IN THE SUPREME COURT STATE OF MISSOURI

IN RE:	)	
	)	
LYDIA MARIE CARSON,	)	Case No. SC96484
	)	
Respondent.	)	
	)	

RESPONDENT'S BRIEF

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ATTORNEYS FOR RESPONDENT

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A. CASE STATUS

For ease of reference and to promote efficiency, Respondent incorporates and adopts by reference Informant's Appendix as if it were attached to Respondent's Brief herein.

This case primarily involves failures to timely disclose attorney fee payments and a prior reprimand, and it arises from an Information initiated against Lydia M. Carson "Respondent" in December 2015. App. 2-12**.** The Information alleged multiple violations of the Rules of Professional Conduct, including Rule 4-3.3 - Candor Toward the Tribunal, (a)(1): A lawyer shall not knowingly: make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; 4-3.3(d): In an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse; Rule 4-8.4 - Misconduct: It is professional misconduct for a lawyer to: (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation and (d) engage in conduct that is prejudicial to the administration of justice; and 4-7.2 - Advertising: (f) Any advertisement or communication made pursuant to this Rule 4-7.2, other than written solicitations governed by the disclosures rules of Rule 4-7.3(b) shall contain the following conspicuous disclosure: "The choice of a lawyer is an important decision and should not be based solely upon advertisement."

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. 143-144**.** 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.

The Disciplinary Hearing Panel Decision was issued April 5, 2017, finding Respondent guilty of misconduct with respect to 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; and Rule 4-7.2 regarding omitted disclosures in advertising. App. 455-458.

The hearing panel found that disbarment was excessive and recommended that the appropriate disciplinary sanction is an indefinite suspension of at least three years. App. 459-460. The panel further found that Respondent's conduct did not cause a significant or potentially cause significant adverse effect on the bankruptcy. The panel further concluded that Respondent's conduct did not cause serious or potentially serious injury to her client or other interested parties. App. 460.

The panel 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. Additionally, 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's fees. App. 463.

The disciplinary hearing panel recommended that Respondent's law license be suspended indefinitely with no leave to reapply for three (3) years. App. 458. The OCDC accepted the panel's recommendation, but Respondent rejected it based upon the sanction imposed. App. 466-467.

Informant's Brief, pursuant to its Point Relied On, I, alleges violations of Rules 4-3.3(a)(1), 4-8.4(c), 4-3.3(d), 4-8.4(d), and 4-7.2(f). Respondent accepts the hearing panel's findings of misconduct as she (1) acknowledges that she did not correct a false statement of material fact made to the tribunal by the lawyer until July 9, 2013, after the hearing to disgorge her fees on July 1, 2013, (2) did not timely report the Missouri Supreme Court reprimand to the federal court clerk, (3) mistakenly believed that her affidavit filed with the Louisiana federal court was accurate, and (4) admitted to disseminating advertisements without the required disclosure. Respondent submits that the panel's considerations of the mitigating factors were inadequate and further requests that this Court consider issuing a reprimand in lieu of a suspension or, alternatively, reduce the suspension time and/or reduce the time when Respondent could reapply and allow for the immediate institution of probation to allow Respondent to continue to practice law as long as the requirements of the probation terms are met successfully, and at the conclusion of the probation term, Respondent's license would then be fully reinstated with no restrictions.

B. BACKGROUND

Respondent agrees with most of Informant's counsel's recitation of the background facts, has incorporated many of the factual statements herein, and has also augmented the recitation.

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). She received admonitions in 2001 (Case No. 01-0156-IV) and 2010 (Case No. 10-1755-IV) for violations of Rule 4.15 regarding safekeeping of property. The first case involved retention of a client's file, and the second involved mismanagement of her trust fund. App. 183-184; 188-189. She received an admonition in 2008 in Case No. 06-654-IV and Case No. 06-703-IV for violating Rule 4-1.3 involving diligence. In both instances, she did not file a client's consumer bankruptcy in time to avoid the 2005 bankruptcy law changes. App. 185-187. Finally, she entered into a Joint Stipulation of Facts, Conclusions of Law, and Recommendation for Discipline in January 2013 to receive a reprimand for a violation of Rule 4-1.4(a) - Communication. App. 171-180.

Respondent is a sole practitioner and has incorporated her law practice as Carson Law Center, P.C. App. 3, 13. Respondent practices in the federal district and bankruptcy courts in the Western District of Missouri. App. 3, 13. The underlying legal proceedings involve three related Chapter 11 bankruptcies, two in Missouri and one in Louisiana, for interrelated companies engaged in the lodging and motel industry. App. 2-5.

Respondent was counsel of record in the Missouri bankruptcy cases and admitted *pro hac vice* in the Louisiana case. App. 470; 34 (Tr. 54); 35 (Tr. 60); App. 396-399. Devan Pardue, Esq. (an attorney in Louisiana) was "general counsel" for Satnam Lodging LLC which operated a motel in Kansas City, Missouri. App. 249; 281; 34 (Tr. 55-56).

On June 26, 2012, Respondent filed a Chapter 11 bankruptcy proceeding on behalf of Satnam Lodging LLC in the United States Bankruptcy Court for the Western District of Missouri, Case No. 12-42607 ("2012 Bankruptcy"). App. 3, 13. 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 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). In the case of payments or transfers to an "insider,"[2] the preference or defined 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

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

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

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).

Satnam was owned by three individuals, Deljeet ("Dee") Mann, Jagtar Otal, and Harjindar Ladhar. App 281; 34 (Tr. 54). These three owners collectively held ownership interest 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). 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.

Mr. Pardue represented to Ms. Carson the structures of the interrelated companies and participated in the creation of the Chapter 11 plan for the business. App. 43 (Tr. 91-92); 44 (Tr. 94). Respondent and Mr. Mann divided tasks. Mr. Pardue acquired a lot of the necessary information from the client after having daily phone calls between Mr. Pardue; the client representative, Dee Mann, and Respondent. App. 82 (Tr. 240-241); 56 (Tr. 144); 307. Mr. Pardue did not provide the organization chart for all the related companies until March 2013. App. 56 (Tr. 143).

In connection with the 2012 Bankruptcy, Respondent disclosed to the court her receipt of a $4,039 payment directly from the client Satnam 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 $10,745 ($5,650 in July 2012 and $5,096 in October 2012) for representation of the Satnam 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), and the 2012 Bankruptcy was voluntarily dismissed by debtor on December 2, 2012. App. 3, 13. Respondent testified at the hearing regarding why those payments were not disclosed as follows:

Q: Turning now to the Satnam bankruptcy, did you disclose in Satnam to-well, okay. Let me back up. During Satnam one did you disclose all the funds that you receive?

