INVOLVED DISHONESTY, FRAUD, DECEIT OR MISREPRESENTATION;

(B) RESPONDENT VIOLATED RULES 4-3.3(a)(1) AND 4-8.4(c) IN THAT SHE KNOWINGLY MADE A FALSE STATEMENT OF FACT, UNDER OATH, TO THE LOUISIANA BANKRUPTCY COURT

REGARDING A DISCIPLINARY PROCEEDING, AND SUCH CONDUCT INVOLVED DISHONESTY, FRAUD, DECEIT OR MISREPRESENTATION;

(C) RESPONDENT VIOLATED RULES 4-3.3(d), 4-8.4(c) AND 4-8.4(d) IN THAT SHE KNOWINGLY FAILED TO INFORM THE MISSOURI FEDERAL COURT OF A MATERIAL FACT THAT WOULD HAVE ENABLED THE COURT TO MAKE AN INFORMED DECISION UNDER LOCAL RULE 83.6 REGARDING PUBLIC DISCIPLINE, AND SUCH CONDUCT INVOLVED DISHONESTY, FRAUD, DECEIT OR MISREPRESENTATION AND WAS PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE; AND

(D) RESPONDENT VIOLATED RULE 4-7.2(f) IN THAT SHE ADVERTISED HER SERVICES THROUGH PUBLIC MEDIA WITHOUT THE REQUIRED DISCLOSURE.

II.

IN ORDER TO PROTECT THE PUBLIC AND MAINTAIN THE INTEGRITY OF THE LEGAL PROFESSION, THE COURT SHOULD REMOVE RESPONDENT FROM THE PRACTICE OF LAW BY EITHER SUSPENSION OR DISBARMENT.

ARGUMENT

I.

RESPONDENT IS SUBJECT TO DISCIPLINE BECAUSE THE PREPONDERANCE OF EVIDENCE, INCLUDING ADMISSIONS, ESTABLISHES THAT RESPONDENT IS GUILTY OF NUMEROUS INSTANCES OF PROFESSIONAL MISCONDUCT, AS FOLLOWS:

(A) RESPONDENT VIOLATED RULES 4-3.3(a)(1) AND 4-8.4(c) IN THAT SHE KNOWINGLY MADE FALSE STATEMENTS OF FACT TO THE MISSOURI BANKRUPTCY COURT REGARDING THE SOURCE AND AMOUNT OF COMPENSATION AND HER "CONNECTIONS" AND KNOWINGLY FAILED TO CORRECT FALSE STATEMENTS OF MATERIAL FACT PREVIOUSLY MADE TO THE TRIBUNAL, AND SUCH CONDUCT INVOLVED DISHONESTY, FRAUD, DECEIT OR MISREPRESENTATION;

(B) RESPONDENT VIOLATED RULES 4-3.3(a)(1) AND 4-8.4(c) IN THAT SHE KNOWINGLY MADE A FALSE STATEMENT OF FACT, UNDER OATH, TO THE LOUISIANA BANKRUPTCY COURT

REGARDING A DISCIPLINARY PROCEEDING, AND SUCH CONDUCT INVOLVED DISHONESTY, FRAUD, DECEIT OR MISREPRESENTATION;

(C) RESPONDENT VIOLATED RULES 4-3.3(d), 4-8.4(c) AND 4-8.4(d) IN THAT SHE KNOWINGLY FAILED TO INFORM THE MISSOURI FEDERAL COURT OF A MATERIAL FACT THAT WOULD HAVE ENABLED THE COURT TO MAKE AN INFORMED DECISION UNDER LOCAL RULE 83.6 REGARDING PUBLIC DISCIPLINE, AND SUCH CONDUCT INVOLVED DISHONESTY, FRAUD, DECEIT OR MISREPRESENTATION AND WAS PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE; AND

(D) RESPONDENT VIOLATED RULE 4-7.2(f) IN THAT SHE ADVERTISED HER SERVICES THROUGH PUBLIC MEDIA WITHOUT THE REQUIRED DISCLOSURE.

A. Fraud on the Missouri Bankruptcy Court

It is not necessarily unethical or prohibited for a lawyer to accept payment from a third party to represent a client. ***Cf.*** Rule 4-1.8(f) (a lawyer shall not accept compensation for representing a client from one other than the client unless the client gives informed

consent and there is no interference with the lawyer's independence of professional judgment); Rule 4-5.4(c) (lawyer shall not permit person who pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment). Yet, no attorney could ever rationalize a situation where she was paid by the plaintiff to represent the defendant. Likewise, virtually no one would argue that it is permissible for the same lawyer to represent both the plaintiff and defendant in a lawsuit.

In the bankruptcy context, however, situations and dilemmas arise for which non-bankruptcy principles offer no analog. This is due in large part to the inherent nature of the role of a Chapter 11 debtor's counsel in representing the legal interests of both the company and its entire bankruptcy estate, which includes a multitude of legal and equitable interests of the debtor in property. Bankruptcy cases involve a wide array of parties with diverse interests that may coincide and yet diverge in the same proceeding.

11 U.S.C. § 327(a) imposes two limitations on the Chapter 11 debtor in possession's choice of counsel. One, the attorney must not hold or represent an "interest adverse to the estate." And two, she must be a "disinterested person." If a Chapter 11 debtor's attorney were owed money from outstanding invoices for pre-petition services, this would naturally raise the question of whether the attorney can assist in the affairs of the estate with the requisite "disinterestedness" because the attorney would also be a creditor. Similarly, there is an inherent concern with "interests adverse to the estate" if a lawyer attempts to simultaneously represent the interests of both the debtor and a creditor in the same bankruptcy.

Sometimes the situation is less obvious, such as when the debtor's attorney has

previously represented a creditor of the debtor, or when the attorney fee has been paid or guaranteed by a principal equity owner or a company affiliated with the debtor, or even if the attorney has received a payment from the debtor in the ninety days prior to the bankruptcy filing.[18] "The objective of requiring disclosure is to ensure undivided loyalty and untainted advice from professionals." ***In re Byington***, 454 B.R. 648, 657 (Bankr. W.D. Va. 2011). Disclosure is necessary to prevent evasion of creditor protections and to reduce the opportunity for overreaching by attorneys. ***In re Redding***, 263 B.R. 874, 878 (B.A.P. 8th Cir. 2001). If counsel's loyalties are too strongly aligned with certain insiders or equity owners or creditors to the detriment of other creditors and interested parties, this is exactly the type mischief that § 327 of the Bankruptcy Code is designed to prevent.

Yet, how would anyone ever know about counsel's otherwise private, privileged and confidential arrangements with third parties? The solution is set forth in 11 U.S.C. § 329(a) and Rule 2014(a) which sets a high standard of transparency, even requiring a verified statement of the person to be employed setting forth the person's "connections**"** with the debtor, creditors, and any other party in interest. "Connections" is broadly construed. ***Waldron v. Adams & Reese, L.L.P. (In re American Int'l Refinery, Inc.***, 676

[18] Payments to counsel could qualify as preferences if received during the statutory period (generally 90 days) prior to bankruptcy. For instance, if the $5,096 paid to Respondent on 10/18/12 had come from directly from Satnam rather than Southern Host, this could have been regarded as a preferential transfer albeit just under the $5,850 threshold that existed in January 2013 under 11 U.S.C. § 547(c)(9). **See App. 497**.

