

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

CORINNE N. DARVISH,

Respondent.

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Supreme Court #SC96905

INFORMANT'S BRIEF

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STATEMENT OF JURISDICTION

Jurisdiction over attorney discipline matters is established by Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMo 2000.

STATEMENT OF FACTS

Procedural History

This matter was heard by a Disciplinary Hearing Panel on August 2, 2017 in St. Louis County, Missouri. It was a one Count Information. **App. 2-27.**¹

Two witnesses testified for the Informant. Respondent and four character witness testified for the Respondent at the hearing. **App. 39-41 (Tr. 2-4).**

The Disciplinary Hearing Panel recommended that Respondent be disbarred. **App. 463-479.** Informant accepted the recommendation. **App. 480.** The Respondent rejected the recommendation. **App. 481-482.** Pursuant to Rule 5.19, this case has been set for briefing and argument.

¹ The facts contained herein are drawn from the testimony elicited and the exhibits admitted into evidence at the trial in this matter conducted on August 2, 2017. Citations to the trial testimony before the Disciplinary Hearing Panel are denoted by the appropriate Appendix page reference followed by the specific transcript page reference in parentheses, for example “**App. ____ (Tr. ____)**”. Citations to the Information, Respondent’s Answer to the Information and the trial exhibits are denoted by the appropriate Appendix page reference.

Disciplinary History

Respondent has a previous disciplinary history. She received an admonition in March of 2016 for violation of Rule 4-1.15 on safekeeping client property. **Ex. C; App. 327-333; 78-79; (Tr. 41-42).** As part of the process, she was required by the OCDC to attend a trust accounting course. **App. 93, 101, 234 (Tr. 56, 64, 197).**

In addition, Respondent previously was suspended by this Court for violation of Rule 5.245 by failing to pay applicable taxes. The tax suspension date was February 2, 2009. Respondent corrected her tax issues and was reinstated by this Court on March 27, 2009 in case number SC90019. **Ex. D; App. 334-337.**

Work History

Respondent was licensed as an attorney in Missouri in September of 1994. Her Missouri Bar number is 43168. Her main office address is 8151 Clayton Road, Suite 201, St. Louis, Missouri 63117. **Ex. A; App. 296-321.** That is also her address of registration with the Missouri Bar.

After licensure in 1994 the Respondent worked at the firm of Schwartz and Davidson and then moved to Brinker, Doyen and Kovacs. Later Respondent went to Uthoff, Graeber, Robinette and O'Keefe. Respondent primarily worked with attorney Kevin O'Keefe and left the Uthoff firm with him to join the Curtis Oetting Law Firm. Respondent then left Curtis Oetting and joined the Armstrong Teasdale Law Firm for a short time. Since 2002 Respondent has been a solo practitioner. **App. 154-156; 159-161 (Tr. 117-19; 122-24).**

Evidence

Informant exhibits A-N and Respondent Exhibits 1-8 were admitted by agreement of the parties. **App. 41-42 (Tr. 4-5).**

In 2010 Respondent was hired to represent a not-for-profit corporation in Missouri entitled “Save A Life for Geno Foundation” (hereinafter “SALFG”). **Ex. 3 and 4; App. 409-410; 411-412.** SALFG’s purpose was to provide endowment scholarships for underprivileged children to continue their education for college. **App. 50 (Tr. 13).** Between 2010 and 2015, the primary contact for SALFG was Leon Campbell, the father of Geno Campbell, who had died in a tragic boating accident in 2008. **App. 50 (Tr. 13).** All matters for SALFG were handled satisfactorily in those representations. **App. 172-173; 175-178 (Tr. 135-36; 138-41).** In 2013, Ms. Darvish obtained federal and state tax-exempt status for SALFG. **Ex. 4; App. 411-412.**

In the calendar year 2015 Leon Campbell died. Mr. Campbell’s ex-wife, Donna Campbell (hereinafter “Ms. Campbell”), became the primary administrator for SALFG. The funds of SALFG were held in two accounts at Bank of America that had been controlled by Leon Campbell. In 2015, Ms. Campbell hired Respondent to take the necessary steps to have the SALFG funds removed from Bank of America, to open a new account at Commerce Bank, and to deposit the funds to the new account for the benefit of SALFG, that account to be controlled by Ms. Campbell. **App. 51-54 (Tr. 14-17).**

