

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:)	
)	
RICHARD TILLMAN NICHOLS)	Supreme Court # SC96112
)	
Respondent.)	

RESPONDENT'S BRIEF

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STATEMENT OF JURISDICTION

Respondent hereby adopts the Statement of Jurisdiction contained in Informant's Brief.

STATEMENT OF FACTS

Respondent hereby adopts the Statement of Facts contained in Informant's Brief and includes the following Supplemental Facts:

A. Mr. Nichols has never been accused of stealing or in any way misappropriating any of his clients' money.

B. Concurrent with the filing of this Brief, Respondent has moved to reopen the case for evidence of mental health treatment by Dr. Christine Trueblood M.D., treatment commencing after the last evidentiary hearing by the Disciplinary Hearing Panel. Respondent will supplement Statement of Facts with the report of treating psychiatrist, Christine Trueblood, M.D., and update the previously entered evidence of on-going treatment by psychologist, Stanley Bier, Ph.D. at such time as the evidence is accepted into the case.

POINT RELIED ON

A THREE YEAR STAYED SUSPENSION WITH PROBATION IS WARRANTED IN THIS CASE BECAUSE CASE LAW, COURT RULES AND ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS SUPPORT THIS LEVEL OF DISCIPLINE IN THAT RESPONDENT ENGAGED IN CONDUCT WITH RESPECT TO HIS LACK OF DILIGENCE, FAILURE TO COMMUNICATE, FAILURE TO EXPEDITE LITIGATION AND CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE, BUT RESPONDENT ACKNOWLEDGES HIS MISCONDUCT AND MENTAL HEALTH ISSUES AND HIS PROPOSED PROBATION CONDITIONS ENSURE HE WILL BE PROPERLY MONITORED, CONTINUES MENTAL HEALTH TREATMENT, AND PROVIDES INFORMANT CLOSE MONITORING OF HIS PROFESSIONAL CONDUCT; AND IS ADEQUATE TO PROTECT THE PUBLIC FROM RISK OF HARM

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

In re Wiles, 107 S.W.3d 228 (Mo. Banc 2003)

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

In re Carey, 89 S.W.3d 477 (Mo. Banc 2002)

ABA Standards 9.0 *et seq.*

Mo.R.Civ.P. Rule 5.225

Mo.R.Civ.P. Rule 5.225(a)(2)

ARGUMENT

Respondent Richard Tillman Nichols (Nichols) accepts the findings of the Disciplinary Hearing Panel (DHP). In its Findings of Fact, Conclusions of Law, and Recommendation of Sanction, the DHP found that Mr. Nichols had “violated multiple Rules of Professional Conduct, and he has violated most of those rules multiple times.” (DHP Findings, Page 65) Nichols admits that he has violated Rules 4-1.1, 4-1.3, 4-1.4(a), 4-1.6, 4-1.7, 4-1.16(d), 4-1.22, 4-4.1, 4-8.1(c), and 4-8.49(c). The DHP recommended Suspension of license to practice law indefinitely with no leave to apply for reinstatement for a period of six months.

Respondent Nichols suggests that the appropriate sanction is that he be suspended for three years, that the Suspension be stayed, and that he be placed on probation for three years. Nichols offers a proposed Probation Order, included as an Addendum hereto.

“The fundamental purpose of an attorney disciplinary proceeding is to protect the public and maintain the integrity of the legal profession.” *In re Coleman*, 295 S.W.3d 857, 869 (Mo. Banc 2009). This court relies upon the ABA Standards when imposing sanctions. When determining the appropriate penalty for an attorney that has violated the rules of professional conduct, the court considers the gravity of the attorney’s misconduct as well as any mitigating or aggravating factors that tend to shed light on Respondent’s moral and intellectual fitness as an attorney. *In re Wiles*, 107 S.W.3d 228, 229 (Mo Banc 2003). In determining the appropriate sanction to impose after a finding of misconduct, this court has held any such sanction should be consistent with the sanction for the most serious instance

of misconduct among the violations committed. *In re Ehler*, 319 S.W.3d 442, 451 (Mo. Banc 2010).

ABA Standard 3.0 provides, “In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors: (a) the duty violated; (b) the lawyer’s mental state; (c) the potential or actual injury caused by the lawyer’s misconduct; and (d) the existence of aggravating or mitigating factors.” Further, “the ABA Standards look at the actual injury to the client as well as the potential injury to the client, public, and legal system or profession that is reasonably foreseeable at the time of the lawyer’s misconduct.” *In re Coleman*, 295 S.W.3d at 870 (internal cites omitted).

Missouri Supreme Court Rule 5.225 provides that, “a lawyer is eligible for probation if the lawyer: (a) is unlikely to harm the public during the period of probation and can be adequately supervised; (b) is able to perform legal services and is able to practice law without causing the courts or profession to fall into disrepute; and (c) has not committed acts warranting disbarment.” Nichols has been treated with a regime of psychotropic medication and regular therapy sessions with Dr. Stanley Bier. Nichols has successfully managed his solo law practice in Clinton, Missouri, and prosecution of municipal ordinance violations for the City of Clinton through the present. With mental stability afforded by his medication regime, and appropriate self-care and therapy, future harm to the public by Mr. Nichols is unlikely. Probation will provide appropriate means for monitoring Nichols. Consequently,

the sanctions proposed by Respondent are consistent with Rule 5.225(a)(2)'s requirements for probation.