A: No.

Q: Why is that?

A: I did disclose the first set of funds. Frankly, one way to get a client's attention is to send them a bill and say how much more do you want to pay to get this worked out. So I sent the bills and the actually paid them and I would have asked for those fees, except that the case got dismissed.

Q: You say you would have asked for those fees. You mean you would have disclosed those fees?

A. Would have disclosed them by-yes.

Q. Because you did ask for those fees through your billing statements?

A. Absolutely.

Q. Okay, but you did not disclose them, am I understanding you correctly, because the case got dismissed before you disclosed them?

A: Yes.

Q: And that case got dismissed before you settled with the creditor that forced the filing of the bankruptcy?

A: Yes.

App. 81 (Tr. 234-235).

On January 10, 2013, Respondent refiled a Chapter 11 bankruptcy proceeding on behalf of the debtor In the United States Bankruptcy Court for the Western District of Missouri, Case No. 13-40100-abf11 ("2013 Bankruptcy"). App. 3, 13. Preferential payments and conflict of interest issues were "heightened issues" in the refiled bankruptcy. App. 63 (Tr. 171).

Southern Host Lodging, LLC is a lodging management company owned by the three individual members of Satnam, and provides services to Satnam and other motel operations. App. 264. Southern Host also employed Mr. Pardue "to handle the legal work of Satnam Lodging LLC." App. 249. The 2013 Voluntary Petition listed four creditors who received pre-bankruptcy transfers, including Southern Host. App. 497. Southern Host was ultimately determined an "insider" or "affiliate" of the debtor. App. 32**0**. In January 2013, Respondent received a $6,500 payment drawn from the account of Southern Host. Respondent knew the payment was for the 2013 Bankruptcy. App. 58 (Tr. 151).

Evidence was conflicting as to when this check was received by Respondent in relation to the timing of the filing of the Petition and related documents. The Voluntary Petition was dated Thursday, January 10, 2013 and filed on the 10th at 7:41 p.m. App. 468. The Application for Employment of Attorney and Preliminary Approval of Fee Agreement was dated January 10, 2013, but was not filed until Sunday, January 13, 2013 at 2:29 p.m. App. 3, 13; 246. The check itself was dated January 9, 2013, and the check stub indicated: "01/09/2013 Filing and Attorney Fees." App. 432.

In the Application, Respondent made an affirmative representation to the Bankruptcy Court that she had been paid no retainer, and the Application was not updated prior to its filing on the 13th. App. 4, 14. Respondent testified that the check was received after the Application for Employment was drafted on the 10th.

Q: And when did you receive your first funds for fees in Satnam 2?

A: January 13.

Q: When did you disclose that you had received zero funds from fees in Satnam 1?

A: Satnam 1 or Satnam 2?

Q: Satnam 2, I am sorry

A: January 10.

Q: So the document that you filed on January 10, said that you received zero funds for fees?

A: Yes.

Q: And at that point, was that true?

A: Yes.

App. 81 (Tr. 236).

Respondent testified that the nondisclosure regarding the $6,500 retainer was intentional, because she thought that disclosure was not necessary when the source of the funds is a third party other than the debtor. App. 328; App. 131 (Tr. 426-427). Respondent testified as follows:

Q: And who did you think those funds were actually from?

A: Mr. Mann.

Q: And why, if they were on the accounts of other companies, did you think they were from Mr. Mann?

A: That was what he told me, and then Mr. Pardue said this is, that is just the way it is going to have to be, so I believed that-and there were checks that-money that Mr. Mann put in those accounts and then took back, took back out.

App. 89 (Tr. 266).

This payment was later disclosed on April 14, 2013. App. 256; 534.

Additionally, Respondent believed she had time to amend her fee disclosures after filing of the initial applications and disclosures. She testified as follows:

Q: Why did you not disclose those payments prior to the filing of document 56 in Satnam 2? (The Supplemental Application for Employment of Attorney filed 7-9-13 App. 306-307).

A: I had time to amend, and I intended to amend and had not yet amended. So I filed the documents. I needed to amend them, and I didn't-and I didn't get around to amending them.

Q: Is there a time limit for making those amendments?

A: No.

App. 89 (Tr. 266).

Respondent further testified as follows regarding the lack of an additional application for fees:

Q: Why did you never file an application for fees?

A: At some point the Judge says-I just did not get, I would get to it. I just had not gotten to it. There is no time limit, so I am trying to get things done on a case and that gets put on the back burner so I can get something else done, which is to get information in there. I knew I needed to amend my employment application, still looking for conflicts of interest, and who is owned by who, so that when that gets filed it is the right information so I never get a chance to get the right information and get and do the documents that I am supposed to do, but I keep hearing tomorrow, tomorrow, so I keep thinking every day I will get it done this week as soon

as I get the information. And this just does not get done. There is not a time limit. I did not miss a time limit. I did not amend.

App. 114 (Tr. 360).

The prior 2012 Bankruptcy was disclosed by reference to the case number and venue in the refiled Voluntary Petition. 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 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.

Respondent represented a related company in a companion bankruptcy filed February 20, 2013 in Louisiana styled as *In re GS Hospitality LLC*, Case No. 13-10392 in the Western District of Louisiana ("2013 Louisiana Bankruptcy"). App. 360. Also on February 20, 2013, Respondent received a $10,000 wire transfer from another related company, Guru Lodging. App. 320, App. 431.

On February 28, 2013, Respondent received a copy by certified mail of the reprimand Order issued by the Missouri Supreme Court in *In Re Lydia M. Carson, Respondent*, SC93063 regarding a Joint Stipulation she entered into for a violation of Rule 4-1.4(a). App. 179; 7, 16. She set the Order aside on her desk. App. 67 (Tr. 187).

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. 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 Respondent testified that she did not realize that the reprimand had not been sent to the federal court until February 2016. App. 98 (Tr. 294), and she then sent the reprimand to the United States Western District of Missouri. App. 119 (Tr. 379). She specifically testified at the hearing regarding the circumstances surrounding her receipt of the reprimand as follows:

Q: And your mother had recently passed. What was the date of her death?

A: February 15.

Q: Okay, and her funeral was when?

A: February 20.

Q: And you received or Ms. Smith received this Exhibit 7 on your office on February 28, and you saw it sometime shortly thereafter, is that correct?

