IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
BRANDON WILLIAMS	)	**Supreme Court No. SC96752**
462 North Taylor, Suite 105	)	
Saint Louis, Missouri 63108	)	
	)	
MISSOURI BAR NO. 55307	)	
	)	
Respondent.	)	

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

Disciplinary History

Respondent is Brandon Williams, licensed on September 17, 2003, with MO Bar No. 55307. **App. 186.**[1] Respondent has been the subject of prior discipline having (a) been suspended in 2009 and 2013 pursuant to Rule 5.245 for failing to file his state tax returns, and (b) received an admonition in 2012 for violating Rule 4-1.3 for failing to act with reasonable diligence and promptness and Rule 4-1.4 for failure to adequately communicate with his client. **App. 186.**

The Kozhukharenko Complaint (Count I)

Respondent was retained to represent Karina Kozhukharenko in connection with her claim following an automobile accident. **App. 128 (Tr. 29); App. 186**. Respondent settled the matter with the insurer for $3,750. **App. 132 (Tr. 33)**. Ms. Kozhukharenko did not sign the release or receive the settlement funds. **App. 186**. However, the settlement and

[1] The facts contained herein are drawn from the Joint Stipulation of Facts agreed to by Informant and Respondent and admitted into evidence at the disciplinary hearing held on this matter held on August 15, 2017, along with facts drawn from the testimony elicited during, and the exhibits admitted into evidence at, the DHP Hearing. 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 pleadings and trial exhibits are denoted by the appropriate Appendix page reference.

release agreement and the settlement check were executed by Respondent's paralegal, Brittney Anderson ("Anderson"), without the authorization of Respondent or Ms. Kozhukharenko. **App. 165 (Tr. 66)**. Thereafter, the funds were deposited into the Respondent's operating account by Ms. Anderson without the authorization of Respondent or Ms. Kozhukharenko [2]. **App. 113 (Tr. 14)**. Respondent entrusted communication of the settlement and delivery of the settlement proceeds to Ms. Kozhukharenko to Anderson. **App. 153 (Tr. 54)**; **App. 186**. Respondent was unaware the settlement proceeds were not paid to Ms. Kozhukharenko until he was contacted by her new counsel. **App. 162 (Tr. 63)**. As a consequence, the settlement funds were not turned over to Ms. Kozhukharenko until 2015, which was more than eighteen months after they were deposited into Respondent's operating account. **App. 60**; **App. 186**[3].

The Turner Complaint (Count II)

Respondent was retained to represent Makayla Turner ("M. Turner") and Persaphanie Turner, M. Turner's mother ("P. Turner)," together with M. Turner, the "Turners") in connection with a 2013 automobile accident involving M. Turner while she

[2] Respondent's sworn statement was taken by Informant on November 9, 2016, wherein he stated the Turner settlement funds were deposited into his trust account. **App. 59**. The stipulated facts likewise noted that the settlement check was deposited into Respondent's trust account. **App. 186-187**. However, at the DHP Hearing, Respondent stated that the deposit was into his operating account.

[3] *Id.*

was a minor. **App. 60**; **App. 187**. Respondent settled the matter with the insurer for $7,500, but M. Turner, no longer a minor at the time of settlement, did not sign the release, endorse the settlement check or receive the settlement funds. **App. 165 (Tr. 66)**; **App. 187**. The settlement and release agreement was signed by P. Turner, M. Turner's mother. **App. 62**; **App. 187**. The settlement check was not endorsed by the Turners, but by Ms. Anderson without the authorization of Respondent or the Turners. **App. 165 (Tr. 66)**; **App. 187**. However, the settlement check was executed, and the funds were deposited into the Respondent's operating account by Ms. Anderson without the authorization of Respondent or the Turners. **App. 113 (Tr. 14)**[4].

