

IN THE SUPREME COURT  
STATE OF MISSOURI

---

IN RE: )  
 )  
JONATHAN DAVID VALENTINO ) NO. SC96700  
 )  
MO BAR # 56166 )  
 )  
Respondent. )

---

**RESPONDENT'S BRIEF**

---

MANDEL & MANDEL, LLP  
Alan S. Mandel, #29137  
Michael J. Sudekum, #49738  
1108 Olive Street, Fifth Floor  
Saint Louis, MO 63101  
314-621-1701 (Telephone)  
314-621-4800 (Facsimile)  
dsmm001@aol.com

ATTORNEYS FOR RESPONDENT

**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES ..... 2**

**JURISDICTIONAL STATEMENT..... 3**

**STATEMENT OF FACTS..... 4**

**POINTS RELIED ON ..... 7**

**ARGUMENT ..... 8**

**CONCLUSION ..... 15**

**CERTIFICATE OF SERVICE ..... 16**

**CERTIFICATION..... 17**

**TABLE OF AUTHORITIES**

**Cases**

*Disciplinary Board v. Dyer*, 817 N.W.2d 351 (N.D. 2012)..... 13

*In Re Bishop*, 179 P.3d 1096 (KS 2008) ..... 13

*In re Disciplinary Action Against Summers*, 821 N.W.2d 758 (N.D. 2012)..... 13

*In re Kopf*, 767 S.W.2d 20 (Mo. banc 1989)..... 14

*In re Krigel*, 480 S.W.3d 294, 301 (Mo. 2016)..... 9

*In re Reza*, 743 S.W.2d 411 (Mo. banc 1988)..... 12

*In re Staab*, 719 S.W.2d 780 (Mo. banc 1986) ..... 12, 14

*People v. Eaton*, 240 P.3d 1282 (Colo. O.P.D.J. 2010) ..... 13

**Other Authorities**

ABA Standard 3.0 (2013 Ed.) ..... 9

ABA Standard 9.0 ..... 10

ABA Standard 9.32 ..... 11, 12

**JURISDICTIONAL STATEMENT**

Respondent agrees with the Statement of Jurisdiction as stated by Informant.

**STATEMENT OF FACTS**

Respondent will track the Statement of Facts as outlined by Informant and provide supplemental facts as he believes are relevant to this inquiry.

**PROCEDURAL HISTORY**

Respondent agrees with the procedural history as set forth by Informant.

**BACKGROUND AND DISCIPLINARY HISTORY**

Respondent agrees with the Background and Disciplinary History as set forth by Informant.

**MICHAEL GREENBLATT REPRESENTATION**

Respondent agrees that he admitted the relevant factual allegations in his Answer to the Information.

Additionally, while Mr. Greenblatt expressed concern that the delay would increase the likelihood that he may lose his currently filed case, he also testified that his lawyer has stated that he does not believe the adverse landowner's claim for possession is very strong. App. 109 (Tr. 15). Furthermore, this defense was raised by the landowner at the time of the initial notice of the claim. App. 112 (Tr. 18); App. 122 (Tr. 28). Exhibit 11 & 12.

Mr. Greenblatt also testified that when Respondent reported his conduct to him that the Respondent was so upset that Mr. Greenblatt asked him to pull over and stop driving. App. 114 (Tr. 20).

## RESPONDENT'S TESTIMONY AT THE DHP HEARING

Respondent candidly admitted his failure to file a lawsuit on behalf of Mr. Greenblatt. While Respondent does state that he flat out forgot to file the matter, he also stated that may have slipped through the cracks. App. 128. (Tr. 34).

When Respondent initially informed Mr. Greenblatt that the lawsuit was filed and made subsequent misstatements in relation to the filing, he acknowledged that he “proceeded to make a bad situation worse” and “worse from there.” App. 128 (Tr. 34).

In explaining his failure to earlier acknowledge his mistake, Respondent stated “I’d never screwed up like this before. I didn’t know what to do.” App. 130 (Tr. 36).

In regards to his depression and anxiety, Respondent stated in 2009 through 2011 that he moved into his parents house, despite owning his own home. App. 132-3 (Tr. 38-39). Respondent was told by a therapist that he reacts poorly to failure. App. 133 (Tr. 39). He has been working on his reaction to stress or failure with a professional. App. 137 (Tr. 43). Importantly, Respondent repeatedly refused to go too deep into a discussion of the issue. Id ., and App. 138 (Tr. 44). He also stated that the initial dropping the ball and not filing the lawsuit was not related to his depression or related symptoms. App. 150 (Tr. 56). His treatment started after the self-report. App. 149 (Tr. 55).