A: Yes.

App. 67 (Tr. 187-188).

Respondent further testified as follows:

Q: The date on the reprimand is February 26, 2013. And do you recall receiving it?

A: Yes.

Q: Do you recall receiving it relatively soon after the date shown on the order?

A: Yes.

Q: What had happened in your life relatively recently prior to that?

A: My mother was in the hospital and ended up dying. The funeral was February 20, 2013. I believe that I took it really hard.

Q: So when you received that reprimand, did you know that you needed to do anything with it regarding advising the federal court?

A: Yes.

Q: And we have just established that you did not do that for about three years?

A: Yes.

Q: So why did you not do that?

A: It also says in the notary, you have to pay $750. At the time I wrote that check I thought I had sent it out for staff to get it done.

Q: Get it done, let us be more specific. What did you think staff was going to do?

A: Send an email that I had given them.

Q: What was that email?

A: The email was this order to the federal court specifically to whoever it is that I got the letter from.

App. 97 (Tr. 291-292).

Q: Okay. Your failure to disclose the reprimand to the clerk's office of Western District of Missouri was that your issue or a staff problem?

A: Well it is never a staff problem. It is always my issue. There is never a time that it is not my issue. So no, this is all my issue, although I know what I did and I did not check as to whether it got done, so.

App. 115 (Tr. 362).

On March 19, 2013, Respondent signed an Affidavit that she had never been 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*." App. 378-383. Respondent also obtained a Certificate of Good Standing dated March 19, 2013 from the Western District of Missouri federal court. App. 381. The Affidavit accompanying the *pro hac vice* motion was signed by Respondent in Jackson County, Missouri. App. 69-70 (Tr. 196-197); 382-383. Paragraph 5 of the Affidavit "deposes and states" "that she [Respondent] is not and have (sic) been the subject of any disciplinary proceedings or criminal charges, as per the attached certificate." App. 382.

Respondent had not filled to be admitted *pro hac vice* in another jurisdiction previously. App. 101 (Tr. 306). Respondent and her paralegal Eugene Rose, contacted the office of the clerk of the bankruptcy court in Louisiana and asked whether the court needed disciplinary information in connection with the *pro hac vice* motion. Respondent testified at the hearing as follows:

Q: Mr. Rose and I were looking for a form. In the process of looking for the form we looked in the bankruptcy Shreveport Division bankruptcy local rules. Did not find anything about *pro hac vice*. Went to the district court rules and found 116-Rule 116 which is the *pro hac vice* rules for the Western District of Missouri. That- in those rules it described that the Western District of Missouri maintains jurisdiction. It goes on to talk about the western district disciplinary proceedings which include language that are specifically disciplinary proceedings or criminal charges.

Q: And did you think about all of this at this time you signed the affidavit or is this something you have come up with later on in time?

A: No, this is what we were doing that day.

Q: Okay.

A: In addition, Mr. Rose called the Shreveport division and talked to a clerk, and I had received the clerk's certificate of good standing and Mr. Rose was on the phone. I was on the other side of the desk, and heard the clerk say no, that's just for western district. If you took-if you take a look at the certificate of good standing, that specifically discusses the Western District Rule 116, the court - the western district maintains control over this, and- and has specific disciplinary proceedings and since-and with that information, this is what-this is the language that I used.

App. 70 (Tr. 199).

Mr. Rose testified at the hearing as follows:

Q: So what did the clerk tell you?

A: The clerk said that she was not able to provide specific documents, but she gave us a couple of cases to kind of base our *pro hac vice* off of, and to my recollection, there were a couple of things that we had questions on, and she gave me her cell number and we were able to communicate on a regular basis to try to work it out to the courts approval.

Q: Was Ms. Carson part of some of those conversation as well?

A: Yes.

Q: Was one of those conversations a conversation in which you asked for or she asked the clerk specifically what court the bankruptcy court wanted disciplinary information from?

A: Yes.

Q: And what response did you get?

A: The understanding that I pulled away from it is they wanted to know if there were any issues in Louisiana in the area that she practices directly.

Q: Okay and was there anything about Federal court versus State court?

A: No.

Q: So your understanding was that Ms. Carson did not have any problems in Louisiana, that she did not have to disclose any discipline?

A: Correct.

Q: What about any problems with the Federal Court in Missouri, was she required to disclose that?

A: You know, I do not remember anything specific to that, but it is something that I think-I do not know. I just remember it seemed like she said do you have any problems with Louisiana, let us know about those, is the way I recall it.

App. 120 (Tr. 384-385).

Respondent was admitted to represent the debtor in the 2013 GS Hospitality in the 2013 Louisiana Bankruptcy by court order on May 13, 2013. App. 8, 16; 396-399.

Respondent further testified regarding the Louisiana Bankruptcy as follows:

Q: So in that bankruptcy things were turned just a little bit where you were the out-of-state attorney and Mr. Pardue was the in-state attorney. Correct?

A: Yes.

Q: You both shared responsibilities for representing the debtor, G H Hospitality just as you shared responsibilities in the Satnam bankruptcy. Right?

A: My job was to come up with a confirmable plan.

Q: And Mr. Pardue needed you for that. Right?

A: Yes.

Q: To the point where in order for you to participate in that bankruptcy you had to get court recognition of your ability to be an admitted *pro hac vice* as an out-of-state attorney. Right?

A: Of course, when it was filed, no. Later Mr. Pardue decided that I needed to do the *pro hac vice*, which I never intended to do.

Q: Okay.

A: There's conversations. He needed to protect the clients for some reason. Frankly, I was pretty affected by my mother's death so he kept pressing, got to do this, and I did it.

App. 68 (Tr. 191-192).

Q: And you did not have any objection to participating in the case, co-counsel, *pro hac vice*. Right? You would not have signed Exhibit 37 if you had a problem with it. Right?

A: At that point I was feeling pretty depressed. Devan was getting louder and louder about me needed to do that, although I am not a Louisiana attorney and did not intend to go to Louisiana. He needed a Louisiana attorney. Apparently looked around and had to have this as a temporary fix for whatever it is that he needed, and I agreed to do it.

App. 69 (Tr. 193).

Q: Okay. Alright. But you met with Mr. Pardue and a principal of GS Lodging on February 20?

A: Yes.

Q: That is the date that the wire transfer came in. Correct?

A: Yes.

Q: That is also the day of your mother's funeral.

A: Yes.