F.3d 455 (5th. Cir. 2012) (disclosure requirements of Rule 2014(a) are broader than the rules governing disqualification, and an applicant must disclose all connections regardless of whether they are sufficient to rise to the level of a disqualifying interest under Section 327); ***In re Citation Corp.***, 493 F.3d 1313 (11th Cir. 2007) (bankruptcy court, not the professionals, must determine which prior connections rise to the level of an actual conflict or pose the threat of a potential conflict; therefore, the professional must disclose all previous contacts with any party in interest).

These connections can include financial connections such as payment arrangements, professional connections such as concurrent or past legal representation, or even personal connections. Sometimes, the disclosure can reveal significant conflicts of interest which can lead to disqualification of counsel. In the present case, a proper disclosure at the outset would have shown that Respondent had been paid over $17,285 in the year prior to the re-filed bankruptcy by third parties on behalf of the Debtor who were either amongst the largest unsecured creditors of the Debtor and/or insiders who had received significant pre-bankruptcy transfers in the twelve months prior to the bankruptcy.

A deficiency in a disclosure of this type is considered to be way more serious than a pleading defect or a missed deadline. In the words of the United States Trustee,[19] this

[19] The United States Trustee Program is the component of the Department of Justice responsible for overseeing the administration of bankruptcy cases and private trustees under 28 U.S.C. § 586 and 11 U.S.C. § 101, *et seq*. It is a national program with broad administrative, regulatory, and litigation/enforcement authorities whose mission is to

aspect of bankruptcy law involving the debtor's selection of counsel and disclosure of compensation arrangements and connections is a "self-policing" situation whereby an intentional nondisclosure by the lawyer causes the system to malfunction. **App. 290**. ***See also Rome v. Braunstein***, 19 F.3d 54 (1st Cir. 1994) ("as with other prophylactic ethical rules constraining attorney conduct, sections 327(a) and 328(c) cannot achieve their purpose unless court-appointed counsel police themselves in the first instance"). In the context of Chapter 11 bankruptcy proceedings, a lawyer's failure to disclose connections and compensation is tantamount to "a fraud on the court." ***See In re Crivello***, 134 F.3d 831, 836-837 (7th Cir. 1998); ***In re M.T.G., Inc.***, 366 B.R. 730 (Bankr. E.D. Mich. 2007), decision aff'd, 400 B.R. 558 (E.D. Mich. 2009).

There is a well-developed body of law in which bankruptcy courts and federal appellate courts have looked at various relationships and the "totality of circumstances" to determine whether counsel is qualified to serve under 11 U.S.C. § 327. ***See e.g. In re***

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promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders–debtors, creditors, and the public. www.justice.gov/ust. The U.S. Trustee has statutory responsibility to monitor applications for retention of professional persons in bankruptcy cases, and, whenever the United States trustee deems it appropriate, to file with the court comments with respect to the approval of such applications." 28 U.S.C. § 586(a)(3)(H). The Bankruptcy Code addresses the U.S. Trustee's standing by explicitly providing that "[t]he United States trustee may raise and may appear and be heard on any issue in any case or proceeding under this title." 11 U.S.C. § 307.

Middleton Arms, 934 F.2d 723 (6th Cir. 1991) (strict construction of disinterestedness); ***In re M & M Marketing LLC***, 426 B.R. 796 (BAP 8th Cir. 2010); ***In re Big Mac Marine***, 326 B.R. 150 (BAP 8th Cir. 2005); ***In re Interwest Business Equipment, Inc.***, 23 F.3d 311 (10th Cir. 1994); ***In re Huntco, Inc.***, 288 B.R. 229 (Bankr. E.D. Mo. 2002); ***In re Martin***, 817 F.2d 175 (1st Cir. 1987); ***In re American International Refinery, Inc***., 676 F.3d 455, 462 (5th Cir. 2012) (adopting totality of circumstances approach as opposed to a *per se* bright line approach); ***In re Harris Agency, LLC***, 451 B.R. 378 (Bankr. E.D. Pa. 2011***); In re Coal River Res. Inc.***, 321 B.R. 184 (W.D. Va. 2005).

Thankfully, these thorny issues of disqualification, disinterestedness and "interest adverse" need not be resolved in this disciplinary proceeding. While such analysis is beyond the scope of this disciplinary proceeding, suffice it to say that conflicts of interest for § 327 purposes are not necessarily coterminous with a conflicts analysis under Rule 4-1.7,[20] 4-1.8 and 4-1.9. ***See In re Amdura***, 121 B.R. 862, 866 (Bankr. D. Colo. 1990) (while

[20] In Count V of the Information, Informant alleged that Respondent violated Rule 4-1.7(a)(2) in that Respondent engaged in a representation of a client and/or attempted to engage in the representation of a client in the 2013 Missouri Bankruptcy that would be materially limited by Respondent's responsibilities to a third person or by Respondent's own personal interests. The disciplinary hearing panel concluded there was no prohibited conflict of interest or related violation under the Rules of Professional Conduct. Informant accepts the panel's determination because Respondent was fired by the client just days before the bankruptcy judge had scheduled a hearing on the issue. Thus the record from

rules of professional conduct are pertinent under § 327, "activities and multiple representations that may be acceptable in commercial settings, particularly with the informed consent of the clients, may not be acceptable in bankruptcy"). For instance, permissible dual representation of an organization and its constituents under Rule 4-1.13(e) and conflicts waivers under Rule 4-1.7(b) may not necessarily be accepted in the context of a Chapter 11 proceeding.

Bankruptcy courts do look at the state codes of professional conduct, and use rules such as 4-1.7 as a threshold for approval of counsel under 11 U.S.C.§ 327. ***In re El San Juan Hotel Corp.***, 239 B.R. 635 (B.A.P. 1st Cir. 1999) (Rule 1.7 is more strictly applied

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the bankruptcy proceeding does not provide enough clues as to whether the payments to Respondent and her relationships with creditors and insiders would have satisfied the threshold under Rule 4-1.7. However, the bankruptcy judge did express doubt as to Respondent's qualification to represent the Debtor (**App. 303**). This suggests that once all payments and connections had been revealed and analyzed, Respondent would have been under one or more disqualifying conflicts of interest, at least under 11 U.S.C. § 327. Arguably this doubt could signify a "significant risk" of a conflict under Rule 4-1.7(2)(a). If the disciplinary hearing panel reached an erroneous conclusion of law as to Count V, the error was harmless. The panel correctly found a pattern of other instances of more serious misconduct along with multiple violations of the Rules of Professional Conduct as alleged in other counts of the Information.

in bankruptcy because of the fiduciary duty owed by trustee's counsel to the estate); ***In re Creative Restaurant Management***, 139 B.R. 902 (Bankr. W.D. Mo. 1992) (Federman, j) (using a two-step analysis by first examining Rule 4 and then applying bankruptcy considerations; "the question is whether the law firm is eligible to represent the debtor under the Bankruptcy Code, even though such firm does not have a conflict of interest under applicable ethical rules"). The most salient point here is that because of the extraordinarily complex and nuanced approach to qualification of counsel under § 327 of the Bankruptcy Code, all facts, relationships and circumstances must be affirmatively disclosed by counsel in an organized, thoughtful and cogent manner.