Respondent entrusted communication of the settlement and delivery of the settlement proceeds to his paralegal, Anderson in 2013. **App. 153 (Tr. 54)**. Respondent was unaware the settlement proceeds were not paid to the Turners until he received a phone call from P. Turner in 2015. **App. 162 (Tr. 63)**. Upon receiving the call, Respondent "immediately tried to rectify it." **App. 122 (Tr. 23)**. The settlement funds were not delivered to the Turners until July 2015, which was twenty-two months after the funds were received by Respondent's office. **App. 187**.

Disciplinary Proceeding

This attorney disciplinary matter is before this Court following an evidentiary hearing conducted by the Disciplinary Hearing Panel (the "Panel") on August 15, 2017, (the "DHP Hearing"). **App. 98-215**. On September 12, 2017, the Panel issued the

[4] *Id.*

Disciplinary Hearing Panel Decision (the "DHP Decision"). **App. 216-234**. The Panel found that Respondent violated Rule 4-l.15(d)[5] by receiving client funds consisting of the Turner Matter and Kozhukharenko Matter settlement funds and failing to promptly notify the clients of such settlements or such receipts or to promptly deliver those client funds to the clients. **App. 226**. The Panel also found that Respondent violated (a) Rule 4-5.3(b), as stipulated by Respondent and the Office of Chief Disciplinary Counsel ("OCDC" or "Informant"), by failing to make reasonable efforts to ensure that the conduct of non-lawyers employed by Respondent was compatible with the professional obligations of Respondent, and (b) Rules 4-8.4(b), 4-8.4(c) and 4-8.4(d) as evidenced by the acts of Anderson, a non-lawyer employee of Respondent's law firm, for which Respondent is responsible under Rule 4-5.3(c)(2), in (i) forging of multiple clients' names on multiple settlement and release agreements and multiple settlement checks while those items were in the possession and control of Respondent, (ii) the failure to notify clients of settlements and the receipt of settlement amounts belonging to such clients, (iii) the failure to properly administer and abide by the terms and conditions of settlement agreements tendered by third-parties in prejudice to the administration of justice, (iv) the failure to deposit settlement proceeds belonging to clients into a client trust account, and (v) the failure to promptly pay to clients the settlement amounts belonging to such clients, and the failure to discover or to take any steps to rectify any of the foregoing for 18-22 months. **App. 226**.

[5] Respondent and Informant stipulated to the violation of Rule 4-1.15(d), but that fact was not noted in the DHP Decision. **App. 210**.

The Panel recommended that Respondent's law license be suspended for one year, but that such suspension be stayed during a one-year period of probation. **App. 227.** Both the Informant and the Respondent accepted the DHP Decision. **App. 235-236**. By order dated December 19, 2017, this Court ordered the record in this matter to be filed on or before January 18, 2018, and the matter briefed pursuant to Rule 84.24(h).

POINT RELIED ON

I.

RESPONDENT IS SUBJECT TO DISCIPLINE BECAUSE HE ENGAGED IN PROFESSIONAL MISCONDUCT IN VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT.

Rule 4-1.15(d)

Rule 4-5.3(b)

Rule 4-5.3(c)(2)

Rule 4-8.4(b)

Rule 4-8.4(c)

Rule 4-8.4(d)

II.

A STAYED SUSPENSION, WITH A PERIOD OF PROBATION IS THE APPROPRIATE SANCTION FOR RESPONDENT'S MISCONDUCT BECAUSE:

A. MISSOURI CASE LAW AND THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS SUPPORT SUCH A SANCTION;

B. THE PANEL ERRONEOUSLY DESIGNATED CERTAIN FACTS AS AGGRAVATING FACTORS;

C. THE PANEL ERRONEOUSLY FAILED TO FIND ANY MITIGATING FACTORS.

In re Wiles, 107 SW3d 228 (Mo. banc 2003)

In re Belz, 258 S.W.3d 38, 46 (Mo. banc 2008)

In re Coleman, 235 SW3d 870 (Mo. banc 2009)

In re Farris, 472 SW3d 549 (Mo. banc 2015)

Rule 4-5.3

Rule 5.225

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

ARGUMENT

I.