Q: So you were working on the day of your mother's funeral?

A: I was late getting to the funeral because they were there at 6:00 in the morning.

App. 69 (Tr. 195)

Q: What else happened on February 20, 2013?

A: I was late for my mother's funeral because I was working with GS Hospitality. So Devan Pardue, Mr. Mann were there at my office early in the morning, and we started pulling information together. And I did most of-and Aaron, my bankruptcy paralegal was there, and in fact, I had to jump up and run out of there and was late.

Q: Okay. Why did you do it on that day?

A: Emergency. Another emergency.

Q: Why was it an emergency?

A: One of-it was a foreclosure from the main creditor of, that another motel down in Louisiana. I think there was a bigger problem, which some creditor

> was trying to get records and we needed to stop the records from being taken or money from being taken out of the cashiers, so it was an emergency.

App. 99 (Tr. 299-300).

On March 15, 2013 in the 2013 Bankruptcy**,** 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[3] verified statements showing such counsel's connection to the debtor, its affiliates, and other interested parties." App. 211.

Respondent did not respond to the March 15, 2013 order. App. 122 (Tr. 393). She testified 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. Also, Respondent knew that she had already filed the disclosure and Application described in the March 15th text entry. App. 211; 122 (Tr. 393).

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, Respondent filed with the court an Amended Disclosure of Compensation (known as a Form 203 Disclosure) on April 14, 2013. App. 256; 534. The Form did disclose the $6,500 payment received in January 2013, (but was slightly underreported at $6,213 and it

[3] Local Rule 2014, Employment of Professional Persons.

identified the source of the payment as "Dee Mann Personally."[4] App. 256; 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. App. 534. Respondent did not understand that she was required to disclose the 2012 payments. App. 298.

On May 14, 2013 the Honorable Arthur B. Federman held that the previous nondisclosure of the $5,000 retainer was intentional. App. 260. The Court found that disgorgement of all fees paid in this case was an appropriate 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. Before the Judge made a determination on the conflict of interest, the client terminated the attorney/client relationship with the Respondent. App. 41 (Tr. 82-83).

Respondent had been paid a total of $21,285 from both the Debtor and from companies affiliated with the debtor in the seven-month period prior to the 2013 Bankruptcy, including payments for the 2012 Bankruptcy. App. 320. Respondent

[4] 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.

received (a) $14,789 for the 2012 bankruptcy; (b) $6,500 for the 2013 Bankruptcy; and an additional $10,000 payment received by Respondent on February 20, 2013 in connection with the 2013 Louisiana Bankruptcy. 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 but appeared in person at the July 1, 2013 hearing. App. 286. Respondent did not understand that she was required to disclose the source of third party fee payments. App. 323.

At the conclusion of the July 1, 2013 hearing Judge Federman stated that Respondent's failure to disclose all of her connections to the other entities which had common ownership with the Debtor was in violation of 11 U.S.C. §329(a) and Rule 2014. 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 her Supplemental Application for Employment of Attorney for Debtor and Preliminary Approval of Fee Arrangement (App. 306), Supplemental Disclosure of Compensation of attorney for Debtors (App. 310-311), and Accounting to Court (App. 312). These disclosures corrected the amount of the payment for legal services and filing fees from $6,213 to $6,500, disclosed receipt of the $10,000 payment for the Louisiana bankruptcy for GS Hospitality and BABA and identified the

two previously undisclosed 2012 payments she received from Akaal and Southern Host for the 2012 Bankruptcy. At the disciplinary hearing, Respondent testified as follows:

> Q: On the second page of Exhibit 53, are you with me? Once up at the top. SHL in the amount of $5,096.00 then there is another one in the middle of the page from Akaal Lodging for $5,650.00, and then at the bottom of the page there is one from Southern Host Lodging for $6,500.00. Right? Are those 3 separate checks that you received at or about the date indicated on the date of the check stub? (Exhibit 53 reflects the payments stubs included as App. 432)
>
> A: Yes and so I know why. Mr. Mann told me that this was the way it was done, and I accepted that that was checks from him. And because he was traveling from wherever he was traveling or whatever bank accounts that were available to him, this is the way they were paid.

App. 58 (Tr. 150-151).

In the July 10, 2013 Amended Order, the Bankruptcy Court held that Respondent improperly failed to disclose $10,746 in payments from the debtor's 2012 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. Judge Federman also reaffirmed his prior finding that there was an intentional nondisclosure with respect to the payment of $6,500 (with $1,213 properly used for the bankruptcy filing fee). App. 5; 15. Judge Federman found that $5,287 ($6,500 – the $1,213 filing fee) should be

disgorged in connection with the 2013 Bankruptcy on the grounds that the $6,500 payment was never disclosed. App. 5; 15; 327.

The total disgorgement amount ordered to be repaid by Respondent for the pair of Missouri bankruptcies was $16,033. App. 5; 15. 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 its Order on United States Trustee's Motion to Examine Attorney Transactions and Disgorge All Undisclosed Fees from Lydia Carson and the Carson Law Firm. App. 8; 16. The Judge ordered Respondent to repay the $10,000 received in February 2013 due to nondisclosure and failure to satisfy filing requirement for employment of counsel. App. 8-9; 16.

Respondent was ordered to disgorge over $26,000 of her fees for her work on all three bankruptcy cases and has returned the funds. She testified at the panel hearing as follows:

Q: Did you receive Exhibit 21, the Amended Order from Judge Federman on or about July 16, 2013?

A: Yes.

Q: Did you file a motion for reconsideration of that order?

A: No.

Q: Did you appeal that order?

A: No.

Q: Does the order that is in Exhibit 21, did it direct you to pay money?

A: Yes.

Q: Did you pay that money?

A: Yes.

App. 65 (Tr. 178-179).

Moreover, Respondent testified at the panel hearing regarding the Louisiana disgorgement order as follows:

Q: Okay. So same as Ms. Wattenbarger filed a motion, the US Trustee filed a motion to Louisiana bankruptcy to have you pay back or disgorge all the fees that you received for representation of GS Hospitality?

A: Not the same motion, no.

Q: Same type of motion. It is a motion to disgorge from the US Trustees office?

A: Yes.

Q: Okay, and did you appeal the order that is in Exhibit 40?

A: No

Q: Did you pay the amounts, the $10,000.00?

A: Yes.

App. 73 (Tr. 209).