The rule of thumb followed by bankruptcy practitioners who desire to be employed under § 327 is to disclose, disclose and disclose, and then when you are done disclosing, disclose some more. Experienced bankruptcy counsel such as Respondent know that they are obliged to inquire into and analyze the factual and legal elements of every document signed and filed in the case. Federal Rule 11, similar to Mo.R.Civ.P. 55.03(c), applies to bankruptcy counsel. ***See In re Pierce***, 809 F.2d 1356 (8th Cir. 1987) (applying Bankruptcy Rule 9011 to erroneous application to employ counsel). A half-hearted inquiry into conflicts is inadequate. It is counsel's responsibility to ensure complete disclosure. ***In re Keller Fin. Servs. of Fla., Inc.***, 243 B.R. 806, 812 (Bankr. M.D.Fla.1999) ("The professional must disclose all facts that bear on his disinterestedness and cannot usurp the court's function by unilaterally choosing which connections impact on his disinterestedness, and which do not").

In order for the bankruptcy court, with the guidance and oversite of the US Trustee,

to make the determination required under § 327(a), the court must be fully informed of all actual or potential connections between debtor's counsel and other pertinent parties. The duty to disclose is sacrosanct because "complete and candid disclosure … is indispensable to the court's discharge of its duty to assure the [professional's] eligibility for employment under section 327(a)…." ***In re eToys, Inc.***, 331 B.R. 176, 189 (Bankr. D.Del. 2005). Rigorous compliance with Rule 2014 is critical to the integrity and transparency required of the bankruptcy system.

Moreover, because approved attorney fees can be paid from the assets of the estate, the court will also examine the reasonableness of the fee arrangements between the debtor and its counsel. In light of the unique role debtor's counsel plays in representing a Chapter 11 bankruptcy estate, a bankruptcy court is particularly sensitive to the potential for adverse interests and other indicia of disqualifying circumstances described in 11 U.S.C. § 327(a) as well as unreasonable and excessive fee arrangements described in 11 U.S.C. § 329(a). In short, the facts and circumstances of counsel's compensation arrangements (including payments from third parties) and connections are "material facts" and matters of great significance within the Bankruptcy Code.

This case closely resembles the issues addressed in ***USA. v. Gellene***, 182 F.3d 578 (7th Cir. 1999), a criminal case in which a bankruptcy lawyer was convicted under 18 U.S.C. § 152(3) for submitting a false Rule 2014 disclosure (which failed to divulge his representation of a major secured creditor of the debtor) to a bankruptcy court in connection with an application to be employed as debtor's counsel. The defendant argued that "the fraud ought to be considered material only when it is related to the estate's assets, to

pecuniary and property distribution issues." Under this narrow interpretation, the defendant claimed that since the Rule 2014 nondisclosure was not intended to impact on the equitable distribution of assets in the bankruptcy, it was not material. The court noted that it and other circuit courts have rejected expressly such a reading.

> Materiality in this context does not require harm to or adverse reliance by a creditor, nor does it require a realization of a gain by the defendant. Rather, it requires that the false oath or account relate to some significant aspect of the bankruptcy case or proceeding in which it was given, or that it pertain to the discovery of assets or to the debtor's financial transactions. . . . Statements given by individuals in order to secure a particular adjudication carry their own reliable index of materiality; the person giving the statement believed it sufficiently important --and hence, material—to the goal of obtaining the desired action.
>
> We have no doubt that a misstatement in a Rule 2014 statement by an attorney about other affiliations constitutes a material misstatement. . . . This requirement [of disclosure in Rule 2014] goes to the heart of the integrity of the administration of the bankruptcy estate. The Code reflects Congress' concern that any person who might possess or assert an interest or have a predisposition that would reduce the value of the estate or

> delay its administration ought not have a professional relationship with the estate. (citations omitted).

Id. at 588.

There is no question that the Respondent made statements to a "tribunal" in the Application, Voluntary Petition and even in related hearings and court filings. The bankruptcy court is a tribunal under Rule 4-1.0(m).

The statements made by Respondent were false. Respondent either received a $6,500 payment prior to the filing of the bankruptcy petition, or at the very least she had reached an agreement prior to the filing to receive a $6,500 payment and/or had received the payment before filing the Application on January 13, 2013 which claimed that the firm "has not received a retainer in this matter." A check did not get drawn on January 9, 2013 and magically appear in her office without Respondent's prior knowledge and consent. Thus, the statement in the Petition that she had received $0 and had agreed to receive $0 was patently false. The statement in the Application that her firm had received no retainer was likewise undeniably false. Moreover, Respondent received three other payments (totaling almost $15,000) for representing Satnam in the twelve months prior to January 2013, which were likewise omitted from the Petition despite the solemn certification of completeness on page 4 of the Petition (**App. 471)** and page 32 of the Petition (**App. 499**, ¶ 9). Moreover, there were various connections between Respondent and creditors and insiders of the Debtor, despite her declaration in the Application that there was no connections other than as counsel for the debtor. These connections included receipt of payments from third parties who were either creditors or potential preference defendants

as well as representation of insiders and creditors on other legal and bankruptcy-related matters.

The false statements were never adequately nor timely corrected, despite multiple opportunities prior to July 2013 for additional disclosure.[21] Perhaps the most egregious failure to correct the disclosure is her deliberate insistence that the $6,500 payment was from "Dee Mann personally" when all of the evidence showed otherwise. The source of the payment was Southern Host Lodging, ultimately identified as being an insider and one of the debtor's largest unsecured creditors. Reading between the lines, this may have been the most compelling reason for the judge's anger and frustration, resulting in the most

[21] Unlike Rule 2016 pertaining to supplemental fee disclosures, Rule 2014 does not expressly require supplemental disclosure as to potential conflicts and connections during the course of the proceeding. However, an ongoing duty of disclosure is undeniably mandated. ***See I.G. Petroleum LLC v. Fenasci (In Re West Delta Oil Co., Inc.)***, 432 F.3d 347 (5th Cir. 2005) (case law has uniformly held that under Rule 2014(a), full disclosure is a continuing responsibility; a professional is under a duty to promptly notify the court if any potential for conflict arises); ***In re Granite Partners LP***, 219 B.R. 22 (S.D.N.Y. 1998); ***In re Metropolitan Environmental, Inc.***, 293 B.R. 871, 887 (Bankr. N.D.Ohio 2003) (collecting cases); ***Rome v. Braunstein***, 19 F.3d 54 (1st Cir. 1994) (explaining that because the court is empowered "to deter inappropriate influences upon the undivided loyalty of court-appointed professionals throughout their tenure, the need for professional self-scrutiny and avoidance of conflicts ... does not end upon appointment").

