

IN THE SUPREME COURT OF THE
STATE OF MISSOURI

In re

CORINNE N. DARVISH,
Attorney-Respondent.

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Supreme Court Case SC96905

BRIEF OF RESPONDENT

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JURISDICTIONAL STATEMENT

Ms. Darvish does not contest this Court’s jurisdiction. This is a lawyer discipline case. Therefore, as stated in Informant’s Brief, this Court has jurisdiction over this case pursuant to Article V, Section 5 of the Missouri Constitution; Supreme Court Rule 5; Missouri common law; and Missouri Revised Statute § 484.040. In addition, this Court has jurisdiction under its inherent authority to regulate the Missouri Bar.

CASE SUMMARY

Corinne Darvish is a solo practitioner whose practice focuses on helping small businesses, not-for-profits, and individuals with real estate and landlord tenant matters. Ms. Darvish has worked as a solo practitioner at her firm – Corinne N. Darvish, Attorney at Law – in St. Louis since 2002.

Ms. Darvish finds herself before this Court due to a single charge of mishandling a payment due to her client. Ms. Darvish has admitted and readily admits mishandling the payment. Ms. Darvish has also tendered repayment for more than the amount due to the client, and the client has accepted reimbursement of the mishandled funds. Nevertheless, a hearing panel has recommended Ms. Darvish be disbarred.

In this Brief, Ms. Darvish demonstrates why, based upon the (largely uncontested) errors at issue and Ms. Darvish’s compelling evidence in mitigation, this Court should impose no more than a stayed, two-year suspension and probation. Ms. Darvish believes such consequences are appropriate due to the nature of the violation and Ms. Darvish’s strong evidence in mitigation including moral character, extensive *pro bono* assistance, passion for community volunteer work, absence of a dishonest or selfish motive, and medical conditions including PTSD and clinical depression.

STATEMENT OF FACTS

Consistent with Missouri Supreme Court Rule 84.04(c) and (f), Ms. Darvish offers the following Statement of Facts.

Background. Ms. Darvish was born in 1969. (App. 2) She obtained her undergraduate degree from the University of Missouri-Columbia and graduated from the Washington University School of Law in 1994. (App. 153) She was admitted to the Missouri Bar in September 1994. (App. 2)

Law Firm Practice. Ms. Darvish began her law career working at the firm of Schwartz, Herman & Davidson before moving to Brinker, Doyen & Kovacs. (App. 154-55) Later Ms. Darvish joined Uthoff, Graeber, Bobinette & O’Keefe, where she primarily worked with municipal law attorney Kevin O’Keefe. Ms. Darvish then left the Uthoff firm with Mr. O’Keefe to join Curtis, Oetting, Heinz, Garrett & Soule P.C., now known as Curtis, , Heinz, Garrett & O’Keefe, P.C. (App.159-60) Upon leaving Curtis Oetting, Ms. Darvish joined Armstrong Teasdale LLP for a short period before becoming a solo practitioner since 2002. (App. 160)

Community Involvement. Ms. Darvish has a passion for community volunteer work, including testimony regarding her volunteer service for Court Appointed Special Advocates (CASA) and the Junior League of St. Louis. Ms. Darvish has helped CASA for more than fifteen years as a volunteer, planning CASA annual galas and trivia nights, assisting with fundraising, and training the special advocates to assist abused and neglected children in the foster system who are seeking safe and healthy home environments. (App. 215-16)

Ms. Darvish has also volunteered for many years with the Junior League, a women's group that is dedicated to volunteering and helping train community volunteers. (App. 217) She has served on the Legal Committee and thus effectively as in-house counsel for the Junior League, reviewing contracts, helping them with corporate matters, and otherwise helping serve essentially as *pro bono* corporate counsel. (App. 216-17) Ms. Darvish has also helped prepare the Junior League's publication, gala, and other fundraising.