In 2013, Respondent 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 admitted that the Craigslist advertisements do not comply with the Rule. App. 103 (Tr. 315). Respondent admitted that she violated 4-7.2(f) by disseminating advertisements without the required disclosure. App. 12; 119 (Tr. 380). She testified at the hearing as follows:

Q: With respect to account 8 in paragraph 54, do you acknowledge any wrongful conduct as alleged in paragraph 54?

A: Yes. At the time I was doing it I thought I was fine. In fact there is even one advertisement in there that has the correct disclosure. I see now that what I believed is wrong, so it was wrong. I believe it is wrong now, although I did not believe it was wrong then.

Q: Okay so are you saying you admit to paragraph 54?

A: Yes, although I have-although in my answer, I-so we already answered these.

App. 119 (Tr. 379-380).

POINTS RELIED ON

I. THE SANCTION THAT SHOULD BE IMPOSED FOR THE ALLEGED MISCONDUCT IS PUBLIC REPRIMAND OR A LESSER SUSPENSION

II. IF THE SANCTION OF SUSPENSION IS IMPOSED, RESPONDENT SHOULD ALSO BE IMMEDIATELY PLACED ON PROBATION

ARGUMENT

STANDARD OF REVIEW

Professional misconduct must be proven by preponderance of the evidence before discipline will be imposed. *In re Crews*, 159 S.W.3d 355, 358 (Mo. banc 2005). This Court reviews the evidence *de novo*, independently determines all issues pertaining to credibility of witnesses and the weight of the evidence, and draws its own conclusions of a law. *In re Belz*, 258 S.W.3d 38, 41 (Mo. banc 2008). This Court treats the panel's finding of fact, conclusions of law, and the recommendations as advisory. *In re Crews*, 159 S.W.3d at 358. Moreover, this Court may reject any or all of the panel's recommendations. *In re Madison*, 282 S.W.3d 350, 352 (Mo. banc 2009). A preponderance of the evidence indicating professional misconduct is required before discipline will be imposed. *In re Cupples*, 952 S.W.2d 226, 228 (Mo. 1997).

I. The Sanction That Should Be Imposed for the Misconduct is Public Reprimand or a Lesser Suspension

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. 2009). The ABA Standards for Imposing Lawyer Sanctions (1992) provide guidance for assessing the appropriate discipline. When imposing discipline, this Court should consider (1) the ethical duty violated, (2) the lawyer's mental state, (3) the extent of actual or potential injury caused by the attorney's misconduct, and (4) any aggravating

or mitigating factors. *In re Eisenstein*, 45 S.W.3d 759, 763 (Mo. 2016); ABA Standards for Imposing Lawyer Sanctions, Rule 3.0 (1992).

Regarding prong one, ethical duties are owed to the client, the public, the legal system, and the profession. *See In re Coleman*, 295 S.W.3d 857, 869 (Mo. 2009). Informant has not charged Ms. Carson with any violations relating to her ethical duties to her client, which are the most important ethical duties. ABA Standards for Imposing Lawyer Sanctions, Theoretical Framework (1992). The duties owed that are relevant to Informant's allegations involve the legal system: Rule 4-3.3(a)(1) and (d) Candor Toward the Tribunal and Rule 4-8.4(d) Attorney Misconduct; the profession: Rule 4-7.2 Advertising; and the public, Rule 8-4(c) Attorney Misconduct.

The ABA's second factor to examine when determining the appropriate sanctions is the attorney's mental state while committing the rule violation. The ABA Standards describe three mental states: intent, knowledge, and negligence. Intent, the most culpable mental state, is displayed when a lawyer acts with a conscious objective or purpose to accomplish a particular result. Knowledge is shown when "the lawyer acted with conscious awareness or intended circumstances of his or her conduct both without the conscious objective or purpose to accomplish a particular result. *In re Coleman*, 295 S.W.3d 857, 870 (Mo. 2009). The least culpable mental state is negligence, exhibited when a lawyer fails to be aware of a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Id*.

In this case, Ms. Carson testified that she did not initially disclose payments made by related companies for her work for Satnam, the debtor company, because she believed that payments from third parties were not included. Moreover, she believed the payments were being made by Dee Mann, personally, from his various business accounts, until she finally received the organizational chart for the Satnam related companies from Mr. Pardue in March 2013.

Additionally, Respondent did not disclose her Missouri Supreme Court reprimand to the Louisiana bankruptcy court based upon her research and the conversations with the court clerk. Respondent and her paralegal both verified the same telephone conversation and information exchanged. Respondent also testified that she had not filed for pro hac vice in another jurisdiction previously.

Moreover, Respondent intended to amend her disclosures once more information about the interrelated companies became available. On July 9, 2013, Respondent did file her Supplemental Application for Employment of Attorney for Debtor and Preliminary Approval of Fee Arrangement, Supplemental Disclosure of Compensation of Attorney for Debtors, with the Exhibit listing the payments, and Accounting to Court.

When discussing the third prong, actual or potential injury caused by the lawyer's misconduct, the ABA Standards describe 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." *Id*. The level of injury ranges from "serious" to "little or no" injury. *Id*.

In this case, Ms. Carson's alleged failure to disclose did not affect Satnam in the 2012 or 2013 bankruptcy or GS Hospitality in the 2013 Louisiana bankruptcy. In fact, a payment arrangement was agreed to in the 2012 Bankruptcy with the main creditor, and the case was dismissed. The 2013 case was also dismissed after she was terminated per the client's wishes. Additionally, the bankruptcy estates were not harmed by the initial nondisclosures, because Respondent was ordered to disgorge her fees which actually benefitted the bankruptcy estate. Logically, a return of approximately $26,000 of attorney's fees to the pot is a benefit and not a bane. Of particular note, the panel also found that Respondent's conduct did not cause a significant or potentially cause significant adverse effect on the bankruptcy, and the panel further concluded that Respondent's conduct did not cause serious or potentially serious injury to her client or other interested parties. App. 460.

The fourth and last prong set forth in the ABA Standards considers aggravating or mitigating factors, but these factors should not be considered until after the initial determination of the sanction ABA Standards for Imposing Lawyer Sanctions, B. Methodology (1992). As such, they will be discussed *supra*.

Pursuant to ABA Standards for Imposing Lawyer Sanctions 6.1 False Statements, Fraud, and Misrepresentation, which also encompasses cases involving conduct that is prejudicial to the administration of justice, Rule 6.13 states that a reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial actions when material information is being

withheld, 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.

ABA Standards Rule 6.12 states that suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is being improperly 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.

ABA Standards Rule 6.11 states that 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.