RESPONDENT IS SUBJECT TO DISCIPLINE BECAUSE HE ENGAGED IN PROFESSIONAL MISCONDUCT IN VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT.

The Panel found that Respondent engaged in professional misconduct, as follows:

(1) Respondent violated Rule 4-l.15(d) by receiving client funds consisting of the Turner Matter and Kozhukharenko Matter settlement amounts and failing to promptly notify the clients of such settlements or such receipts or to promptly deliver those client funds to the clients;

(2) Respondent violated Rule 4-5.3(b), as stipulated by Respondent and Informant, by failing to make reasonable efforts to ensure that the conduct of non-lawyers employed by Respondent was compatible with the professional obligations of Respondent;

(3) Respondent violated Rules 4-8.4(b), 4-8.4(c) and 4-8.4(d) as evidenced by the acts of a non-lawyer employee of Respondent's law firm, for which Respondent is responsible under Rule 4-5.3(c)(2), in (a) forging of clients' names on the settlement and release agreement and settlement check for the Turner Matter and the Kozhukharenko Matter, (b) the failure to notify Turner and Kozhukharenko of the settlements and the receipt of settlement amounts belonging to them, (c) the failure to properly administer and abide by the terms and conditions of the settlement agreements tendered by third parties in prejudice to the administration of justice, (d) the failure to deposit settlement proceeds

belonging to clients into a client trust account, and (e) the failure to promptly pay to clients the settlement amounts belonging to such clients, and the failure to discover or to take any steps to rectify any of the foregoing for 18-22 months[6].

App. 216-234.

[6] The Panel found that the remaining charges of misconduct contained in the Information (e.g. Rules 4-1.5, 4-8.4(b), 4-8.4(c), 4-8.4(d)) were subsumed in the violations specified in the DHP Decision. However, the purpose of the Panel's statement is unclear because it found violations of each of Rules 4-8.4(b), 4-8.4(c), and 4-8.4(d) and made no findings regarding a violation of Rule 4-1.5.

II.

A STAYED SUSPENSION, WITH A PERIOD OF PROBATION IS THE APPROPRIATE SANCTION FOR RESPONDENT'S MISCONDUCT BECAUSE:

A. MISSOURI CASE LAW AND ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS SUPPORT SUCH A SANCTION;

B. THE PANEL ERRONEOUSLY DESIGNATED CERTAIN FACTS AS AGGRAVATING FACTORS;

C. THE PANEL ERRONEOUSLY FAILED TO FIND ANY MITIGATING FACTORS.

Missouri Case Law and the ABA Standards Suggest a Stayed Suspension Plus Probation is the Appropriate Sanction

When determining the appropriate sanction for attorney misconduct, this Court relies on several sources, including its own decisions, disciplinary rules and the American Bar Association Standards for Imposing Lawyer Sanctions ("*ABA Standards*"). ***In re Forck***, 418 S.W.3d 437, 441 (Mo. banc 2014) (citing ***In re Stewart***, 342 S.W.3d 307, 310 (Mo. banc 2011)); *see also*, ***In re Coleman***, 295 S.W.3d 857 (Mo. banc 2009). In addition, this Court considers aggravating and mitigating factors relevant to the Respondent's actions. ***In re Wiles***, 107 S.W. 3d 228, 229 (Mo. banc 2003) (the Court considers the gravity of Respondent's misconduct, as well as any mitigating or aggravating factors).

Probation, as a part of a stayed suspension, is the appropriate sanction in this case. In ***In re Wiles***, this Court determined probation was the appropriate discipline. ***In re Wiles***, 107 S.W. 3d at 229. There, the attorney had been admonished at least eleven times over a three-year period for violations of the rules pertaining to diligence, communication, safeguarding client property, and conduct prejudicial to the administration of justice in Missouri. ***Id. at 229***. The attorney also had two prior admonitions and stipulated to misconduct that warranted a public censure in Kansas. ***Id. at 228***. In this case, Respondent has received one admonition and two tax suspensions in his fourteen years of practice.