Respondent in the course of representation contacted Bank of America, the situs of the funds in question, and arranged for transfer of the funds from the account of Leon

Campbell. Respondent recommended to Ms. Campbell, and Ms. Campbell agreed, that Bank of America was to mail the checks to Respondent. **App. 50-52; 65-66 (Tr. 13-15; 28-29).**

On or about September 18, 2015, Respondent received two separate checks as payouts from two SALFG bank accounts. One check was for \$10,007.96 and the other for \$6,935.24, in sum totaling \$16,943.20. Both checks were made payable to “Donna Campbell c/o Corinne Darvish”. Ms. Campbell never had physical possession of either check, nor did she ever see either check. **Ex. H; App. 376-378; 53 (Tr. 16).**

On September 18, 2015, Respondent deposited the checks into her client trust account entitled the Corinne N. Darvish Attorney, LLC Missouri IOLTA Trust Account number XXXX1748 at PNC Bank. **Ex. H; App. 376-378.** On or about September 30, 2015, Respondent opened an account with Commerce Bank that was to hold the funds received from Bank of America. On or about September 30, 2015, Respondent wrote a check from her trust account in the amount of \$500.00 payable to “Save A Life” and deposited the check into the new Commerce Bank account for the benefit of SALFG. **Ex. J; App. 396.** Respondent had no explanation as to why she did not deposit the funds from Bank of America directly into the Commerce Bank account, nor did she have any explanation why she did not transfer the full amount of \$16,943.20 from her trust account. **App. 228 (Tr. 191).**

Other than a letter to Ms. Campbell’s trust attorney, on which Ms. Campbell was copied, stating that the funds had been received, Ms. Campbell heard nothing from

Respondent until Ms. Campbell's meeting with Respondent on March 10, 2016. Ms. Campbell requested funds for a charitable golf tournament, which was the primary source of funding for SALFG. **App. 55-56 (Tr. 18-19)**. At that meeting, Respondent gave Ms. Campbell a second checkbook for the Commerce Bank account, which started with check number 150. Respondent kept the first checkbook. **Ex. K; App. 397-398; 68 (Tr. 31)**. At that point the only money in the Commerce Bank account was the \$500.00 deposited the previous September.

From March to June 2016, Ms. Campbell heard nothing further from Respondent. Respondent sent Ms. Campbell no additional money. Ms. Campbell eventually wrote a letter to Respondent June 4, 2016 requesting the money and an accounting, as well as complaining that Respondent did not return Ms. Campbell's repeated phone calls. **Ex. K; App. 397-398; 57-58 (Tr. 20-21)**.

Ms. Campbell then retained counsel to write Respondent an additional letter demanding payment of the money due and owing SALFG. That letter also asked for an accounting of Respondent's hours related to the \$425.00 retainer paid by Ms. Campbell to Respondent. **Ex. L; App. 399-400; 58 (Tr. 21)**.

Around June 2016, Ms. Campbell called Respondent and informed Respondent that a check had bounced in the SALFG Commerce Account. **App. 187-188 (Tr. 150-151)**. Respondent seemed befuddled by this news. Respondent in June 2016 issued a \$1,000 check from Respondent's trust account, which was deposited by Respondent in the Commerce account. **Ex. F and J; App. 342-347; 396; 184-189 (Tr. 147-152)**.

In June 2016, Respondent made a note to her own client file for SALFG that she had told Ms. Campbell that additional funds would be deposited soon to SALFG and “all funds will be deposited.” **Ex. M; App. 401; 232 (Tr. 195).**

Ms. Campbell had no further communication with Respondent from June 2016 to June 2017. **App. 59-60 (Tr. 22-23).** Ms. Campbell never received an attorney billing or an accounting from Respondent. **App. 72 (Tr. 35).**

The money received and deposited into Respondent’s trust account in September 2015 was not delivered to SALFG until late June of 2017, over twenty-one months after deposit. Payment was made eleven months after complaints by Ms. Campbell to the Informant, four months after the filing of this Information and slightly more than one month before the trial date in this case. **Ex. N; App. 402-403; 111, 113 (Tr. 74, 76).**