Generally, when an attorney with an intent to deceive the Court submits a false document, makes a false statement, or withholds material information, disbarment is the appropriate sanction. *In re Caranchini*, 956 S.W.2d 910, 919 (Mo. banc 1997). Disbarment is reserved for clear cases of gross misconduct, those in which the attorney is demonstrably unfit to continue in the profession. *In re Ver Dught*, 825 S.W.2d 847, 851 (Mo. banc 1992). There is no evidence in this case, beyond pure speculation, that Respondent intended to deceive the Court, and as such, the hearing panel properly found that disbarment was excessive.

Pursuant to ABA Standards Rule 7.0 Violations of Other Duties as a Professional, which includes cases involving improper solicitation of professional employment from a prospective client, Rule 7.4 states that admonition is generally appropriate when a lawyer engages in an isolated instance of negligence that is a violation of a duty owed by a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.

Here, Respondent placed advertisements on Craigslist which did not contain the required disclosure, and she admitted to the omission. These ads were placed on one advertising medium, and as such, constitute an isolated instance of improper advertising. As such, an admonition would be an appropriate sanction. However, when this Court finds an attorney has been committed multiple acts of misconduct, "the ultimate sanction imposed should at least be consistent with the sanctions of the most serious instance of misconduct among the violations. *In re Coleman*, 295 S.W.3d 857, 870 (Mo.banc 2009).

Aggravating factors, which increase the severity of the sanction, include prior disciplinary offenses; dishonest of selfish motives; a pattern of misconduct; multiple offenses; bad faith obstruction of the disciplinary proceedings; submission of false evidence, false statements, or other deceptive practices during the disciplinary process; refusal to acknowledge wrongful nature of conduct, vulnerability of victim substantial experience in the practice of law; indifference in making restitution; and illegal conduct. ABA Standards for Imposing Sanctions, Rule 9.21 and 9.22 (1992). Additionally, when multiple charges of misconduct are found, "the ultimate sanction imposed should at least

be consistent with a sanction for the most serious instance of misconduct among the violations." ABA Standards for Imposing Sanctions, II. Theoretical Framework (1992).

Candidly, this case does involve prior disciplinary offenses and multiple offenses. However, Respondent's prior disciplinary actions did not involve any allegation of false statements or misrepresentations. Additionally, the multiple nondisclosures complained of in this case occurred primarily within a six month period between January 2013 and July 2013. The alleged misconduct also occurred primarily within the confines of three Chapter 11 bankruptcy cases involving a group of interrelated companies with one main representative, Dee Man, and one corporate counsel, Devan Pardue, interacting with Respondent, arguably not evidencing a pattern of misconduct.

Informant's counsel argues that Respondent was also motivated by dishonest or selfish motive because the lack of disclosure involved her attorney fees. Respondent testified that she believed that payments from third parties were not required to be disclosed. This Court should note that Respondent did timely and appropriately disclose the initial payment made by the listed debtor Satnam to her in beginning of the 2012 Bankruptcy.

Opposing counsel, without mention of any evidence in the Statement of Facts, also claims that Respondent wanted to avoid disciplinary consequences in the Western District of Missouri. Respondent testified that she instructed her staff to send the $750.00 check and the Missouri Supreme Court Reprimand to the Western District of Missouri

sometime in March 2013 and did not realize it was never sent or verify its nonreceipt until February 2016.

Counsel for the Informant also argues that respondent has refused to acknowledge the wrongful nature of the conduct alleged. Respondent admitted that she initially failed to disclose her fees, failed to disclose the Missouri Supreme Court reprimand to the Louisiana Bankruptcy Court, and failed to ensure that the reprimand was received by the Western District of Missouri. At the hearing, she merely explained the "why's" to the hearing panel and also accepted responsibility. For example, Respondent testified at the panel hearing as follows:

> Q: The question is, is the disclosure required by the bankruptcy court and by the local rules?
>
> A: Yes. I did not think of it. I figured it was the past case and I just did not-I did not list it. All that matters to me was that I was getting this filed. I did not even consider that, because I considered it was the other case, but I think I should have-It should have been listed, I ended up listing it at some point. So I just-yeah, I did not list them and I should have.

App. 129 (Tr. 418-419).

> Q: How do you feel about the fact that you did not timely make disclosures that Judge Federman expected you to make?

A: I am horrified. I also realized that I was-that I was trying to comply. I wish I could do it all over again. I am just-I am-I am absolutely horrified that Judge Federman is upset about this, and I did it.

App. 103 (Tr. 317).

Q: Okay. Your failure to disclose the reprimand to the clerk's office of Western District of Missouri was that your issue or a staff problem?

A: Well it is never a staff problem. It is always my issue. There is never a time that it is not my issue. So no, this is all my issue, although I know what I did and I did not check as to whether it got done, so.

App. 115 (Tr. 362).

Respondent testified more than once that she later realized that the filed disclosures would need to be amended, but she did not believe there was a deadline to do so. The evidence in this case also reflects that the final supplements and amendments were filed on July 9, 2013.

Informant argues that the final aggravating factor to consider in this case is Respondent's substantial experience in the practice of law. Although it is true that Respondent has been practicing for over thirty years and practices in bankruptcy law, Respondent had not handled complex Chapter 11 cases previously and was not well versed in this type of bankruptcy law. At the panel hearing, she testified in the following manner:

Q: Do you consider yourself to be an expert in Chapter 11 bankruptcy law?

A: No.

App. 107 (Tr. 331).

Q: Okay. Can the panel rely upon your statements on as required of a Chapter 11 bankruptcy from a statutory and local rule perspective?

A: No, I am not an expert, and said they would be doing that. So anybody would be looking at me as an expert witness and I am not.

App. 107 (Tr. 331).

Q: My question is a little bit more general. Are you fit and competent to represent debtors in Chapter 11 bankruptcies?

A: Depends on which kind of case it is. If it is a small one, I have done them before. This one-This one got completely out of control for me, and I do not think it was a competency issue. It just was not going to-I was not going to get the information I needed.

App. 115 (Tr. 364-365).

Mitigating factors, which decrease the severity of the sanction, in relevant part include: (1) absence of a dishonest or selfish motive; (2) personal or emotional problems; (3) timely good faith effort to make restitution or to rectify consequences of misconduct; (4) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; (5) inexperience in the practice of law, (6) character or reputation, (7) imposition of other penalties or sanctions; (8) remorse; and (9) remoteness of prior offenses. ABA Standards for Imposing Sanctions, Rule 9.31 and 9.32 (1992). Mitigating

factors do not constitute a defense to a finding of misconduct, but may justify a downward departure from presumptively proper discipline. *In re Eisenstein*, 45 S.W.3d 759, 763 (Mo. 2016).