"blatant" case of nondisclosure the judge had seen in his nearly twenty-five years on the bench.[22] **App. 303**.

The disciplinary hearing panel found that Respondent knew the statements regarding the amount and source of compensation in the petition and Application (and even in the supplemental disclosures) were false. As used in Rule 4-3.3, "knowingly" denotes actual knowledge of the fact in question. ***See*** Rule 4-1.0(f). A person's knowledge may be inferred from circumstances. ***Id***.

The panel's finding, while advisory, was based upon overwhelming evidence of a guilty mental state. Because of the weight of evidence presented at the hearing, the disciplinary hearing panel found that it was not necessary to address the issue of offensive, non-mutual collateral estoppel adopted in ***In re Caranchini***, 956 S.W.2d 910 (Mo. banc 1997). **App. 456**. Suffice it to say, the panel's conclusion was identical to Judge Federman's take on the situation, inasmuch as he was very troubled by Respondent's intentional conduct and explanations, compelling him to report his findings to OCDC. Informant contended to the panel below that all of the elements present in ***Caranchini***, including identity of issues (specifically including intentional nondisclosure), were present in this case. If the disciplinary hearing panel's failure to apply offensive, non-mutual collateral estoppel against Respondent was erroneous, such error was harmless.

The bankruptcy judge determined that Respondent's explanation for why she did

[22] Judge Federman was appointed to the bench in the United States Bankruptcy Court for the Western District of Missouri in 1989 and retired in 2017.

not disclose the various connections to Satnam was "ridiculous" and "not acceptable" because any bankruptcy attorney should have known better than to hide the ball with respect to compensation arrangements and connections to other parties in interest. 11 U.S.C. § 329 expressly requires identification of the "source of such compensation." Rule 2016(b) implements Section 329 and itself expressly requires disclosure of the source of compensation. "The Code and Rules require, without exception, that the amount and source of the compensation be disclosed." ***In re Redding***, 263 B.R. 874, 878 (B.A.P. 8th Cir. 2001). ***See also Waldron v. Adams & Reese, LLP (In re Am. Int'l Refinery, Inc.)***, 676 F.3d 455, 462-63 (5th Cir. 2012) (sanction for failure to disclose payments from third party); ***In re Glenn Elec. Sales Corp.***, 99 B.R. 596, 601-602 (D.N.J. 1988) (disqualification for failure to disclose that affiliate of the debtor's secured creditor paid counsel's retainer). A Missouri bankruptcy practitioner handling Chapter 11 bankruptcies would likely have come across the ***Redding*** case because it originated out of the Western District of Missouri. Moreover, an experienced bankruptcy practitioner such as Respondent would have had broad working knowledge of Sections 327, 329, and 330 of the Bankruptcy Code and Bankruptcy Rules 2014 and 2016, at least enough to know that mandatory disclosure of the "source" of compensation means that payments received on behalf of the debtor from third parties must be disclosed.

Even if one had never read the Bankruptcy Code, the Bankruptcy Rules or its well-established case law regarding disclosure, the form signed by Respondent is itself self-explanatory with regard to the specific information required to be disclosed. The form 203 gives two options as to the source of attorney compensation, as follows:

"3. The source of the compensation paid to me was:

__ Debtor __Other (specify):_____."

The form does not leave much room for confusion, uncertainty or creative interpretation.

Finally, the specific question of handling disclosure of third party payments was raised with Respondent both in July 2012 and again in March of 2013 by other counsel. **App. 337; 348**. The "heightened" concern over preferential transfers also points to a situation where Respondent had to have been focused on her connections to other parties in interest including those who may have held adverse interests to Satnam. Respondent knew she was receiving attorney fee payments from insiders, creditors and recipients of pre-bankruptcy preferential transfers. She went to great lengths to hide the ball out of fear of disqualification and disgorgement of any unauthorized fees. Respondent had 31,285 reasons to play coy with her disclosure obligation.

It simply defies logic that an experienced bankruptcy attorney could believe that the court is not interested in situations where debtor's counsel receives payment from non-clients or other third parties, all of whom were amongst the largest unsecured creditors of the estate and/or were faced with potential liability as a preferential transferee. Having practiced bankruptcy law for thirty years, Respondent surely understood the importance of this disclosure obligation. She certainly understood the concerns with preferential transfers to insiders and affiliated creditors. These were not rookie mistakes. In her owns words, she touted her own expertise in bankruptcy law to the court in order to gain approval of her retention on behalf of the estate: "The Debtor has selected Lydia M. Carson based on her

expertise and knowledge of Bankruptcy Procedures."[23] **App. 246**.

Indeed, the disciplinary hearing panel examined the same type of evidence considered by the jury in convicting the bankruptcy attorney in ***USA. v. Gellene***, 182 F.3d 578 (7th Cir. 1999). The Seventh Circuit stated:

> We now consider whether there was sufficient evidence of Mr. Gellene's guilt. We therefore must determine, after viewing the evidence in the light most favorable to the government, whether a rational trier of fact could have found the essential elements of the offense of bankruptcy fraud beyond a reasonable doubt. See United States v. Webster, 125 F.3d 1024, 1034 (7th Cir. 1997), cert. denied, 118 S. Ct. 698 (1998). "Circumstantial evidence is sufficient to prove fraudulent intent and to support a conviction." Id.
>
> Our review of the record verifies that the government established Mr. Gellene's knowledge of his duty to disclose. It set forth Mr. Gellene's expertise in bankruptcy and the

[23] At the disciplinary hearing, Respondent retreated from this statement to fit the narrative that she genuinely believed her disclosures were truthful and compliant. Respondent was either lying to the bankruptcy court about her bankruptcy experience, competence and expertise to get approval, or she was lying to the disciplinary hearing panel, or perhaps both. Either way, Respondent's credibility is frail and anemic.

> bankruptcy court's statements alerting him to the importance of full disclosures. Mr. Gellene was fully apprised of the importance of the information that had been excluded. He had been questioned by his law partner, Toni Lichstein, several times about whether there might be a conflict of interest and whether all necessary disclosures had been made. Yet Mr. Gellene continued to withhold the information over a two-year period.

Id. at 588-589.

Respondent violated Rules 4-3.3(a)(1) and 4-8.4(c) in that she knowingly made false statements of fact to the Missouri bankruptcy court regarding the source and amount of compensation and her connections to the debtor and knowingly failed to correct false statements of material fact previously made to the tribunal, and such conduct involved dishonesty, fraud, deceit or misrepresentation.

B. False Statement Under Oath to the Louisiana Bankruptcy Court

In many respects, the false affidavit Respondent submitted to the Louisiana Bankruptcy Court implicates that same concerns as her submission of false statements in the bankruptcy petition, employment application and supplemental Form 203 disclosures. The affidavit would have been part of the same nucleus of documents which must be filed in order to obtain court approval of employment as counsel for a debtor-in-possession in a Chapter 11 bankruptcy. The affidavit was for the purpose of informing the court as to whether Respondent, as an out-of-state stranger to the court, possessed the requisite

competence, moral character and fitness to practice in a Louisiana federal bankruptcy court.