Upon receiving a complaint by Ms. Campbell on behalf of SALFG in July 2016, Respondent investigated the approximately five to ten bank accounts maintained at or by her law firm, but she did not investigate her trust account. Respondent in her response to OCDC explained that she had recently undergone a review of her trust account by OCDC paralegal Kelly Dillon, and that neither she nor Ms. Dillon had identified the SALFG funds in that account. **App. 198-199, 201 (Tr. 161-162, 164).**

OCDC then contacted Respondent and requested copies of bank records. Respondent did not provide them. The OCDC then subpoenaed the bank records from Commerce Bank and conducted an audit of Respondent’s trust account. **App. 102-104**

(Tr. 65-67). OCDC Paralegal/Certified Fraud Examiner Kelly Dillon in her audit found the following:

- a) The Save A Life funds were deposited to her client trust account on September 18, 2015, totaling \$16,943.20. **Ex. H; App. 376-378.**
- b) Immediately prior to this deposit, the trust account had a balance of \$213.04. Within ten days, she began withdrawing funds from that account. The first check written was for \$2,000, payable to the Respondent's LLC. The memo line of the check said "Save A Life". **Ex. F; App. 342-347.**
- c) There were a total of six withdrawals from the trust account that were attributed to SALFG by Respondent's naming "Save A Life" in the memo line of the check. These withdrawals totaled \$7,065. **Ex. F and J; App. 342-347; 396.** Three of the checks, totaling \$1,565, were either paid to or attributable to SALFG. The remaining three checks, totaling \$5,500, were deposited into Respondent's operating account where they were subsequently disbursed for Respondent's personal expenses. Respondent stated that the other payments were for attorney's fees. However, no invoices were submitted to or approved by Mr. or Ms. Campbell, and Respondent was unable to explain the basis for the determination of these fees. **App. 188-191 (Tr. 151-154).**

- d) There were a total of eleven withdrawals from trust which were a combination of cash withdrawals and withdrawals by check payable to Respondent for which Respondent did not attribute any client (contrary to her normal practice) in the memo line. These eleven withdrawals totaled \$9,950. **Ex. F and J; App. 342-347; 396; 80-90 (Tr. 43-53).**
- e) The total withdrawals from the trust account, which apparently were drawn from the SALFG funds, span from September 28, 2015 to July 12, 2016, and in total amounted to \$17,015. **Ex. J; App. 396.** While there were other deposits in the trust account, Kelly Dillon was able to account for the source(s) into and out of the trust account. **App. 80-90 (Tr. 43-53).**
- f) Of the seventeen withdrawals from the trust account listed in (c) and (d) above, one went to the Secretary of State for a filing fee, two went to SALFG [totaling \$1,500], eight were deposited to Respondent's personal/operating account (PNC acct ending 4358), and six were cash withdrawals, most of which were deposited into Respondent's personal operating account. **Ex. F and J; App. 342-347; 396; 80-90 (Tr. 43-53).**
- g) Respondent was unable to produce the records and documentation relating to the transactions related to her professional operating and trust accounts and to reconcile these accounts. **App. 88 (Tr. 51).**

h) Subsequent to Respondent attending the trust accounting course, in connection with her prior admonition, she continued to make withdrawals from the trust account for reasons unrelated to SALFG. Thereafter Ms. Dillon went to Respondent's office to review training. This occurred after the Bank of America checks were deposited and before Respondent was contacted by Ms. Campbell in April 2016. **App. 101 (Tr. 64).**

Kelly Dillon is a paralegal employed by the Informant for over 16 years. She handles trust account investigations for the Office of Chief Disciplinary Counsel, is a member and past president of the Organization of Bar Investigators and is a certified fraud examiner. She teaches trust accounting courses for the Missouri Bar on a regular basis. **Ex. E; App. 338-341; 75-77 (Tr. 38-40).**

Ms. Dillon in the course of this investigation prepared spreadsheets analyzing Respondent's trust account, operating account, and what should have been Respondent's client ledger for SALFG. Those spreadsheets accurately reflect the bank account records and financial transactions for those accounts from September 2015 through October 2016 for the operating account, and through January 2017 for the trust account. **Ex. F, G and J; App. 342-347; 348-375; 396.**

Respondent's six withdrawals from her trust account attributed to SALFG totaled \$7,065. Three of the checks, totaling \$1,565, were either paid to or attributable to SALFG. The remaining three checks, totaling \$5,500, were deposited into Respondent's operating account where they were subsequently disbursed for Respondent's personal expenses.