Probation for Mr. Nichols is also consistent with similar cases that have been decided by this court. In *Coleman, supra*, this court found that Coleman violated Rules 4-1.2, 4-1.5, 4-1.7, 4-1.16, and 4-8.4(d). The cited violations in *Coleman* included agreeing to settle a case without the client's consent, comingling funds and failing to keep an adequate Trust Account record, created a conflict of interest from the contingent fee contract drafted by Respondent, failure to notify the client of withdrawal as counsel, and otherwise violating multiple rules of professional conduct which can be generally described as conduct prejudicial to the administration of justice. *Coleman*, 295 S.W.3d at 862-63. Further, the attorney in *Coleman*, was initially licensed to practice law in Missouri in 1977. In 1990 Mr. Coleman was admonished for failure to communicate with his client and for unreasonable fees. In 1999 he was again admonished with failure to act with reasonable diligence, to expedite litigation and to communicate with his client. In 2008, Mr. Coleman received a public reprimand for violations regarding diligence, unreasonable fees, and conduct prejudicial to the administration of justice. *Coleman*, 295 S.W.3d at 859. These three admonitions were all separate and apart from those being dealt with in the *Coleman* opinion. It was found that Mr. Coleman committed numerous violations in the case at issue, and had an extensive disciplinary history. The court in *Coleman* found the attorney's misconduct could be remedied by education and supervision, and that his violations made him a proper subject for

probation. *Id* at 871. Ultimately, the court did order the Respondent in *Coleman*, suspended without leave to re-apply for one year, but said suspension was stayed and various probationary terms were imposed. *Id*. Here, Nichols' issues can be remedied with appropriate medical care and therapy.

Mr. Nichols has admitted to a multitude of violations, with the most serious being his failure to cooperate with Office of Chief Disciplinary Counsel, and material misrepresentation of fact. Missouri case law and ABA Standards do provide that suspension is generally applicable when a lawyer knowingly fails to perform services for a client and causes injury or a lawyer engages in a pattern of negligence and causes injury. See ABA standard 4.42. However, the court must also consider any mitigating circumstances when determining what sanction to impose. See *In re Carey*, 89 S.W.3d 477, 502 (Mo. Banc 2002); and *ABA Standards 9.0 et seq.*

Several mitigating factors exist in the case at bar. Mr. Nichols has admitted all of his violations of Rules of Professional Conduct. (L.F. 168); *ABA Standards* §9.32(e). Mr. Nichols is remorseful of his actions. (L.F. 168); *ABA Standards* §9.32(1). At the time of the misconduct Mr. Nichols was suffering from attention deficit hyperactivity disorder and anxiety disorder not otherwise specified. Respondent is undergoing treatment for his conditions and his resultant ability to practice law since commencement of that treatment is much improved.

This Court determined probation was the appropriate discipline in *In re Wiles*, 107 S.W.3d 228 (Mo. banc 2003). There, the attorney had been admonished at least eleven times over a three-year period for violations of the rules pertaining to diligence, communication, safeguarding client property, and conduct prejudicial to the administration of justice in Missouri. *Id.* at 229. While Mr. Nichols's violations of the Rules of Professional Conduct are many and varied, they are largely the result of his anxiety disorder, and his ADHD, as well as his relatively young legal career.

It is also important to remind the Court that albeit Mr. Nichols does admit to a number of Rule violations, and multiple violations of the same rules, Mr. Nichols has never been accused of stealing or in any other way misappropriating his clients' money. The cases cited herein, the facts at issue, and the following proposed stipulations of probation will insure Mr. Nichols will not violate the requirements of Rule 5.225(a)(2) and probation is warranted in this case. Mr. Nichols suggests that he be placed on probaton against an indefinite suspension without leave to apply for reinstatement for three years. Terms of probation would include:

First, Mr. Nichols has not committed any acts that would warrant disbarment. Second, Mr. Nichols is not likely to harm the public during the period of probation and can be adequately supervised. Pursuant to the proposed probationary terms, Mr. Nichols is to be monitored by the OCDC, he shall submit written quarterly reports concerning the status of his practice, carry malpractice insurance, attend Ethics School, attend the

Solo & Small Firm Conference of the Missouri Bar, take the Multistate Professional Responsibility Exam, obtain a mental health evaluation and follow its recommendations, and obtain a mentor to help guide and advise Mr. Nichols. (L.F. 179-185). Third, Mr. Nichols is able to perform legal services and able to practice law without causing the courts or profession to fall into disrepute.

CONCLUSION

In summary, Mr. Nichols has admitted to the violations as stated by Informant in her brief and as found by the Disciplinary Hearing Panel. Mr. Nichols is remorseful for his actions and prepared to take all necessary steps to prevent any similar instances from occurring in the future. The preventative measures found in his proposed Probationary Requirements will guide and oversee him in his future practice of law during the probationary term. The mitigating factors and proposed probationary terms make him eligible for probation pursuant to Rule 5.225 and in consideration of Mitigation under rule 5.285, rather than full suspension. Probation would also be consistent with Missouri case law, especially recent decisions in keeping with recognition of mental health and the benefits of recognition and treatment thereof; ABA Standards, and Missouri Rules. For this reason, Respondent requests the court modify the recommendation of The Disciplinary Hearing Panel and the requested sanction of Informant, to provide a significant term of suspension, with a Stay conditioned upon the terms of Probation suggested by Mr. Nichols, with such additional terms as the Court may deem necessary to ensue the protection of the public, the legal profession and the Courts. Respondent's proposed conditions of probation on stay of suspension are filed in Respondent's Brief - Appendix, filed concurrently with filing of this Brief.

Respectfully submitted,

By: /s/ David H. Johnson
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CERTIFICATE OF SERVICE

I certify that on this 15th day of March, 2017, I have served a true and accurate copy of the foregoing by electronic mail to:

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/s/ David H. Johnson
David H. Johnson

CERTIFICATION: RULE 84.06(c)

I certify, to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 2,178 words, according to WordPerfect word count, which is the word processing program used to prepare this brief.

/s/ David H. Johnson

David H. Johnson