Respondent believes his current work environment at small specialized firm is a better fit for him. App. 138 (Tr. 44). He meets with his current supervisor to discuss cases on a weekly basis. App. 139 (Tr. 45). The firm utilizes a group calendar and case

management software to prevent cases from not getting proper attention. App. 140 (Tr. 46).

Respondent also summarized his behavior stating that he made a mistake and has worked to understand why it happened to make sure it doesn't happen again. App. 145 (Tr. 51).

**TESTIMONY OF TODD NISSENHOLTZ AT THE DHP HEARING**

Respondent believes the Statement of Facts accurately sets forth the relevant testimony from Respondent's former colleague and current employer.

**THE DISCIPLINARY HEARING PANEL'S DECISION**

Respondent agrees with this summary of the decision.

**POINTS RELIED ON**

**I. THE SUPREME COURT SHOULD APPROPRIATELY DISCIPLINE RESPONDENT'S LAW LICENSE BECAUSE IT IS UNDISPUTED THAT HE ENGAGED IN PROFESSIONAL MISCONDUCT IN REPRESENTING HIS CLIENT MICHAEL GREENBLATT BY VIOLATING THE COMPETENCE [RULE 4-1.1], DILIGENCE [RULE 4-1.3], COMMUNICATION [4-1.4] AND HONESTY [RULE 4-8.4(C)] RULES AND BY ENGAGING IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE IN VIOLATION OF RULE 4-8.4(D).**

**II. PREVIOUS MISSOURI SUPREME COURT DECISIONS, THE ABA STANDARDS FOR IMPOSING LAWYER SANCTION, AND RELEVANT CASE LAW SUGGEST THAT THE DISCIPLINARY HEARING PANEL RECOMMENDATION THAT RESPONDENT SHALL BE SUSPENDED INDEFINITELY WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR A PERIOD OF ONE YEAR, SUSPENSION TO BE STAYED AND RESPONDENT SHALL BE PLACED ON PROBATION FOR A PERIOD OF ONE YEAR IS THE APPROPRIATE SANCTION IN THIS CASE.**

*In re Staab*, 719 S.W.2d 780 (Mo. banc 1986)

*ABA Standard 9.32*



**ARGUMENT**

**I. THE SUPREME COURT SHOULD APPROPRIATELY DISCIPLINE RESPONDENT’S LAW LICENSE BECAUSE IT IS UNDISPUTED THAT HE ENGAGED IN PROFESSIONAL MISCONDUCT IN REPRESENTING HIS CLIENT MICHAEL GREENBLATT BY VIOLATING THE COMPETENCE [RULE 4-1.1], DILIGENCE [RULE 4-1.3], COMMUNICATION [4-1.4] AND HONESTY [RULE 4-8.4(C)] RULES AND BY ENGAGING IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE IN VIOLATION OF RULE 4-8.4(D).**

Respondent has admitted the allegations him since the time of his self-reporting and does not contest the Conclusions of Law and Recommendations as found by the DHP. In Point II, Respondent addresses that the DHP recommendation that Respondent shall be suspended indefinitely with no leave to apply for one years, with suspension stayed pending a one year probation period with conditions is the appropriate result.

**II. PREVIOUS MISSOURI SUPREME COURT DECISIONS, THE ABA STANDARDS FOR IMPOSING LAWYER SANCTION, AND RELEVANT CASE LAW SUGGEST THAT THE DISCIPLINARY HEARING PANEL RECOMMENDATION THAT RESPONDENT SHALL BE SUSPENDED INDEFINITELY WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR A PERIOD OF ONE YEAR, SUSPENSION TO BE STAYED AND RESPONDENT SHALL BE PLACED ON PROBATION FOR A PERIOD OF ONE YEAR IS THE APPROPRIATE SANCTION IN THIS CASE.**

While this court does review these matters de novo, the decision of the DHP is given some weight. Accordingly, the DHP considered the evidence and the first hand view of the testimony in this matter. After reviewing the record, the DHP recommended a stayed suspension with probation for one year.

“It is this Court's duty to determine what discipline is appropriate to impose for these violations by reviewing similar past cases, the disciplinary rules, and the applicable ABA standards. This Court notes that generally when considering what sanction to impose, this Court considers four 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.