Likewise, in ***In re Coleman***, this Court imposed a suspension, which was stayed, subject to the completion of a one-year term of probation. ***In re Coleman***, 295 S.W.3d at 870. There, the attorney had been admonished twice and publicly reprimanded 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. ***Id***.

Probation, under the terms recommended by the Panel, is the appropriate sanction for a lawyer like Respondent with a limited, albeit significant, disciplinary record spanning a fourteen-year period. An attorney is eligible for probation if the attorney: (1) is unlikely to harm the public during the probationary period and can be supervised adequately; (2) is able to perform legal services and practice law without causing the courts or profession to fall into disrepute; and (3) has not committed acts warranting disbarment. Rule 5.225(a)(2)(A-C). This Court may take into account the nature and circumstances of the

attorney's misconduct and his history, character, and health status when placing him on probation and fashioning the conditions the attorney must abide by while on probation. Rule 5.225(b)(1). ***In re Forck*** 418 S.W.3d at 443. The eligibility requirements of Rule 5.225(a) have been met in this case.

Respondent has not had any disciplinary history since the Kozhukharenko Matter and the Turner Matter, which arose out of conduct 4 and 5 years ago, respectively. In addition, Respondent has been cooperative and remorseful throughout the Informant's investigation and the Disciplinary Hearing Panel proceedings. Respondent's cooperation and remorse speak to the fact that Respondent is unlikely to do public harm or to bring disrepute on the courts or the profession during a probationary period. Further, Respondent's misconduct in connection with the Kozhukharenko Matter and Turner Matter do not warrant disbarment.

This Court has relied on the *ABA Standards* to determine the appropriate discipline to be imposed in attorney discipline cases. See, e.g., ***In re Crews***, 159 S.W.3d at 360-61; ***In re Coleman***, 298 S.W.3d at 869. Therefore, the suspension guidelines included within the *ABA Standards* are instructive.

ABA *Standard* 4.12 indicates that suspension is generally appropriate when a lawyer knows or should have known that he is dealing improperly with client property and causes injury or potential injury to a client. Rule 4.12, ABA *Standards*. In the Commentary to Rule 4.12 it is noted, "[s]uspension should be reserved for lawyers who engage in misconduct that does not amount to misappropriation or conversion. The most common cases involve lawyers who commingle client funds with their own, or fail to remit client

funds promptly." Even though there is no indication that Respondent intentionally intended to violate the Rules relating to preservation of client property, he should have known that by being absent from his office and by delegating certain responsibilities to Anderson that he was not properly dealing with funds due the Turners and Kozhukharenko, and that his inactions could cause injury to them. Therefore, in this case the *ABA Standards* suggest suspension may be appropriate. Informant believes that consideration of applicable aggravators and mitigators, as well as the case law discussed *supra*, suggests that a stayed suspension plus probation is appropriate notwithstanding the baseline sanction.

The Panel Erroneously Designated Certain Facts as Aggravating Factors

After establishing discipline, as noted above, this Court considers aggravating and mitigating factors relevant to the Respondent's actions. ***In re Wiles***, 107 S.W. 3d at 229. The Panel erroneously found certain facts as aggravating factors and described certain of the purported aggravating factors in a way that may have been misleading. The Panel found the following as aggravating factors (each a "Panel Designated Aggravating Factor," and collectively, the "Panel Designated Aggravating Factors"):

(1) Respondent failed to provide for the valid processing of settlements of claims, including complying with such basic conditions of settlements as obtaining valid signatures of clients on settlement and release agreements and settlement checks, and the proper handling and disbursal of settlement funds, which are essential, minimal core competencies of a law practice, and the failure to observe such essential, minimal core competencies of

a law practice are prejudicial to the administration of justice and represent a danger to the public.