There should have been almost \$10,000 of SALFG funds remaining in her trust account from the \$16,943.20 deposit on September 18, 2015. **Ex. J; App. 396; 83 (Tr. 46).**

Respondent never had a client account ledger for SALFG showing receipts into and disbursements from her trust account. **App. 226 (Tr. 189).**

From at least December 23, 2015 through January 2017 the balance in Respondent's trust account continuously was below \$9,000, by the summer of 2016 it fell below \$1,000 on numerous occasions, and had a negative balance in September of 2016. **Ex. F; App. 342-347.**

Respondent's law practice was under significant financial pressure from the fall of 2015 through the end of 2016. On numerous occasions, her office operating account had a negative balance. **Ex. G; App. 348-378; 85-87 (Tr. 48-50).**

Respondent utilized funds belonging to SALFG to support her office practice by transferring SALFG funds from the trust account to her operating account and using those funds for her own purposes. **App. 87 (Tr. 50).** Respondent personally signed all the withdrawal slips for cash withdrawals from her trust account. **Ex. I; App. 379-395; 236 (Tr. 199).** Respondent's failure to timely transfer the SALFG funds into the Commerce Bank account caused Ms. Campbell to write an insufficient funds check on that account, and impeded the charity's ability to hold a golf tournament, which was the principal source of the funds for the charity's scholarship. **App. 56, 70, 185-188 (Tr. 19, 33, 148-151).**

Respondent was the only person responsible for the bookkeeping and the management of her trust account from September 2015 through the time of the DHP

hearing. Respondent's assistant is Pamela Miller, who had been with Respondent approximately two and one-half years at the time of the DHP hearing. Ms. Miller had no involvement in the trust account. **App. 163-164 (Tr. 126-127).** Prior to Ms. Miller, Respondent's previous assistant handled all financial matters for Respondent's law office. **App. 164 (Tr. 127).**

Respondent delivered a \$17,000 check to Ms. Campbell for SALFG on or about June 26, 2017. The check was drawn on a Charles Schwab account in the name of "Jacques Darvish, Carolyn D. Darvish". **Ex. N; App. 402-403.** In her cover letter Respondent said "I take full responsibility and have enclosed a check the amount of \$17,000 to fully and rightfully deliver the funds to Save-A-Life." **Ex. N; App. 402-403.**

Respondent called four character witnesses and submitted five written character references. **Ex. 1, 2 and 5; App. 406; 407-408; 413-417.** All mentioned Respondent's charitable work in the community, the hours she spent on charitable endeavors, and stated that they believed Respondent to be of sound moral character.. Mark Levitt, an attorney, stated that he had always found Respondent to be "honest," of the utmost high character," and "very conscientious," "a highly moral, religious person." **App. 117-118 (Tr. 80-81).** Attorney Shulamith Simon has also known Respondent for between 15 and 20 years, and stated that Respondent is regarded as a "good and competent and trustworthy attorney." **App. 126 (Tr. 89).** Character witness Alice Ray Chang has known Respondent for twenty-five years, and noted Respondent has a "passion for [community] volunteer work," **App. 132 (Tr. 95).** Ms. Chang considers Respondent a "special community volunteer who

makes sure she is able to follow through with whatever she takes on. **App. 134 (Tr. 97).** Thomas Ray, who has also known Respondent for twenty-five years, described Respondent as a “straight shooter” who is “diligent” in her work. **App. 146-147 (Tr. 109-10).**

None of the character witnesses had specific knowledge of the SALFG withdrawals and none of the five character letters made any reference to, or demonstration of, any knowledge of this case.