In addition to her considerable work for CASA and the Junior League, Ms. Darvish has been an active volunteer for other community organizations. She has helped raise funds for the Ed Heitz Special Fund for the Leukemia and Lymphoma Society, including chairing its black-tie gala for several years. (App. 218-19) Ms. Darvish has also done a considerable amount of fundraising for Beth Hamedrosh Hagodol Synagogue, helping raise funds, pay for repairs, and prepare meals, including dinners for two hundred attendees. (App. 224)

Ms. Darvish has also been active in the Missouri Municipal League and Missouri Municipal Attorney's Association, including serving as treasurer, vice-president and president of the Missouri Municipal Attorney's Association. (App. 219) She has organized and presented Continuing Legal Education (CLE) programs for the Missouri Municipal League and Missouri Municipal Attorney's Association, and also for National Business Institute. Ms. Darvish has been an active community volunteer through the Bar Association of Metropolitan St. Louis, including more than twenty years serving as a judge and evaluator for its (mainly high school) mock trial programs and its Read Across America program. (App. 220-21) Ms. Darvish has even been teaching a three-week mock trial class

to eighth graders at Wydown Middle School. (App. 222) A thank you note from Ms. Darvish's students is included in the record. (*See* App. 223, 418-20)

Testimony regarding good character. Building upon Ms. Darvish's *pro bono* and community work, Ms. Darvish received support including in-person testimony from several well-respected witnesses. Shulamith Simon testified having a personal friendship and professional relationship with Ms. Darvish for more than fifteen years. (App. 126) Ms. Simon described Ms. Darvish as "a lawyer who tries to do her best for her clients, who has the interests of her clients as her primary focus, and . . . is competent and trustworthy." (App. 126) "[S]he does have the best interests of her client at heart." (App. 127)

Attorney Mark Levitt also testified that he had shared office space with Ms. Darvish for more than a decade, and "always found [Ms. Darvish] to be honest, forthcoming, going . . . out of her way to try to help clients." (App. 117) Mr. Levitt added that Ms. Darvish "[a]lways found [Ms. Darvish] to be of the utmost high character, very conscientious, staying on top of the law, making sure that she does the adequate research and whatever is necessary to perform her duties and services to clients"

In addition to these attorney character witnesses, community volunteer and non-profit consultant Alice Ray Chang testified about working with Ms. Darvish and getting Ms. Darvish involved in CASA, where Ms. Chang had served as executive director. (App. 131-32) Ms. Chang testified that Ms. Darvish has a real passion for volunteer work, including her work with CASA and the Junior League, and that despite having an "expansive list" of community service tasks was someone who "followed through on everything." (App. 133-34; *see also* Letter from Alice Ray Chang, App. 406)

Thomas Ray, Ms. Chang's husband and a commercial real estate broker, also testified about working with Ms. Darvish when they were both involved in student government at the University of Missouri as undergraduates. Mr. Ray testified that Ms. Darvish was always a dependable and diligent "straight-shooter," someone who followed the rules. (App. 145-57; *see also* Letter from Thomas Ray, App. 407-08)

In response to cross-examination by Informant, all character witnesses indicated the conduct at issue in the Information was an aberration, and did not change their opinion regarding Ms. Darvish. A reference letter from multiple members of the Dye family, for example, call upon those judging Ms. Darvish's character to consider it from the family's fifty-year perspective, and not to unduly focus on the one lapse at issue in this case. (App. 415) Likewise, Dr. Jonathan Singer, JD, Ph.D., describes Ms. Darvish as an "intelligent, compassionate, and generous person who is more active in charitable work and her religious community than anyone else who [he] know[s]," and a "very capable attorney whose legal skills and integrity [he] trust[s] implicitly." (App. 417)

Handling of funds for SALFG. In 2010, and later in 2013, Ms. Darvish was hired to represent a not-for-profit corporation in Missouri entitled "Save A Life for Geno Foundation" (hereinafter "SALFG"), a foundation to commemorate drowning victim Gene "Geno" Campbell and help underprivileged students pay for college. (Ex. 3 and 4; App. 49-50; 409-10; 411-12)

During the initial years, Ms. Darvish's primary contact with SALFG was Leon Campbell (an entertainer also known as Gene Lynn), Geno's father. (App. 50)

In 2015, after Leon Campbell had died, his ex-wife Donna Campbell became Ms. Darvish's new contact person for SALFG. Ms. Campbell hired Ms. Darvish to transfer funds from an SALFG Bank of America to an account where Ms. Campbell would have better access. (App. 50-51) In 2015, two bank checks constituting \$16,943 in SALFGs' funds were delivered to Ms. Darvish, who was to receive the funds from Bank of America and deposit them into a Commerce Bank account that Ms. Darvish had helped Ms. Campbell open for that purpose. (App. 68-69)

Instead, Ms. Darvish apparently inadvertently deposited the checks into her trust account at PNC bank, causing Ms. Campbell to be unable to access the funds when she sought to do so in March 2016. (App. 187-88)