(2) The deprivation by Respondent of settlement funds that belonged to Makayla Turner and Ms. Kozhukharenko for a minimum of 18-22 months (and which deprivation is continuing in the case of Makayla Turner) constitutes a serious injury, even if later restitution was made by Respondent to some of these parties, or to other parties, after monetary claims and ethics claims had been filed against Respondent.

(3) The deposit of the Turner Matter and Kozhukharenko Matter settlement funds, which belonged respectively to Makayla Turner and Ms. Kozhukharenko, into Respondent's operating account was a misappropriation of those funds.

(4) The forgeries of client signatures on the settlement agreements and settlement checks in the Turner Matter and the Kozhukharenko Matter, while these documents were in the possession and control of Respondent, constitute criminal acts.

(5) The improper handlings of the settlements of the Turner Matter and Kozhukharenko Matter constitute multiple incidents of professional misconduct and involve a pattern of neglect causing serious or potentially serious injury to those clients.

(6) Respondent knew or should have known that he was failing to properly supervise and oversee his paralegal employee Brittany Anderson during the extended period of his absence from his solo law practice office, and his conduct in that regard was at best reckless and grossly negligent.

(7) Respondent has had multiple recent prior disciplinary violations consisting of two suspensions and one admonition, occurring within one to four years of the two separate

incidents that are the subject of these proceedings, and two of those prior ethical violations occurred in 2012 and 2013, within a year or two of the two separate incidents that are the subject of these proceedings.

See. **App. 224-225**.

The Panel Designated Aggravating Factors numbered (1) through (4) and (6) are not aggravating factors under the ABA Standards. *See*. Rule 9.22, ABA *Standards*. In fact, Panel Designated Aggravating Factors numbered (1), (2) and (4) are restatements of the facts in this case as viewed by the Panel. Panel Designated Aggravating Factor number (2) speaks to harm or potential harm to the clients and is relevant when deciding the level of discipline that is appropriate, but is not an aggravating factor under the ABA Standards. *See*. Rules 3.0(c) and 9.22, ABA *Standards*.

Panel Designated Aggravating Factor number (4) is not an aggravating factor since no criminal charges were ever brought against Respondent in this case. In the event criminal charges would have been filed, they would not have been against Respondent, but against his former paralegal, Anderson, since she is the one alleged to have forged the signatures. Respondent failed to supervise Ms. Anderson in accordance with Rule 5.3, as stipulated to by Informant and Respondent, and as determined by the Panel. **App. 210, 226**. However, Respondent did not commit a crime.

Similarly, Panel Designated Aggravating Factor number (6) is not an aggravating factor. Rather it is a statement of the Panel's view of the facts that gave rise to the violation of Rule 5.3, which was stipulated to by Informant and Respondent, and found to exist by the Panel. **App. 210, 226**.

Three Panel Designated Aggravating Factors Are Misleading

In addition to the fact that five of the seven Panel Designated Aggravating Factors are not aggravating factors under the ABA Standards, three of the seven are worded in ways that are misleading. For example, the failure to note that the forgeries and deposit of funds specified in Panel Designated Aggravating Factors numbered (3) and (4) were at the hands of Respondent's assistant, Anderson, may give the false impression that Respondent personally committed the forgeries and made the deposits into his bank account which, as discussed above, was not the case.

This Court has clearly stated, and the rules provide, that the duty to safeguard and properly distribute trust account funds is non-delegable. *See* ***In re Farris***, 472 S.W.3d 549, 560 (Mo. banc 2015). And while Respondent cannot rely on a staff member to satisfy his obligations, and bears the risk of the staff member's non-performance, the fact that Anderson was the person who committed the forgeries should have been noted in Panel Designated Aggravating Factor number (4) so that it would not be potentially misleading. In addition, even if the determination had been written in a way that was not misleading, Panel Designated Aggravating Factor number (4) would still not qualify as an aggravating factor under the *ABA Standards* since it is a factual matter giving rise to a violation of Rule 5.3.