Respondent also testified about her service to the community and pro bono legal work. This included that Respondent helped plan annual galas for Court Appointed Special Advocates (“CASA”); she served on the Legal Committee for the Junior League of St. Louis; she solicited advertisers for Junior League of St. Louis publications; and she helped raise funds for the Leukemia and Lymphoma Society, among other activities. **App. 215-219 (Tr. 178-82).** Respondent was also active and a leader for several years in the Missouri Municipal Attorneys Association and its affiliate, the Missouri Municipal League, and a volunteer for the Bar Association of Metropolitan St. Louis (“BAMSL”) for its mock trial and Read Across America programs. **App. 220-221 (Tr. 183-84).**

DHP Decision

The Disciplinary Hearing Panel found that Respondent violated Rules 4-1.15, 4-8.4(c) and 4-1.4. **App. 463-479.** The Panel recommended that Respondent be disbarred.

POINTS RELIED ON

I.

RESPONDENT IS SUBJECT TO DISCIPLINE BY THE SUPREME COURT BECAUSE SHE ENGAGED IN PROFESSIONAL MISCONDUCT INVOLVING MISAPPROPRIATION, FAILING TO SAFEKEEP PROPERTY, AND A LACK OF CLIENT COMMUNICATION, IN HER HANDLING OF MONEY ENTRUSTED TO HER BY A CHARITABLE TRUST IN THAT SHE SPENT SOME OF THOSE FUNDS FOR HER PERSONAL USE.

Rule 4-1.15, Rules of Professional Conduct

Rule 4-8.4(c) Rules of Professional Conduct

Rule 4-1.4, Rules of Professional Conduct

POINTS RELIED ON

II.

DISBARMENT IS THE APPROPRIATE SANCTION IN THIS CASE WHERE RESPONDENT VIOLATED THE SAFEKEEPING PROPERTY RULES, MISAPPROPRIATED CLIENT FUNDS, AND FAILED TO ADEQUATELY COMMUNICATE WITH HER CLIENT. DISBARMENT IS APPROPRIATE BECAUSE:

- A. THIS COURT HAS RULED THAT ATTORNEYS WHO FAIL TO SAFEKEEP CLIENT PROPERTY AND WHO MISAPPROPRIATES CLIENT TRUST ACCOUNT MONEY SHOULD BE DISBARRED;
AND**
- B. THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS SUGGEST DISBARMENT AS THE APPROPRIATE SANCTION;
AND**
- C. EVEN IF RESPONDENT’S MISCONDUCT OTHERWISE WOULD WARRANT A SUSPENSION, PAST DISCIPLINARY HISTORY AND AGGRAVATING FACTORS WARRANT DISBARMENT.**

Rule 4-1.15, Rules of Professional Conduct

Rule 4-8.4(c), Rules of Professional Conduct

Rule 4-1.4, Rules of Professional Conduct

In re Farris, 472 S.W.3d 549 (Mo. banc 2015)

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

ABA Standards for Imposing Lawyer Sanctions, (1991 ed.)

ARGUMENT

I.

RESPONDENT IS SUBJECT TO DISCIPLINE BY THE SUPREME COURT BECAUSE SHE ENGAGED IN PROFESSIONAL MISCONDUCT INVOLVING MISAPPROPRIATION, FAILING TO SAFEKEEP PROPERTY, AND A LACK OF CLIENT COMMUNICATION, IN HER HANDLING OF MONEY ENTRUSTED TO HER BY A CHARITABLE TRUST IN THAT SHE SPENT SOME OF THOSE FUNDS FOR HER PERSONAL USE.

Respondent received checks totaling \$16,943.20 from Bank of America. This was not her money; it belonged to a charitable trust. She initially appropriately placed the money in her trust account. That was about the last ethical thing she did with her client's money.

Although Respondent opened an account at Commerce bank for the charity, she only deposited \$500.00 from her trust account to that account. She should have deposited the full \$16, 943.20.

Over the next seven months, Respondent depleted the remaining funds belonging to SALFG in her trust account. She made deposits from the trust account to her operating account to fund her office. She made cash withdrawals from her trust account. She sent no bills or work itemizations to Donna Campbell, the administrator of the trust. She did not communicate with Ms. Campbell about the money. Respondent's trust account had a

negative balance in 2016. Despite being cautioned and advised by Kelly Dillon, Respondent failed to maintain adequate records and ledgers and commingled personal funds in the trust account.