The applicable Western District of Louisiana local rule for admission of an out-of-state attorney provides as follows:

> LR83.2.6 Visiting Attorneys
>
> Any member in good standing of the bar of any court of the United States or of the highest court of any state and who is not a member of the bar of this court, may, upon written motion of counsel of record who is a member of the bar of this court, by ex parte order, be permitted to appear and participate as co-counsel in a particular case.
>
> The motion must have attached to it a certificate of recent date from a court of the United States or the highest court or bar of the state where the attorney has been admitted showing that the applicant is in good standing. **The applicant attorney shall state under oath whether any disciplinary proceedings or criminal charges have been instituted against the applicant, and if so, shall disclose full information about the proceeding or charges and the ultimate determination, if any**. (emphasis added).

This instance of misconduct is perhaps even more compelling than the nondisclosure regarding payments from third parties described above, because the Order

from the Missouri Supreme Court imposing a reprimand upon Respondent literally was sitting on Respondent's desk **[App. 67 (Tr. 187)]** staring her right in the face as she signed the affidavit. Yet she knowingly falsely stated in the affidavit that "that she [Respondent] is not and have (sic) never been the subject of any disciplinary proceedings or criminal charges, as per the attached certificate." The affidavit did not contain a falsehood about someone else or some matter unfamiliar to Respondent. Rather, the affidavit contained a falsehood about something with which Respondent was intimately familiar, e.g., her own disciplinary record. This is the one area where Respondent possesses superior knowledge than virtually anyone else. The Order from this Court was received by certified mail on or about February 28, 2013 and handed to Respondent by an office employee. Nineteen days later, on March 19, 2013, the affidavit was signed under oath in Jackson County, Missouri and filed with the court. The ink on this Court's Order barely had time to dry before Respondent snubbed her nose at it, denying having ever been the subject of disciplinary proceedings.

Thankfully, there could not be more than a handful of attorneys in this state that would treat such a disciplinary order from this Court so lightly that it could be forgotten in a span of less than three weeks. In concluding these were instances of a knowing submission of a false statement and a knowing disobedience of a court rule (discussed below), the disciplinary hearing panel necessarily found that Respondent did not "forget" about the reprimand. Instead, Respondent made an intentional decision to omit disclosure of the reprimand on the affidavit so that she could keep the $10,000 payment wired to her account on February 20, 2013. Even before she supposedly contacted the clerk's office,

earlier that same day she actually signed two preliminary drafts of a *pro hac vice* application both of which contained virtually identical falsehoods. **App. 400-4408**. It just does not pass muster that a lawyer would deliberately sign three separate documents containing the same material falsehood unless there was some actual intent to deceive.

The panel declined to believe Respondent's tale that a Louisiana court official supposedly told Respondent that the bankruptcy judges in Louisiana did not care about the disciplinary troubles from an out-of-state lawyer's home state, despite the explicit requirements of the local rule set forth above mandating "**full information about the [disciplinary] proceeding or charges and the ultimate determination, if any**." Respondent's explanation is antithetical to the whole notion of *pro hac vice* admission, which is to require candid disclosure about matters from a foreign jurisdiction because the local courts and judges do not necessarily have access to such foreign records.

There is an unmistakable pattern in the evidence that Respondent is quite eager to admit to utter incompetence and negligence in the submission of affirmative statements regarding her own professional affairs so as to avoid the more severe consequences of knowing, dishonest and intentional misconduct. Her excuses are just not believable. In a similar vein, as discussed below, Respondent made an intentional decision not to send the reprimand to the federal court. This had nothing to do with an instance of delegating the task to a staff member and then forgetting about it and never following up until three years later. The panel below was not terribly impressed with the credibility of Respondent's explanation for the falsehood in the sworn affidavit.

Informant concurs with the determination of the disciplinary hearing panel that

Respondent violated Rules 4-3.3(a)(1) and 4-8.4(c) in that she knowingly made a false statement of fact, under oath, to the Louisiana bankruptcy court regarding disciplinary proceedings, and such conduct involved dishonesty, fraud, deceit or misrepresentation.

Informant accepts the panel's legal conclusion that Rule 4-3.3(d) was not violated because such rule applies only to *ex parte* proceedings. The panel stated that there was "no evidence" of any *ex parte* proceedings in the 2013 Louisiana Bankruptcy. That point is debatable, as both the W.D. Louisiana Local Rule 83.2.6 cited above and the actual motion itself ("Ex Parte Motion to Enroll Co-Counsel Pro Hac Vice") reflect an expectation that the matter was to have been submitted and decided on an *ex parte* basis. However, as a practical matter the motion was not actually decided in an *ex parte* fashion. The motion was submitted on March 19, 2013 but was not granted until the Order dated May 13, 2013. All parties entitled to notice had an opportunity to object to the motion. While *pro hac vice* motions are often granted *ex parte*, where such a motion is filed in conjunction with an application for employment of debtor's counsel under 11 U.S.C. § 327, then the issue cannot generally be decided on an *ex parte* basis.

USA. v. Gellene, 182 F.3d 578 (7th Cir. 1999), supplies a somber warning to bankruptcy attorneys that submission of false Rule 2014 statements and fraudulent sworn testimony can be prosecuted under 18 U.S.C. § 152(3) and 18 U.S.C. § 1623. Since apparently neither Judge Federman nor the local United States Attorney deemed it appropriate to report the Rule 2014 falsehoods to the federal prosecutors and since the panel found multiple violations of other egregious conduct under Rules 4-3.3(a)(1) and 4-8.4(c), Informant accepts the panel's dismissal of the charge in the Information under Rule

4-8.4(b) alleging criminal conduct.

Nevertheless, Informant submits that when the material falsehood at the core of a Rule 4-3.3(a)(1) violation is found in a **sworn affidavit signed by the lawyer** and knowingly submitted to a judge and not timely corrected thereafter, the conduct is inexcusable and virtually unforgiveable. It is on the same level as the abhorrent conduct present in ***In re Storment***, 873 S.W.2d 227 (Mo. 1994), where the lawyer knowingly presented false sworn testimony of his client in a bench trial.[24] The present case is only barely distinguishable from ***Storment*** in that the false sworn testimony in ***Storment*** was presented live inside a courtroom while here the false sworn testimony was submitted by means of a document electronically filed some 500 miles away from the courthouse.

It is undisputed that Respondent received a letter from a disciplinary representative in January 2014 under the letterhead of the "Missouri Supreme Court Regional Disciplinary Committee." **App. 101 (Tr. 307)**. The letter stated, in part:

> On February 28, 2013, you received a copy by certified mail of the disciplinary order issued to you by the Missouri Supreme Court. On March 19, 2013, you signed an affidavit under oath that you have never been the subject of any disciplinary proceeding in connection with an Ex Parte Motion to Enroll Co-Counsel Pro Hac Vice in In re: GS Hospitality, LLC, Case

[24] Mr. Storment was acquitted of criminal charges related to perjury, but nevertheless was disbarred.