When Ms. Campbell attempted to access the funds in March 2016 for expenditures relating to an SALFG golf tournament, Ms. Darvish went looking but was initially unable to locate SALFG's funds.¹ Ms. Campbell filed her complaint, and Ms. Darvish cooperated

¹ In late 2015, Ms. Darvish was working with paralegal Kelly Dillon of the OCDC regarding another trust account matter triggered after a client's check was returned for insufficient funds, an issue that Ms. Darvish immediately reported to the OCDC. Ms. Darvish incorrectly presumed the SALFG funds could not be in her IOLTA account, because they were not identified during this investigation, which included the records of the deposits of SALFG funds. Also, due in large part because an assistant had resigned and Ms. Darvish was struggling to manage her own health issues, Ms. Darvish was not regularly reconciling her trust account. (App. 195)

with the investigation by perusing numerous bank accounts in her office, but did not initially recognize the SALFG funds had been deposited into her IOLTA account. (App. 451-52) When the funds were later found in Ms. Darvish's IOLTA account, Ms. Darvish informed the Office of Chief Disciplinary Counsel (OCDC) of this information and provided documentation. (App. 452) Any shortcomings in Ms. Darvish's investigation or untimely responses to OCDC inquiries could be attributed to her overall mental health during this stressful time period. (App. 90)

Ms. Darvish had identified and notified the OCDC that the SALFG funds had been deposited to Ms. Darvish's client trust account on September 18, 2015; that, after this deposit, there were six withdrawals of funds attributed to SALFG funds from the trust account; and that there were eleven additional withdrawals of SALFG funds from the trust account which were not attributable to any client. These withdrawals, from 2015 to July 12, 2016, totaled \$17,015. (App. 30) Informant's investigation confirmed the SALFG-related transactions.

Hearing Panel Recommends Disbarment. On August 2, 2017, a Hearing Panel heard the Informant's case against Ms. Darvish. (App. 38) This Hearing Panel issued its decision, recommending disbarment, on November 14, 2017. (App. 479) Ms. Darvish then filed her rejection of the Hearing Panel's recommendation on December 12, 2017. (App. 481)

POINT RELIED UPON

1. MS. DARVISH'S CONDUCT AND EVIDENCE OF MITIGATION SUPPORT IMPOSITION OF A STAYED SUSPENSION, NOT DISBARRMENT.

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

In re Madison, 282 S.W.3d 850, 860 (Mo. 2009)

ARGUMENT

Preliminary Statement. Ms. Darvish has largely stipulated to the conduct at issue in this case. Ms. Darvish admits that she made mistakes with the handling of client property and has taken steps to learn from this incident to ensure it does not happen again. Therefore, the only real question before this Court is what sanction it should impose upon Ms. Darvish. As set forth below, prior precedent and the mitigating factors in this case support imposition of a stayed suspension.

Standard of Review. In matters of professional misconduct, this Court reviews the record of the disciplinary hearing and the evidence *de novo*. *In re Wiles*, 107 S.W.3d 228, 228 (Mo. 2003). This Court then “decides the facts *de novo*, independently determining all issues pertaining to credibility of witnesses and the weight of the evidence, and draws its own conclusions of law.” *In re Eisenstein*, 485 S.W.3d 759, 762 (Mo. 2016). “Professional misconduct must be proven by a preponderance of the evidence before discipline will be imposed.” *Eisenstein*, 485 S.W.3d at 762. A Hearing Panel’s “findings of fact, conclusions of law, and recommendation are advisory, and this Court may reject any or all of [the Hearing Panel’s] recommendation.” *Id.*

Standard for Imposition of Discipline. The twin aims of the Missouri lawyer discipline system are “to protect the public and maintain the integrity of the legal profession,” not to punish the lawyer. *In re Coleman*, 295 S.W.3d 857, 869 (Mo. 2009). In assessing the proper sanction, this Court has recognized that ABA Standards for Imposing Lawyer Sanctions (the “ABA Standards”) provide useful guidance for appropriate discipline. *In re Madison*, 282 S.W.3d 850, 860 (Mo. 2009). Consideration is given to the

nature of the conduct at issue, as well as any evidence in aggravation or mitigation. ABA Standard 9.1.

POINT RELIED #1: Ms. Darvish's Conduct and Evidence in Mitigation Support

Imposition of a Stayed Suspension, Not Disbarment.