As discussed above in aggravating factors, Respondent was not motivated by dishonest or selfish motive. Respondent testified that she believed that attorney fee payments from third parties were not required to be disclosed, and she did timely and appropriately disclose the initial payment to her made by the listed debtor Satnam in the beginning of the 2012 Bankruptcy. Additionally, Respondent testified that she instructed her staff to send the $750.00 check and the Missouri Supreme Court Reprimand to the Western District of Missouri sometime in March 2013 and did not realize it was never sent or verify its nonreceipt until February 2016.

Regarding mitigating factor (2) personal or emotional problems, Respondent stated in her Answer (App. 18) and testified at the panel hearing that her mother became seriously ill in November 2012 and eventually passed away on February 15, 2013. Respondent testified as follows:

Q: The date on the reprimand is February 26, 2013. And do you recall receiving it?

A: Yes.

Q: Do you recall receiving it relatively soon after the date shown on the order?

A: Yes.

Q: What had happened in your life relatively recently prior to that?

A: My mother was in the hospital and ended up dying. The funeral was February 20, 2013. I believe that I took it really hard.

App. 97 (Tr. 291).

Q: In Exhibit 5, do you say that you were too ill to work at the end of February and begin of March?

A: Yes.

Q: But as I think was established at the prior hearing, that you were working?

A: Yes.

Q: Should you have been working?

A: No.

Q: When did you form that opinion that you should not have been working?

A: After the motion by Judge Federman. I thought I had been keeping up on everything, and I believe that I could have sued his-I.

Q: I'm sorry, sued?

A: Could have solved his unhappiness had I been paying more attention, so I did not respond, I did file documents, I do not think I did nearly as good of a job of understanding quicker what it was he was asking for.

Q: And you were dealing with the death of you mother at that time I think you just testified to?

A: Yes.

App. 98 (Tr. 296).

Additionally, Respondent was also treating with a psychiatrist for depression. Her medical records were admitted at the panel hearing as Exhibit C and were sealed. R. Vol. 4, 864. At the hearing, Respondent testified as follows:

Q: Did you have other and I do not want you to get specific at this point, did you have other did you have health issues that you were also dealing with?

A: Yes.

Q: Were those long-term health issues?

A: Yes.

Q: And does Exhibit C reflect some of the treatment for those health issues?

A: Yes.

App. 98 (Tr. 296-297).

On the day of her mother's funeral, Respondent was working on the Louisiana Bankruptcy with Mr. Pardue and Mr. Mann very early in the morning as set forth in Respondent's hearing testimony:

Q: So let us talk about the Louisiana case that is the GS Hospitality case. Correct?

A: Yes.

Q: Did you file that case on February 20, 2013?

A: Yes.

Q: What else happened on February 20, 2013?

A: I was late for my mother's funeral because I was working with GS Hospitality. So Devan Pardue, Mr. Mann were there at my office early in the morning, and we started pulling information together. And I did most of-and Aaron, my bankruptcy paralegal was there, and in fact, I had to jump up and run out of there and was late.

Q: Okay. Why did you do it on that day?

A: Emergency. Another emergency.

Q: Why was it an emergency?

A: One of-it was a foreclosure from the main creditor of, that another motel down in Louisiana. I think there was a bigger problem, which some creditor was trying to get records and we needed to stop the records from being taken or money from being taken out of the cashiers, so it was an emergency.

App. 99 (Tr. 299-300).

The hearing panel stated that although such evidence may have some mitigating affect, it found that her personal or emotional issues did not mitigate against the recommended sanction, because Respondent did not present any evidence or explain how these issues caused the misrepresentations at issue. That finding was in error.

Respondent advised the panel during the hearing that her mother has been seriously ill since November 2012; that she, also, was very ill during late February and early March; that she took the death of her mother very hard; that she had been receiving treatment for depression; and that she should not have been working. Clearly,

Respondent presented compelling evidence that her personal or emotional problems should be considered to be a mitigating factor.

This case also reflects evidence of Respondent's mitigation factor (3), timely good faith effort to make restitution or to rectify consequences of misconduct. Although this Court may disagree that Respondent's efforts to make restitution or to rectify the consequences of the conduct were done "timely," it is undisputed that Respondent did fully and completely disclose all payments made by the interrelated companies to her in all three bankruptcies on July 9, 2013; she sent the Western District of Missouri the Missouri Supreme Court reprimand in February 2016; and she disgorged over $26,000 in attorney fees. The order for disgorgement and her compliance also constitutes compelling evidence of mitigating factor (7) related to imposition of other penalties or sanctions.

Respondent also should be credited with mitigation factor (6) character or reputation. At her hearing, James Christensen, James Anderson, and John Craig- three members of the Missouri Bar who have directly worked with or office shared with Respondent over the past 30- all testified that Respondent was of good character, was honest, and would never take action that would be deliberately or intentionally dishonest. App. 30-31 (Tr. 40-44); App. 46-48 (Tr. 103-109); App. 52-53 (Tr. 128-134).

Respondent also presented evidence of mitigating factor (8) remorse which was discussed in the previous section as counter evidence to a claimed aggravating factor that Respondent has refused to acknowledge the wrongful nature of the conduct alleged. In addition to the hearing testimony excerpted therein, Respondent testified:

Q: Why did you not present the information in Exhibit 5 at that time?

A: I was horrified. I have worked with Judge Federman in the past. He was a trustee, then he was a judge. Seeing him about every week on dockets. I respect him a great deal. He was always someone I considered pro debtor. He, at this time, looked stern and angry, and I had-of the one judge in the world that I would not want to anger, this is what I had done. Since there were already prior order of disgorgement, I believed he had already made up his mind, and already-so I walked in there with my information believing that he was going to say here is how much I want you to disgorge, and I was, walk in there ready to do that. I felt like whatever I said would be arguing, and my intent was to do whatever he told me to do. So if Judge Federman says disgorge, I will disgorge.

App. 95 (Tr. 283-284).