> No. 13-10393, in the Western District of Louisiana. Please explain your position as to whether your affidavit constitutes an intentional misrepresentation to a federal bankruptcy judge.
>
> **App. 429-430**.

Yet, Respondent initiated no remedial action to correct the falsehood in the affidavit, even after the falsehood was pointed out to her by a representative of the Chief Disciplinary Counsel acting under Missouri Supreme Court Rule 5. As shown by the docket of the 2013 Louisiana Bankruptcy, the case remained opened throughout 2014 with various documents filed throughout 2014 up until June 2015 when the bankruptcy was closed by final decree. **App. 375-377**. In fact, Respondent continued to make sporadic payments to the US Trustee in the bankruptcy case throughout 2014 to satisfy the obligation to repay $10,000 in disgorged funds. Despite her ongoing involvement in this bankruptcy in 2014, there was no attempt by Respondent to correct the false affidavit.

C. "Second Verse Same as the First": Knowing and Dishonest Nondisclosure Towards the Missouri Federal Court

Unlike our disciplinary system under Rule 5, the disciplinary process in the Western District of Missouri federal court is more often than not dependent upon a self-reporting system. W.D. Mo. Local Rule 83.6(b) provides: "1. Any attorney admitted to practice before this Court shall, upon being subjected to public discipline by any other Court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, promptly inform the Clerk of this Court of such action." W.D.Mo. Local Rule 83.6(b) establishes a show cause procedure for

reciprocal discipline and Local Rule 83.6(d) authorizes an investigation and prosecution of a formal disciplinary proceeding. **App. 357**. ***See also In re Fletcher***, 424 F.3d 783 (8th Cir. 2005) (describing disciplinary process in the Western District of Missouri federal court under Local Rule 83.6). The federal disciplinary system, including proceedings originating in the Western District of Missouri, serves the same important goals as our state court system. ***See In re Caranchini***, 160 F.3d 420 (8th Cir. 1998) ("it is incumbent upon courts to maintain integrity, professionalism and civility among its practitioners. . . . Courts cannot allow a blizzard of unethical conduct to sweep across an unsuspecting public. . . .This judgment reflects the protection of the public").

Respondent admits that she was aware of a legal obligation to promptly report public discipline to the federal court in Missouri where she had been registered and an active litigant for her entire legal career. Respondent also admits that the reprimand from this court was the type of "public discipline" which triggered the reporting obligation. Respondent further admits that she did not timely report the reprimand to the federal court. Her only excuse is that she thought the reporting was all taken care of because she supposedly asked a clerical employee in her office to send the reprimand to the clerk's office in or about March of 2013. The only staff member to testify at the disciplinary hearing testified that he was never made aware of the reprimand until the time of his testimony in late 2016. Respondent claims that she never followed up on this Local Rule 83.6(b)(1) obligation until after her Answer to the Information was submitted herein in February 2016, not even after specific inquiry on the subject from a disciplinary representative in January 2014. Her story is just not plausible.

Respondent violated Rules 4-3.3(d) 4-8.4(c) and 4-8.4(d) in that she knowingly failed to inform the Missouri federal court of a material fact that would have enabled the court to make an informed decision under Local Rule 83.6 regarding public discipline, and such conduct involved dishonesty, fraud, deceit or misrepresentation and was prejudicial to the administration of justice. The panel saw the failure to make an affirmative required disclosure as yet another instance of misconduct involving dishonesty, one of three separate instances of a violation of Rule 4-8.4(c) found by the disciplinary hearing panel. At some point, the panel just could no longer swallow Respondent's explanations for her conduct, demonstrating a grievous and troubling pattern of dishonesty directed towards three tribunals, including the entire judiciary of the United States District Court for the Western District of Missouri.

As noted by the panel below, the reporting obligation under W.D.Mo. Local Rule 83.6(b)(1) is treated as an *ex parte* matter under Rule 4-3.3(d). An *ex parte* matter is not limited to adjudications before courts. Hazard and Hodes, ***The Law of Lawyering,*** Vol. 2, § 29.25 (3d ed. 2013). Similar to the *pro hac vice* requirements, the purpose of Local Rule 83.6(b)(1) is to provide the judiciary of the district with information necessary for it to evaluate an attorney's ongoing fitness to practice, even after initial admission to the bar of the court.

By failing to submit information regarding the 2013 Missouri Supreme Court Reprimand, Respondent failed to inform the federal court of material facts necessary to make this evaluation. In particular, as a consequence of Respondent's intentional and dishonest nondisclosure, the "show cause" process for reciprocal discipline was not

implemented. Just like the false affidavit submitted in the 2013 Louisiana bankruptcy, Respondent has been able to fly under the radar and has wholly escaped being held accountable by these aggrieved federal courts, at least until this matter became public in 2016.

D. Advertising Violation

Respondent violated Rule 4-7.2(f) in that she advertised her services through public media without the required disclosure: "The choice of a lawyer is an important decision and should not be based solely upon advertisements." This is one of two instances of relatively minor misconduct in the entire record conceded by Respondent. It is noted that the "public media" mentioned in Rule 4-7.2(a) now includes a plethora of internet websites and mobile apps with a platform targeted to consumers of legal services. The particular advertising in this case involved free "do it yourself" postings on Craigslist. The relative convenience of such postings is not an invitation to overlook the requirements of Rule 4-7.2.

ARGUMENT

II.

IN ORDER TO PROTECT THE PUBLIC AND MAINTAIN THE INTEGRITY OF THE LEGAL PROFESSION, THE COURT SHOULD REMOVE RESPONDENT FROM THE PRACTICE OF LAW BY EITHER SUSPENSION OR DISBARMENT.

The circumstances presented here mandate that Respondent be removed from the practice of law without delay. Lawyers should not be allowed to continue to practice law after being found guilty of knowing and intentional submission of false evidence and false statements to the tribunal. ***Cf. In re Caranchini***, 956 S.W.2d 910 (Mo. banc 1997) (in the absence of candor, the legal system cannot properly function). Respondent is a threat to the public, including its most vulnerable citizens who are facing the prospect of divorce and bankruptcy.

The purpose of imposing discipline is not to punish the attorney but to protect the public and maintain the integrity of the legal profession. ***In re Stewart***, 342 S.W.3d 307, 308 (Mo. banc 2011). "Those twin purposes may be achieved both directly, by removing a person from the practice of law, and indirectly, by imposing a sanction which serves to deter other members of the Bar from engaging in similar conduct." ***In re Kazanas***, 96 S.W.3d 803, 807-08 (Mo. banc 2003). In the present case, both purposes of attorney discipline will be served if Respondent is removed from the practice of law.