A stayed suspension is an appropriate sanction for two reasons. First, a stayed suspension is appropriate based upon Ms. Darvish's conduct. Specifically, Ms. Darvish's conduct is consistent with prior situations where this Court has previously imposed suspensions. Second, even if Ms. Darvish's conduct did merit a more severe penalty than suspension – which it does not – Ms. Darvish's extraordinary mitigating evidence should cause this Court to impose a stayed suspension and not a more serious penalty.

Circumstances giving rise to sanction. In discussing the appropriate sanction, this Court should be attentive to the evidence presented to the Hearing Panel of the following:

- (a) The charge in this case arises from a single mishandling of client funds. Ms. Darvish is charged only with mishandling the SALFG checks on a single occasion, in approximately September 2015. (App. 186)
- (b) Ms. Darvish's deposit of the SALFG funds into a law firm account, instead of into an SALFG account, was inadvertent. (App. 187-88) Ms. Darvish did not knowingly misuse or misappropriate client funds;
- (c) Ms. Darvish has readily admitted that she did mishandle client property when she deposited the SALFG checks into her firm's IOLTA account, not into the SALFG account that Ms. Darvish had opened at Commerce Bank;

- (d) Ms. Darvish has fully repaid SALFG the amount due, plus additional funds (App. 451); and
- (e) Ms. Darvish was generally cooperative and forthcoming with the Office of Chief Disciplinary Counsel (OCDC) investigation. (App. 478)

Ms. Darvish's conduct reflects that Ms. Darvish accidentally placed the SALFG funds in an account other than the SALFG account at Commerce Bank. After all, Ms. Darvish provided Ms. Campbell with a checkbook for the SALFG Commerce Bank account, telling Ms. Campbell she could write checks on that account. (App. 66-67; 185) Also, despite directing Ms. Campbell to write checks upon account – and thus knowing that Ms. Campbell would be drawing upon funds that should have been in the account – Ms. Darvish made no effort to place funds into the SALF account until March 2016, when Ms. Campbell reported to Ms. Darvish that the checks Ms. Campbell had written on the account had bounced. (App. 187-88)

Thus, the conduct actually at issue in this case is an inadvertently mishandling of client funds, coupled with Ms. Darvish's failure to properly reconcile her trust account, and thus to detect the excess SALFG funds that were in her account, and that Ms. Darvish drew down, not realizing they were client funds. (App. 192)

Precedent supports a stayed suspension. Conduct such as Ms. Darvish's supports imposition of a formal sanction, but a stayed suspension is consistent with prior precedent and adequate to protect the public and integrity of the legal profession. There is extensive precedence from this Court that suggests mishandling client funds often results in a sanction where the lawyer is permitted to continue practicing, despite probation and a

stayed suspension. In *In re Coleman*, 295 S.W.3d 857 (Mo. 2009), for example, this Court imposed a stayed suspension despite conduct that includes misappropriation of client funds – specifically paying personal obligations out of settlement proceeds, and the lawyer had previously been admonished twice and reprimanded once. The lawyer in *Coleman* had engaged in misconduct including:

- (a) Having a client execute a retainer agreement that gave the lawyer the exclusive right to settle a client’s case, thereby violating Rules 4-1.2 and 4-1.7;
- (b) Failing to notify the client at the time the lawyer withdrew from the client’s case, a Rule 4-1.16 violation; and
- (c) Regularly paying personal obligations out of the lawyer’s portion of settlement proceeds, which were still in the lawyer’s trust account, commingled with client funds.

In light of these facts, *Coleman* supports a similar punishment for Ms. Darvish, a stayed suspension with probation.

In addition to *Coleman*, over the past three years there have been numerous cases where a lawyer was found to have violated Rule 4-1.15 – and often other provisions in the Missouri Rules of Professional Conduct – but was allowed to practice, generally with a stayed suspension and probation. *See, e.g., In re Gerecke*, Case No. SC96571 (Mo. November 21, 2017) (violation of Rules 4-1.15 and 4-8.4(c); *In re Dorsey*, Case No. SC96287 (Mo. October 5, 2017) (reciprocal suspension for violation of Rules 4-1.15(a), (d) and (f); *In re Crawford*, Case No. SC96010 (Mo. September 12, 2017) (violation of