Panel Designated Aggravating Factor number (3) which provides that "[t]he deposit of the Turner Matter and Kozhukharenko Matter settlement funds, which belonged respectively to Makayla Turner and Ms. Kozhukharenko, into Respondent's operating account was a misappropriation of those funds" is also misleading. **App. 224**. The finding

incorrectly suggests that Respondent personally deposited the funds and misappropriated them, when the funds were, in fact, deposited by Respondent's paralegal. While Respondent is responsible for the acts of his paralegal, omission of the fact that Anderson deposited the funds into the account may leave the false impression that any misappropriation was directly the result of Respondent's actions. Even if the Panel's recitation were accurate, it would not be an aggravating factor under the ABA Standards, but rather one of the facts leading to finding a separate violation of the Rules.

Finally, Panel Designated Aggravating Factor number (7) is also worded in a way that is misleading. As written, it appears that Respondent was the subject of three prior complaints, two of which resulted in suspension of his law license. The Panel neglected to note, as was pled in the Information, that Respondent was suspended in 2009 and 2013 for violating Rule 5.245 for failing to file his state tax returns, and not for professional misconduct related to a client, the bar or the judiciary. While failure to pay taxes is a serious matter, without the description of the reason for the suspensions, Panel Designated Aggravating Factor number (7) could easily be misinterpreted to result from misconduct in connection with clients, the bar, or the judicial system, which was not the case.

The Panel Erroneously Failed to Find Any Applicable Mitigating Factors

There were several factors in this case that could be considered in mitigation. However, the Panel found that there were no mitigating factors. **App. 225**. At a minimum, the following mitigating factors exist in this case "… (b) absence of a dishonest or selfish motive, (c) personal or emotional problems, (d) timely good faith effort to make restitution or to rectify consequences of misconduct, (e) full and free disclosure to disciplinary board

or cooperative attitude toward proceedings, … (g) character or reputation, … [and] (l) remorse." Rule 9.32, ABA *Standards*.

While the facts in this case support finding that each of the specified mitigating factors are present in this case, a few are discussed below in some detail. First, Respondent was cooperative with the Office of Chief Disciplinary Counsel in these matters from the beginning when the complaints were filed, during the investigative process and throughout the disciplinary proceedings.

Perhaps most significantly, during the relevant time period that gave rise to the Turner Matter and the Kozhukharenko Matter, Respondent was experiencing personal problems. Specifically, his brother and grandfather, the person who raised him, died suddenly in January and June of 2013, respectively. **App. 113 (Tr. 14).** In addition, in July 2015 one week to the day before Respondent's wedding, his father died in a car accident. **App. 150 (Tr. 51)**; **App. 151 (Tr. 52)**. When asked by the Panel what he was doing during the period giving rise to the Turner Matter and the Kozhukharenko Matter, Respondent replied "[i]n short, grieving." **App 113 (Tr. 14)**. The Panel noted his grief as a fact common to both the Turner Matter and the Kozhukharenko Matter. **App. 222.** The settlement agreements in each of the Turner Matter and the Kozhukharenko Matter, were presented in September 2013 and January 2014, respectively. **App. 204-207**. Thus, these matters arose shortly after the occurrence of the first two personal losses suffered by Respondent and could be considered as mitigating factors. Respondent did not have any dishonest motive in this case, rather the personal losses he suffered, resulted in him not

being as attentive to his practice as he should have been. Lack of a dishonest motive is also a mitigating factor.