"This Court adheres to a practice of applying progressive discipline when imposing

sanctions on attorneys who commit misconduct." ***In re Forck***, 418 S.W.3d 437, 444 (Mo. banc 2014). Disbarment or even an actual suspension in the present case is consistent with the adoption of a system of progressive discipline. The four prior admonitions issued to and accepted by Respondent are considered to be prior discipline. ***See In re Farris***, 472 S.W.3d. 549 (Mo. banc 2015) (majority of Court holding that previous admonitions constitute prior discipline). Even after Respondent was reprimanded by this Court, more misconduct ensued. This history unmistakably means that Respondent is not fit to continue to practice law in this state.

In determining a sanction for attorney misconduct, the Missouri Supreme Court historically relies on three sources. First and foremost, the Court applies its own standards to maintain consistency, fairness, and ultimately, to accomplish the well-established goals of protecting the public and maintaining the integrity of the profession. Those standards are written into law, of course, when the Court issues opinions in attorney discipline cases. ***In re Kazanas***, 96 S.W.3d 803, 808 (Mo. banc 2003).

The four most akin Missouri cases to the conduct involved in this case are ***In re Krigel***, 480 S.W.3d 294 (Mo. banc 2016) (submission of false evidence to a tribunal warrants disbarment unless mitigated by spotless disciplinary record over a distinguished thirty-year career); ***In re Caranchini***, 956 S.W.2d 910 (Mo. banc 1997) (disbarment warranted for submission of false evidence); ***In re Carey***, 89 S.W.3d 477 (Mo. banc 2002) (concluding that the attorneys had violated two of the most fundamental principles of our profession, loyalty to the client and honesty to the bench; thus, “Significant discipline must follow to maintain the public's trust and confidence in our ability to police ourselves. A

'slap on the wrist' will not suffice"; imposing indefinite suspension from the practice of law, with leave to apply for reinstatement not sooner than one year); and ***In re Storment***, 873 S.W.2d 227 (Mo. 1994) (attorney disbarred for knowingly presenting false testimony at trial). ***See also In re Wentzell***, 656 N.W.2d 402 (Minn. 2003) (bankruptcy attorney suspended for intentional misrepresentations to court regarding compensation received in connection with representation of Chapter 11 debtors).

For additional guidance, the Court frequently relies on the ***ABA Standards for Imposing Lawyer Sanctions***. Those guidelines recommend baseline discipline for specific acts of misconduct, taking into consideration the duty violated, the lawyer's mental state (level of intent), and the extent of injury or potential injury. ***In re Griffey***, 873 S.W.2d 600 (Mo. banc 1994). In the present case, the baseline sanction is either suspension or disbarment, depending upon whether the Court concludes there was an intent to deceive and potentially serious injury. Once the baseline guideline is known, the ABA Standards allow consideration of aggravating and mitigating circumstances. ***ABA Standards for Imposing Lawyer Sanctions***. Finally, the Court also considers the recommendation of the Disciplinary Hearing Panel that heard the case, which was a recommendation for an actual suspension for an indefinite period of at least three years.

The ABA Standards for Imposing Lawyer Sanctions consider the following primary questions:

(1) What ethical duty did the lawyer violate? (A duty to a client, the public, the legal system, or the profession?);

(2) What was the lawyer's mental state? (Did the lawyer act

intentionally, knowingly, or negligently?);

(3) What was the extent of the actual or potential injury caused by the lawyer's misconduct? (Was there a serious or potentially serious injury?); and

(4) Are there any aggravating or mitigating circumstances?

ABA Standards: Theoretical Framework (p. 5).

Application of the ABA Standards requires the user to first analyze the first three questions and then, only after a baseline sanction is apparent, to consider aggravating and mitigating circumstances. ***ABA Standards, Preface: Methodology*** (p. 3). The drafters intentionally rejected an approach, however, that focused only on a lawyer's intent. Instead, they recognized that sanctioning courts must consider not only the attorney's intent and damage to his client, but also the damage to the public, the legal system and the profession. ***ABA Standards Preface: Methodology*** (p. 3). When this Court finds an attorney has committed multiple acts of misconduct, "the ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among the violations." ***In re Coleman***, 295 S.W.3d 857, 870 (Mo. banc 2009).

In the present case, the three most serious instances of misconduct each involve dishonesty towards a tribunal. One charge involves the knowing submission of a false affidavit signed under oath by the attorney without any corrective action. One charge involves a series of repeated falsehoods made by Respondent over the course of approximately six months regarding compensation and affiliations without adequate and timely corrective action. One charge involves a knowing nondisclosure for a period of

three years, in deliberate defiance of an important local federal court rule. In their own unique way they are all significantly egregious, making it difficult to isolate the most serious act of misconduct.

Lawyers owe ethical duties to the legal system. They are officers of the court, and must abide by the rules of substance and procedure which shape the administration of justice. Lawyers must always operate within the bounds of the law, and cannot create or use false evidence, or engage in any other illegal or improper conduct. ABA Standard 3.0. In the instant case, Respondent's pattern of dishonesty towards the judiciary is a substantial breach of Respondent's duty to the legal system.

The potentially applicable ABA Standards are set forth below:

> **6.1 False Statements, Fraud, and Misrepresentation**
>
> Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving conduct that . . . involves dishonesty, fraud, deceit, or misrepresentation to a court:
>
> **6.11** Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding;

6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding;

7.0 Violations of Other Duties as a Professional

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving false or misleading communication about the lawyer or the lawyer's services . . . improper solicitation of professional employment from a prospective client, unreasonable or improper fees . . . improper withdrawal from representation, or failure to report professional misconduct:

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed

> as a professional and causes injury or potential injury to a client, the public, or the legal system.

After the disciplinary hearing below, Informant requested disbarment and contended that ABA Standard 6.11 was the most applicable baseline standard for a sanction. The disciplinary hearing panel found that disbarment was excessive, but recommended an indefinite suspension of at least three years. Informant accepted the recommendation of the panel. A three year suspension is by no means a slap on the wrist and will serve the goals of public protection and safeguarding the integrity of the profession. However, disbarment also remains a viable option. In any event, ultimately it is up to this Court to determine the most appropriate sanction, whether that be disbarment as originally urged by Informant or a lengthy suspension as currently recommended by the disciplinary hearing panel.

In connection with its recommendation for discipline, the hearing panel made two observations. First, the panel did not believe that Respondent acted with the intent to deceive. It is true that the bankruptcy judge did not go so far in his comments as to suggest that Respondent acted fraudulently. ***Cf***. Rule 4-1.0(d) (fraud denotes a purpose to deceive). To a large extent, intent is in the eye of the beholder. However, the record taken as a whole could suggest that Respondent intended to deceive both bankruptcy courts for the purpose of obtaining court approval of her legal representation of the debtors and thereby retaining the entirety of fees paid by the group of clients.

The second observation made by the panel in connection with its disciplinary

recommendation is its view that the acceptance, retention, and ultimate disbursement[25] to Respondent of undisclosed and unauthorized payments did not cause serious or potentially serious injury. The attorney fees were paid to Respondent from June 2012 to February 2013, but were not refunded until more than a year later. The money used to pay Respondent had to originate from somewhere. The courts' orders did not result in a windfall to the recipients. The disgorgement of attorney fees meant the payments were to go back to the trust account of the successor attorney for the estate to be held in trust "pending a determination of who may be entitled to them." **App. 329**.