Rule 4-1.15(a), (b) and (f)); *In re Yonke*, Case No. SC96563 (Mo. August 15, 2017) (violation of Rule 4-1.15); *In re Pottenger*, Case No. SC96561 (Mo. August 15, 2017) (violation of Rule 4-1.15); *In re Sheth*, Case No. SC95382 (Mo. March 15, 2016) (violation of Rule 4-1.15 and 4-8.4); *In re Lander*, Case No. SC95263 (Mo. January 26, 2016) (violation of Rules 4-1.15 and 4-8.1); *In re Harsley*, Case No. SC94909 (Mo. September 22, 2015) (violation of Rules 4-1.3 and 4-1.15); *In re Laverentz*, Case No. SC95028 (Mo. June 18, 2015) (violation of Rules 4-1.15 and 4-5.3); *In re McNabb*, Case No. SC94671 (Mo. February 3, 2015) (violation of Rules 4-1.3, 4-1.4, 4-1.15 and 4-8.1); *In re Mandelbaum*, Case No. SC93964 (Mo. October 28, 2014) (violation of Rules 4-1.8(e) and 4-1.15); *In re DeVoto*, Case No. SC94017 (Mo. September 30, 2014) (violation of Rules 4-1.3, 4-1.5, 4-1.15, 4-8.1 and 4-8.4).

These many cases all support imposing only a stayed suspension and probation on Ms. Darvish. Uncontroverted facts show that Ms. Darvish mistakenly used funds belonging to SALFG for her own personal use. Ms. Darvish has testified that she does not remember not depositing all of the SALFG funds into the appropriate account. Ms. Darvish *should* have known that she was dealing with client property improperly, but due to her health-related issues,² which spilled over and affected her practice of law, she did not realize her

² Ms. Darvish did not provide notice pursuant to Rule 5.285 for using her mental health as a mitigating factor. But Ms. Darvish's mental health issues were well-known to the Informant prior to this proceeding, including that Ms. Darvish had discussed her post-traumatic stress disorder with Informant's paralegal Ms. Dillon. Also, Ms. Darvish sees

error until it was too late. Ms. Darvish's testimony and interactions with OCDC supports this.

Mitigating Factors Support Imposing a Stayed Suspension. Imposition of a stayed suspension is further supported by the considerable evidence that Ms. Darvish has offered supporting mitigation. Ms. Darvish has been a passionate volunteer in her community, including the legal community. This includes providing training for special advocates under CASA and students through Wydown Middle School's mock trial program; heading fundraising efforts for Court Appointed Special Advocates (CASA), Beth Hamedrosh Hagodol Synagogue, the Junior League, and Ed Heitz Special Fund for the Leukemia and Lymphoma Society; and working many hours for community efforts ranging from BAMSL's Read Across America program to serving effectively as a *pro bono* in-house counsel for the Junior League. Such efforts have helped provide for the most vulnerable members of society, and improved our community and profession.

In addition, Ms. Darvish has provided evidence and testimony that she has a solid reputation and is someone who pours her heart and best efforts into representation of clients. *See also Eisenstein*, 485 S.W.3d at 766 (noting "evidence of good character is much more appropriate in regard to assessment of sanctions for discipline where [as here] the attorney has admitted to the misdeeds and shows remorse"). This despite the fact Ms.

information about her health conditions as going to whether the misconduct at issue was committed with requisite *scienter*, not necessarily as evidence for mitigation.

Darvish has been dealing for many years with significant health problems, including PTSD and depression. (*See note 2 supra.*)

Ms. Darvish has also made more than full restitution to SALFG. She has been candid, forthcoming, remorseful, and otherwise cooperative throughout the disciplinary process. The Informant agrees that Ms. Darvish's cooperative attitude toward the proceedings, full disclosure to the disciplinary board, and character reputation are all mitigating factors that should be considered. (App. 444)

Finally, Ms. Darvish has gained additional education and now better understands trust account operations; and Ms. Darvish has modified her practices in handling client and third-party funds. Ms. Darvish will not repeat the mistakes made here in her future practice.

Thus, to the extent this Court is considering imposing more serious discipline than a stayed suspension as discussed above, the discipline Ms. Darvish will face should be reduced or mitigated under ABA Standard for Imposing Sanctions on Lawyers 9.32 to a stayed suspension with probation.

Conclusion. Ms. Darvish asks that the Court issue an order suspending her license for a period of two years but staying that suspension and placing Ms. Darvish on probation for a two-year period on such terms as the Court deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was sent via email on this
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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief includes the information required by Rule 55.03. It was drafted using Microsoft Word. The font is Times New Roman, proportional 13-point font, which includes serifs. The brief complies with Rule 84.06(b) in that it contains 4,007 words.

/s/ Michael P. Downey _____