Respondent testified she did not intentionally divert any SALFG funds for her own purposes. That testimony is not credible. Respondent knew or reasonably should have known that funds were being disbursed from her client trust account and deposited in her operating account for her own personal use. She wrote the checks. She withdrew the cash. She was the bookkeeper for her own office and it was her responsibility to safeguard client property.

Respondent did finally acknowledge her wrongful conduct and made restitution of \$17,000 on June 26, 2017. This was almost two years after Respondent first had received the SALFG money in September 2015, almost one year after learning of the ethical complaint against her, four months after the filing of an Information against her, only one month before her hearing date, and long after the money had disappeared from her trust account.

Respondent's acts violated Rules 4-1.15 on safekeeping property, 4-8.4(c) by engaging in conduct involving dishonesty, fraud, deceit and misrepresentation, and 4-1.4 by failing to communicate with Donna Campbell as administrator of the SALFG charitable trust.

II.

DISBARMENT IS THE APPROPRIATE SANCTION IN THIS CASE WHERE RESPONDENT VIOLATED THE SAFEKEEPING PROPERTY RULES, MISAPPROPRIATED CLIENT FUNDS, AND FAILED TO ADEQUATELY COMMUNICATE WITH HER CLIENT. DISBARMENT IS APPROPRIATE BECAUSE:

- A. THIS COURT HAS RULED THAT ATTORNEYS WHO FAIL TO SAFEKEEP CLIENT PROPERTY AND WHO MISAPPROPRIATES CLIENT TRUST ACCOUNT MONEY SHOULD BE DISBARRED;
AND**
- B. THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS SUGGEST DISBARMENT AS THE APPROPRIATE SANCTION;
AND**
- C. EVEN IF RESPONDENT’S MISCONDUCT OTHERWISE WOULD WARRANT A SUSPENSION, PAST DISCIPLINARY HISTORY AND AGGRAVATING FACTORS WARRANT DISBARMENT.**

Respondent has violated multiple rules of professional conduct. She has taken and used money belonging to a charitable entity whose purpose was to provide college scholarship money for underprivileged youth. Failing to safekeep client property (Rule 4-1.15), and engaging in conduct involving fraud, deceit or misrepresentation (Rule

4-8.4(c)) are the most serious rule violations. Respondent's conduct warrants disbarment for the reasons set forth below.

A.

Misappropriation of client property always is a disbarable offense. *In re Shaeffer*, 824 S.W.2d 1, 5 (Mo. banc 1992); *In the matter of Williams*, 711 S.W.2d 518, 521 (Mo. banc 1986). In *Williams* the Respondent was disbarred over an insufficient funds check of \$4,513.36.

More recent cases demonstrate the Court's continued belief in a strong sanction for client misappropriation. In the case of *In re Belz*, 258 S.W.3d 38, (Mo. banc 2008), the Court stated "Disbarment is most often appropriate in misappropriation cases." *Id.* at 42. In *Belz*, the Court imposed a less severe sanction of an indefinite suspension with leave to apply for reinstatement after three years rather than a disbarment. The Court did so after an extensive analysis of applicable mitigating factors. The Court found significant that Respondent Belz had introduced evidence of a significant mental disorder (bipolar disorder), had made restitution of all misappropriated money to affected clients before self-reporting his misconduct to disciplinary authorities, and had no prior disciplinary history in over 25 years of distinguished practice. None of those mitigating factors are present in this case. Respondent Darvish raised no issue of mental health disorder as required by Rule 5.285 to be considered for mitigation, did not pay client SALFG the money owed to it until one month before the hearing date in this case, and has a prior recent disciplinary history of trust account violations.

The Supreme Court's two most recent relevant opinions have further clarified the Court's position. See *In re McMillin*, 521 S.W.3d 604 (Mo. banc 2017) and *In re Farris*, 472 SW.3d 549 (Mo. banc 2015). As stated in *Farris*:

“When an attorney deposits the client's funds into an account used by the attorney for his own purposes, any disbursement from the account for purposes other than those of the client's interests has all the characteristics of misappropriation, particularly when the disbursement reduces the balance of the account to an amount less than the amount of funds being held by the attorney for the client.” *In re Farris*, 472 S.W.3d, 557-58.