Ultimately, the creditors often are the ones forced to absorb the losses when the debtor's estate is unnecessarily depleted due to undisclosed and improper payments to counsel. Even though some of the unsecured creditors were insiders (such as Southern Host, BABA and Akaal), the list of unsecured creditors also included $24,000 owed to the Missouri Department of Revenue, $22,000 owed to the KCMO Revenue Department and $22,000 owed to the Jackson County Revenue Department. **App. 535**. Perhaps the

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[25] Under Local Rule 2016-1, the lawyer is required to "deposit all retainers (with the exception of earned on receipt retainers), **whether received from the debtor or any other source**, in the attorney's trust account pending an order of the court." Obviously, there were no court orders authorizing the funds to be disbursed from Respondent's trust account. Judging by the length of time it took Respondent to refund the payments pursuant to the disgorgement orders (periodic installment payments paid over six to twelve months, **App. 112, Tr. 352**), Respondent did not comply with this rule either.

principals of the debtor could have used their collective financial resources more sensibly to pay these creditors rather than to compensate Respondent the $26,000 ultimately disgorged.

Perhaps the injury here is more intangible. While disgorgement of fees can be viewed as the penalty the lawyer must pay for inadequate disclosure, the sanction also serves to deter future violations and preserves the public's confidence in the bankruptcy process. ***In re Granite Partners LP***, 219 B.R. 22, 41 (S.D.N.Y. 1998). It is doubtful that the local US Trustee's office would have expended so many hours of investigation and litigation in the matter if there was not a genuine potential for significant injury and/or disruption to the bankruptcy proceeding.

At the core of all three situations involved in the present case, Respondent was not truthful about some material aspect of her professional fitness and qualifications. If, after admission to the bar, a lawyer was found to have lied on his or her bar application on a material matter, the license would be revoked by disbarment. ***In Re Mitan***, 387 N.E.2d 278 (Ill. 1979) (lawyer disbarred for intentionally making false statements in bar application); ***In the Matter of Elliott***, 235 S.E.2d 111 (S.C. 1977); ***Attorney Grievance Com'n of Maryland v. Gilbert***, 515 A.2d 454 (Md. 1986); ***People v. Culpepper***, 645 P.2d 5 (Colo.1982). Outside of the legal profession, when someone is caught lying on an employment application, he or she often loses the job. Respondent should not be allowed to continue her "job" of being an attorney.

In reaching its ultimate determination of the most appropriate disciplinary sanction, the Court should also consider the following aggravating circumstances:

9.22 Factors which may be considered in aggravation. Aggravating factors include:

(a) prior disciplinary offenses

Respondent has had four prior admonitions. More importantly, she was reprimanded in early 2013 for conduct occurring in 2009 and 2010. It is significant to note that the reprimand was a result of a stipulation signed by Respondent in the latter half of 2012 and filed in this Court on January 7, 2013. In other words, the initial acts of dishonesty in this case took place within a mere three to six days after her stipulation to accept a reprimand was submitted to this Court. The dishonesty continued into March and April 2013 (and beyond), literally as a copy of the reprimand sat on her desk.

Using an approach of progressive discipline, Respondent should receive a more stringent level of sanction than previously administered. Respondent learned no lessons from the prior discipline proceeding. Unless Respondent is removed from the practice of law, she will continue to be a burden and drain upon the resources of the disciplinary system. She will threaten the public and the judiciary.

(b) dishonest or selfish motive

Respondent's primary motivation in connection with the failure to disclose was the retention of more than $25,000 in attorney fees. She also selfishly wanted to avoid any disciplinary consequences in the Western District of Missouri. Having engaged in three separate instances of dishonest conduct, Respondent is clearly motivated by something other than telling to truth to the tribunals about her professional affairs.

(c) a pattern of misconduct

There is an obvious pattern of misconduct. Respondent has demonstrated an

ongoing and repeated problem of lying, deceit, evasion and failing to make required affirmative disclosures to the tribunal. The bulk of the dishonestly and misrepresentation occurred in January 2013 to July 2013. In that period of time, the record below shows seven to ten discrete instances of dishonesty, some of which occurred while under oath. Respondent even testified falsely while under oath at the July 1, 2013 hearing in front of Judge Federman by stating that she had paid $5,096 in quarterly trustee fees and that she had proof that she had written checks for these amounts. **App. 304**. She later tacitly conceded that she had no such proof (**App. 536, 312**), but could never bring herself to correct this false testimony on the record by admitting that she had never paid the quarterly fees.

(d) multiple offenses

The current disciplinary proceeding involves multiple offenses involving four separate sets of circumstances (the statements in the Missouri Bankruptcy; the affidavit in the Louisiana Bankruptcy; the knowing refusal to report the reprimand to the Missouri federal court; and an advertising violation).

(g) refusal to acknowledge wrongful nature of the conduct

Respondent blamed the nondisclosure in the Satnam case upon her own misunderstanding of bankruptcy law. Respondent blamed the nondisclosure in the Louisiana bankruptcy upon a court clerk who supposedly told her not to report Missouri discipline in connection with the *pro hac vice* motion. She blamed the failure to report the reprimand to the Missouri federal court upon a clerical error and bad office practices. After all of the evidence was heard, Respondent still failed to take accountability for her conduct

and failed to acknowledge wrongful conduct involving dishonesty and lack of candor. She expressed no remorse for anything she had done, other than she was sorry the judge got so mad at her. Lawyers must be forthright and candid. The justice system cannot properly function with attorneys who have been caught in various situations of creating a fraud upon a tribunal. Respondent's attitude and efforts towards full disclosure fell way short of the mark on multiple occasions. The record of the disciplinary hearing does not show much improvement.

(i) substantial experience in the practice of law

Respondent was licensed in 1983. She is an experienced bankruptcy attorney with decades of practice in the Western District of Missouri federal courts.

CONCLUSION

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

(a) to find that Respondent is guilty of professional misconduct with respect to the matters charged in the Information and found by the panel to have been proven by a preponderance of the evidence and to find that Respondent has violated Missouri Supreme Court Rules 4-3.3(a)(1); 4-3.3(d); 4-7.2(f); 4-8.4(c) and 4-8.4(d).

(b) to remove Respondent from the practice of law either by suspension or disbarment; and

(e) to tax all costs in this matter to Respondent.

Respectfully submitted,

ALAN D. PRATZEL #29141
CHIEF DISCIPLINARY COUNSEL

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

ATTORNEYS FOR INFORMANT

CERTIFICATE

I hereby certify that the above and foregoing was filed electronically on this 10th day of July, 2017 under Missouri Supreme Court Rule 103 and that the undersigned signed the original and the original will be maintained in accordance with Rule 55.03.

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(b);

3. Contains 20,890 words, according to Microsoft Word, which is the word processing system used to prepare this brief.

Kevin J. Odrowski