Due to the lack of aggravating factors and the presence of the majority of the mitigating factors, which decrease the severity of the sanction, this Court should depart from the baseline sanction of suspension and should issue a reprimand in accordance with ABA Rule 6.13. This Court should find that Respondent negligently held the following beliefs: 1. disclosure of attorney fee payments or agreements regarding the payment of fees on behalf of a debtor were not required disclosures; (2) the Louisiana bankruptcy court did not require disclosure of disciplinary actions outside of the State of Louisiana; and (3) the Missouri Supreme Court reprimand had been sent to the Western District of

Missouri by her staff as she requested without Respondent pursuing confirmation. Pursuant to this this sanction level, this Court should find that Respondent should have heeded the substantial risk that her beliefs were in error and should have performed additional research and sought additional confirmation in order to ensure that her filings were accurate and that the reprimand was received by the federal court. Arguably, Respondent also negligently failed to verify those beliefs. As such, a Reprimand is appropriate in this case.

Alternatively, this Court should consider ABA Standards Rule 6.12 and find that suspension is appropriate, because Ms. Carson knowingly submitted false statements or documents to the court. The suspension should be less severe than the indefinite suspension without leave to reapply for three years recommended by the hearing panel, because Respondent did take remedial action, and the hearing panel found that Respondent's conduct did not cause a significant or potentially cause significant adverse effect on the bankruptcy and did not cause serious or potentially serious injury to her client or other interested parties. This Court should also consider the mitigating circumstances set forth above and impose an indefinite suspension with leave to reapply within 6 months and then immediately order that the execution of a suspension of her license to practice law be stayed, and that she be placed on probation for one year.

II. IF THE SANCTION OF SUSPENSION IS IMPOSED, RESPONDENT SHOULD ALSO BE IMMEDIATELY PLACED ON PROBATION

The purpose of probation is to educate, rehabilitate, and supervise the attorney in order to enable the attorney to modify his or her professional behavior. *See Coleman*, 295 S.W.3d at 871. The ABA Standards suggest that probation is the appropriate punishment when the conduct can be corrected, and the attorney's right to practice law needs to be monitored or limited rather than revoked. ABA Standards, Rule 2.7 Probation, Commentary.

This concept is recognized by this Court's Rule 5.225 which provides:

A lawyer is eligible for probation if he or she:

1. Is unlikely to harm the public during the period of probation and can be adequately supervised;
2. Is able to perform legal services and is able to practice law without causing the courts and profession to fall into disrepute; and
3. Has not committed acts warranting disbarment. *Id*. at 871.

This Court must take into account the nature and circumstances of the attorney's misconduct and his or her history, character, and health status when placing him or her on probation and fashioning the conditions the attorney must abide by while on probation. Rule 5.225(b)(1).

Ms. Carson's actions arose out of her inaccurate understanding of the disclosure requirements and not from an intention to violate any Chapter 11 bankruptcy rules or an intention to deceive the court. Her alleged misconduct occurred during between January 2013 and July 2013 and involved one group of clients that were interrelated and were allegedly represented by corporate counsel Devan Purdue who was by all accounts communicating with the corporate clients and advising Ms. Carson how to proceed. Since her termination as counsel in the 2013 bankruptcy, Ms. Carson, to her knowledge, has not been the subject of any other disciplinary complaints for over four years.

Prior to the current Information, Ms. Carson had received four admonitions and one reprimand since she began the practice of law in 1983. She received admonitions in 2001 (Case No. 01-0156-IV) and 2010 (Case NO. 10-1755-IV) for violations of Rule 4.1.05 regarding safekeeping or property. She received two admonitions in 2008 in Case No. 06-654-IV and Case No. 06-703-IV for violating Rule 4-1.3 involving diligence. Ms. Carson failed to file consumer bankruptcies before the 2005 bankruptcy rules change as requested by the clients. Finally, she entered into a Joint Stipulation of Facts, Conclusions of Law, and Recommendation for Discipline in January 2013 to receive a reprimand for a violation of Rule 4-1.4(a) Communication. None of the prior cases involved any issues involving misrepresentation.

This Court should find that Ms. Carson's violations make her a proper subject for probation and order that execution of a suspension of her license to practice law be stayed and that she be placed on probation for one year, with any additional conditions including

attendance at an ethics class conducted by OCDC, attendance at Bankruptcy focused continuing legal education classes, participation in law practice management, education and mentoring, employment of a qualified consultant, and commission of no other violations of the Rules of Professional Conduct. Respondent submits a Proposed Probation Plan herein. Resp't App 2-5.

This Court determined probation was the appropriate discipline at *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 violation of the rules pertaining to diligence, communication, safeguarding client property, and conduct prejudicial to the administration of justice in Missouri. *Id*. at 229. The attorney also had two prior admonitions and stipulated to misconduct that warranted a public censor in Kansas. *Id*. at 228.

Likewise, in *In re Coleman*, the attorney had been admonished twice and publicly remanded once for a total of eight violations of the rules pertaining to communication, unreasonable fees, diligence, expediting litigation, and conduct prejudicial to the administration of justice. *Id*. This Court found the attorney committed five new violations of the rules that resulted in client harm, and that concerned the management of his IOLTA account, yet this Court permitted the attorney to serve a one year probationary term rather than be suspended. *In re Coleman*, 295 S.W.3d at 859. The current violations alleged against Respondent are less numerous than the violations in

Wiles and *Coleman,* and do not involve harm to a client. The attorneys in both *Wiles and Coleman* received probation, and as such, she should also be granted probation.

CONCLUSION

Respondent agrees with the hearing panel's finding that that (1) disbarment is excessive and (2) Respondent's conduct did not cause a significant or potentially cause significant adverse effect on the bankruptcy and did not cause serious or potentially serious injury to her client or other interested parties. Respondent also agrees with the hearing panel's findings that Respondent has already incurred a significant penalty in connection with the judicial orders to pay back $26,000 in attorney's fees.

However, the hearing panel should have noted the presence of the other mitigating circumstances present in this case and argued herein. The sanction imposed by the hearing panel was too harsh in light of the evidence before it, and their ability to decrease the severity of the sanction to a reprimand and/or lessen the time of suspension. Like in the other disciplinary matters cited above involving more egregious violations of client loyalty, this Court should order that any suspension be stayed pending completion of a probation period.

Respectfully submitted,

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CERTIFICATE

I hereby certify that the above and foregoing was filed electronically on this 30th day of August 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

/s/ DANIEL F. CHURCH
Daniel F. Church

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 Rue 55.02;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 11,356 words, according to Microsoft Word, which is the word processing system used to prepare this brief.

/s/ DANIEL F. CHURCH
Daniel F. Church