ABA Standard 3.0 (2013 Ed.)” *In re Krigel*, 480 S.W.3d 294, 301 (Mo. 2016) (citations omitted).

As to the first two factors, the Respondent has acknowledged his conduct. Further, even though Respondent submitted his struggles with depression and related symptoms, he has not over-emphasized its impact on his initial conduct. In explaining the condition's impact, he attempted to explain how it impacts his reaction to a bad decision. Otherwise, Respondent has not sought to excuse his behavior. While the Informant is critical of the lack of medical evidence, the disclosure of this condition and his treatment support Respondent's testimony concerning his understanding of the gravity of this matter and demonstrate his refusal to fully excuse his behavior based on a condition. This explanation assists the court in assessing his mental state at the time of the conduct.

With respect to any injury to Mr. Greenblatt's claim against his neighbor, the calculable injury at this point is the delay in the prosecution of the claim. From the record, Mr. Greenblatt's lawsuit is countered by the same defenses that were originally raised by his neighbor. The delay is certainly unfortunate, but thankfully not dispositive to his issues.

With respect to the final factor and the appropriate discipline, Informant is correct that both aggravating and mitigating circumstances may be considered by this Court under *ABA Standard 9.0*. Informant asserts that the aggravating factors in this case include: (c) a pattern of misconduct; (d) multiple offenses; and (i) substantial experience in the practice of law. Again, while not excusing his conduct, Respondent asserts that all of those factors do not apply. Certainly, Respondent is no longer considered a young lawyer, however, at the time of the initial misstatement, he had been licensed for

approximately five (5) years. Further, while Respondent admits to multiple misstatements to his client about the status of the singular litigation, these statements involved the same matter and there is no suggestion in the record that this conduct was a pattern of behavior in other matters. Therefore, there is not a pattern of behavior by an attorney with substantial experience. Rather, this case is an isolated incident that Respondent candidly admits he made “worse.”

The *ABA Standard 9.32* also provide that a court may consider mitigating circumstances in determining an appropriate discipline. In this case, these factors include

- (a) absence of a prior disciplinary record;
  - Respondent has no prior disciplinary record.
- (b) absence of a dishonest or selfish motive;
  - There is no evidence that Respondent had a dishonest or selfish motive.
- (c) personal or emotional problems;
  - Respondent testified about his difficulties facing this conduct and his treatment for the same.
- (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
  - Respondent has been fully cooperative with the process.
- (g) character or reputation;
  - The record demonstrates that Respondent is a well-respected lawyer. He also self-reported his conduct to the Informant.

- (k) imposition of other penalties or sanctions; and,
- Respondent lost his employment at the time of his self-reporting and suffered personal financial hardship.
- (l) remorse. *ABA Standard 9.32.*
- Respondent has repeatedly expressed his apologies to Mr. Greenblatt in disclosing his conduct and at the DHP hearing.

Considering the gravity of Respondent's admitted conduct with these mitigating factors demonstrates that Respondent will continue, with appropriate probation conditions satisfied, to be a valuable contribution to the public as a lawyer.

Informant cites several cases in support of its rejection of the DHP's recommendations. The first cases cited by Informant, *In re Reza*, 743 S.W.2d 411 (Mo. banc 1988) and *In re Staab*, 719 S.W.2d 780 (Mo. banc 1986), involve an attorney's failure to timely file or respond to pending matters that resulted in adverse consequences to the client. In *Reza*, this court suspended the attorney indefinitely with no leave to apply for reinstatement for six months and, in *Staab*, the attorney was reprimanded.

Considering that the clients in both of those cases suffered irreparable harm and, thankfully in this case, Mr. Greenblatt has not been harmed (other than the delayed proceedings), the overall circumstances of this case lean more towards the court's discipline in *Staab*. In fact, Respondent previously consented with the more serious discipline imposed by the DHP than the court ordered in *Staab*.

Informant also references cases from outside jurisdictions in support of its rejection of the DHP's recommendation and decision. Those cases are also factually dissimilar.

In *In re Disciplinary Action Against Summers*, 821 N.W.2d 758 (N.D. 2012), the attorney was suspended for not informing a client about the status of the motion; however, the attorney involved in that matter appears to have a significant disciplinary history and was suspended for another matter at the same time of the decision. *Summers*, 821 N.W.2d at 759 (citing *Disciplinary Board v. Dyer*, 817 N.W.2d 351 (N.D. 2012)).