As in *Farris*, Respondent utilized client funds for her own purposes; she cannot claim ignorance or mistake as an excuse. In *Williams*, and in *Farris*, the attorneys unsuccessfully claimed it was through the fault of another that trust account mistakes were made. In this case, no one else had any access, control or management authority over Respondent's trust account. In any event, that makes no difference. The duty to safeguard and properly distribute trust account funds is non-delegable. *In re Farris at 760*.

Likewise, Respondent cannot avoid responsibility by claiming that she failed to keep accurate records. Rule 4-1.15(d) requires each attorney to keep detailed records showing, among other things, the source of every deposit to – and the purpose of every disbursement from – that attorney's trust account. *In re Farris at 760*. An attorney must be held accountable and is inferred to have knowledge of trust account records. An attorney cannot claim ignorance of client funds as a defense. *In re Farris at 561*.

Once it has been determined that misappropriation has occurred, the Court in both *Farris* and *McMillin* have noted that disbarment is the baseline sanction. *In re McMillin* at 610; *In re Farris*, 472 S.W.3d at 562. This makes sense because the most important ethical duties an attorney has are those that are owed to clients. *In re Ehler*, 319 S.W.3d, 442, 451 (Mo. banc 2010).

B.

In making discipline and sanction analysis, the Supreme Court often looks to the *ABA Standards for Imposing Lawyer Sanctions*, (1991 ed.) for guidance. In this case the most significant sanction standard is for violation of Rule 4-1.15 on safekeeping client property. The sanction standard for that Rule violation is Standard 4.1, entitled “Failure to Preserve the Client’s Property.”

ABA Standard 4.11 states:

Disbarment is generally appropriate when the lawyer knowingly converts client property and causes injury or potential injury to a client.

ABA Standard 4.12 states:

Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

The applicable Standard in this instance is 4.11 on disbarment. It defies belief that Respondent did not knowingly act when she made seventeen withdrawals from her trust account over a nine-month period and the funds for her trust account dropped precipitously.

Respondent cannot claim either “ignorance of the law”, ignorance of her trust accounting duties or general incompetence to avoid disbarment.

C.

Once a baseline sanction has been established (in this case disbarment) the Supreme Court has stated it is appropriate to consider both mitigating and aggravating factors. *In re McMillin* at 611. Mitigating and aggravating factors are set forth in the *ABA Standards* at sanction standards 9.22 (aggravation) and 9.32 (mitigation). After reviewing those factors there is no reason to deviate from the baseline sanction of disbarment. Aggravating factors present in this case include a prior disciplinary history, a dishonest or selfish motive (in utilizing SALFG money for her own benefit), a pattern of misconduct over many months, the vulnerability of a victim (a not-for-profit entity), Respondent’s substantial experience in the practice of law since being licensed in 1994, and indifference in making restitution. While restitution was eventually made, it was not until one-month before the hearing date of this case and almost a year after Respondent first was notified in August 2016 of the complaint against her.

Suggested mitigating factors include a cooperative attitude toward the proceedings, full disclosure to the disciplinary board, and a good character reputation. While there has been recent cooperation, Respondent’s failure to pay timely restitution should be considered non-cooperative in the past. The character or reputation evidence offered did not reflect any witness knowledge of the particular facts of this case, and Respondent’s admirable charitable endeavors do not explain her failure to properly handle her trust

account. The mitigating factors do not warrant a change in the base discipline, particularly considering the many aggravating factors that offset them.

Missouri case law suggests that Respondent should be disbarred. The *ABA Standards* also suggests that Respondent be disbarred, particularly when considering the pattern of conduct and aggravating factors.

CONCLUSION

Respondent engaged in professional misconduct involving failure to safekeep property, misappropriation, deceit, misrepresentation and failure to communicate in her handling of money from a charitable trust that had been entrusted to her. Each violation occurred on multiple occasions over a significant period of time. The totality of the conduct, combined with a prior disciplinary history and applicable aggravating factors, warrants disbarment.

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of February, 2018, a true and correct copy of the Informant's foregoing Brief was served on Counsel for Respondent via the Missouri Supreme Court electronic filing system pursuant to Rule 103.08:

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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 32,514 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



Carl Schaeperkoetter