Upon learning of the fact that Turner and Kozhukharenko had not received payment, Respondent made prompt and good faith efforts to make restitution. In fact, with respect to Kozhukharenko, after receiving a letter from her new counsel that she had not been paid, Respondent entered into negotiations with her counsel and paid her $12,500, which was $8,750 more than the amount of the settlement. Therefore, not only was Kozhukharenko compensated for the delay, for which Respondent took responsibility, but she was paid in excess of the amount she was otherwise due. **App. 132-133 (Tr. 33-34)**; **App. 268-269**. Respondent noted that he paid that amount because he was "very sorry that [the delay] happened and [that he was] glad she was able to settle [for] an amount that was satisfactory to her," thus expressing remorse for his actions. **App. 132-133 (Tr. 33-34)**.

With respect to the Turner Matter, in an effort to make restitution, Respondent paid P. Turner, M. Turner's mother, $7,500, the full amount of the settlement without withholding a fee for his services. At the time payment was made, P. Turner signed a settlement and release agreement. **App. 187**. However, between the original engagement and the date the settlement agreement for the $7,500 payment was signed by P. Turner, M. Turner reached the age of majority and therefore the second settlement agreement, executed by P. Turner, was not binding on her, even though her mother retained the settlement funds. Thereafter, M. Turner sued Respondent for the very funds paid to her

mother and the suit was dismissed the day before the DHP Hearing[7]. **App. 108-109 (Tr. 9-10)**, **App. 202**. The electronic notice of the dismissal was admitted into evidence at the DHP Hearing. **App. 109 (Tr. 10)**, **App. 202**. The dismissal was with prejudice. (*Turner v. Williams*, 1522-CC09896 (August 14, 2017)).

It should be noted that Respondent's efforts to make restitution began before Informant commenced its investigation of the Turner Matter or the Kozhukharenko Matter. This Court has said that voluntarily making restitution should be accorded weight as a mitigating factor. *In re Belz*, 258 S.W.3d 38, 46 (Mo. bane 2008).

During Respondent's years of practice, he has developed a good reputation as a dedicated public servant. For example, he routinely works with people with criminal histories to help develop their skills for entry into the workforce, he is member of the University of Missouri Business School Advisory Board and he is active with Washington University School of Law in connection with strengthening inclusive admissions practices. **App. 144-145**; **App. 199**. Respondent's good reputation and community service are mitigating factors.

Respondent's lack of a dishonest or selfish motive, the existence of personal problems, his timely and good faith effort to make restitution, his cooperation with the

[7] Even though Respondent had paid P. Turner $7,500, he nonetheless offered to settle the suit with M. Turner, an offer that was not accepted. **App. 177 (Tr. 78)**.

Office of Chief Disciplinary Counsel in the investigation and litigation of this case, and his good character and remorse are mitigating factors. Given the totality of the misconduct, as well as consideration of applicable aggravating and mitigating factors, the appropriate sanction is an indefinite suspension, with leave to reapply in one year, with the suspension being stayed during a one-year period of probation under the terms and conditions set forth in the DHP Decision and as otherwise provided under Rule 5.225.

CONCLUSION

Respondent committed professional misconduct by (a) violating Rule 4-1.15(d) by receiving client funds and not promptly disbursing the same, (b) Rule 4-5.3(b) by failing to properly supervise his assistant, and (c) Rules 4-8.4(b) and 4-8.4(d) by evidenced by the acts of his assistant, for whose actions he is responsible under Rule 4-5.3(c)(2), The presence of few aggravating circumstances and significant mitigating factors support the imposition of discipline. The Informant and Respondent agree to the terms of probation set forth in the DHP Decision, as evidenced by their acceptance of the DHP Decision. **App. 227-234**; **App. 235-236**. Informant respectfully requests that this Court indefinitely suspend Respondent from the practice of law with leave to apply for reinstatement after one year, with the suspension stayed and Respondent placed on probation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February, 2018, the Informant's Brief was sent to Respondent's counsel via the Missouri Supreme Court e-filing system to:

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Cheryl DS Walker

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 5,066 words, according to Microsoft Word, which is the word processing system used to prepare this brief.

Cheryl DS Walker