In *People v. Eaton*, 240 P.3d 1282 (Colo. O.P.D.J. 2010) the client was adversely affected when an attorney's misstatements and lack of diligence resulted in the client's claims being barred by the statute of limitations. In *Eaton*, the attorney did not participate in the disciplinary proceedings and had a prior disciplinary record. As a result, the Colorado attorney was suspended for two years. In this matter, the impact to Mr. Greenblatt was comparably minimal and Respondent fully cooperated with the proceedings.

In *In Re Bishop*, 179 P.3d 1096 (KS 2008) the attorney was facing discipline for two separate matters. His misconduct, including "varied explanations" for his failures and other aggravating circumstances, resulted in an indefinite suspension. In contrast, Respondent has admitted his behavior and been forthright in his refusal to make excuses for an isolated, albeit prolonged, incident for which he is truly remorseful.

More analogous in these factually intensive reviews are the rationale by this Court in other proceedings. Respondent is well-regarded by his current employer and former

colleague, to whom he candidly related this conduct. (Although no defense, a good reputation may be considered in determining the appropriate discipline.” *In re Staab*, 719 S.W.2d 780, 784-5.)

He is an employee of a law firm with a systemized practice including weekly meetings and case management software. He will receive mentoring from an established firm with a specialized practice area. (“In addition, he has acted to ensure that neither caseload burden nor careless case management will affect him in the future. These reflect well on his future ability to practice.” *In re Staab*, 780 S.W.2d 780, 785.)

Fortunately, Respondent’s conduct resulted in a delay to the proceedings between neighbors over a certain piece of property. (Attorney reprimanded where “[t]he essential facts are undisputed, and respondent candidly concedes they establish unnecessary delay of the legal matter entrusted to him by the [client].” *In re Kopf*, 767 S.W.2d 20 (Mo. banc 1989)

In summary, the circumstances weigh in favor of a stayed suspension with appropriate conditions of probation.

## **CONCLUSION**

The fact intensive nature of disciplinary proceedings demonstrates a varied range of discipline for misconduct by members of the bar. In this matter, the record as a whole demonstrates Respondent to be a contrite lawyer, who has taken steps to rectify his behavior and his future responsibilities as a member of the bar. Respondent does not challenge the allegations of the Informant that his conduct was improper. Furthermore, the mitigating circumstances outweigh the minimal aggravating circumstances in this matter. Considering the record as a whole, the recommendation of the DHP should be followed.

Respectfully submitted,

MANDEL & MANDEL, LLP



BY: \_\_\_\_\_

Alan S. Mandel, #29137  
Michael J. Sudekum, #49738  
1108 Olive Street, Fifth Floor  
Saint Louis, MO 63101  
314-621-1701 (Telephone)  
314-621-4800 (Facsimile)  
dsmm001@aol.com

ATTORNEYS FOR RESPONDENT




**CERTIFICATE OF SERVICE**

I hereby certify that on this 20th day of November, 2017, a copy of Respondent's Brief is being served upon Informant through the Missouri Supreme Court electronic filing system.

Alan D. Pratzel  
Chief Disciplinary Counsel  
3327 American Avenue  
Jefferson City, MO 65109  
Alan.Pratzel@courts.mo.gov

MANDEL & MANDEL, LLP

BY:   
\_\_\_\_\_  
Alan S. Mandel, #29137  
Michael J. Sudekum, #49738  
1108 Olive Street, Fifth Floor  
Saint Louis, MO 63101  
314-621-1701 (Telephone)  
314-621-4800 (Facsimile)  
dsmm001@aol.com

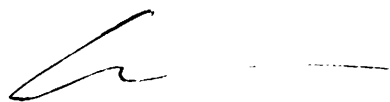
ATTORNEYS FOR RESPONDENT

**CERTIFICATION**

I certify to the best of my knowledge, information and belief that this brief includes the information required by Rule 55.03; complies with the limitations contained in Rule 84.06(b); and contains 2,343 words, according to Microsoft Word, which is the word processing software used to prepare this brief.

MANDEL & MANDEL, LLP

BY:



---

Alan S. Mandel, #29137  
Michael J. Sudekum, #49738  
1108 Olive Street, Fifth Floor  
Saint Louis, MO 63101  
314-621-1701 (Telephone)  
314-621-4800 (Facsimile)  
dsmm001@aol.com

ATTORNEYS FOR RESPONDENT