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IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
ROBERT E. ARNOLD, III	)	**Supreme Court No. SC96938**
P.O. Box 948	)	
Raymore, MO 64083	)	
	)	
Missouri Bar No. 57059	)	
	)	
Respondent.	)	

INFORMANT'S BRIEF

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STATEMENT OF JURISDICTION

This action is one in which the Chief Disciplinary Counsel is seeking to discipline an attorney licensed in the State of Missouri for violations of the Missouri Rules of Professional Conduct. Jurisdiction over attorney discipline matters is established by this Court's inherent authority to regulate the practice of law, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMo 2000.

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STATEMENT OF FACTS

I. Overview

In this attorney disciplinary matter, an Information was initiated against Robert E. Arnold, III ("Respondent") in August 2016. **App. 3**. The Information alleged multiple violations of the Rules of Professional Conduct, including Rules 4-1.15(i) (misappropriation of trust funds; 2012 version); 4-8.4(c) (conduct involving dishonesty); 4-1.15(d) (inadequate records of trust funds; 2012 version); 4-8.1(c) (failure to cooperate with disciplinary investigation); 4-1.5(a) (collection of an unreasonable fee); 4-1.5(c) (failure to provide accounting of settlement funds in a contingent fee matter); 4-1.6 (revealing information pertaining to representation of client without authorization); and 4-8.4(d) (conduct prejudicial to the administration of justice). **App. 3–24**.

The matter was heard by a disciplinary hearing panel during two days of evidence in April 2017 and August 2017. **App. 90, 174**. Respondent admitted a violation of Rule 4-1.15(i), to the extent of having misappropriated that portion of the client's $25,000 personal injury settlement needed to satisfy medical liens. **App. 87, 629, 92 (Tr. 11-12); 133 (Tr. 176)**. Respondent also admitted a violation of Rule 4-8.4(c) (conduct involving dishonesty), while also stating that the misappropriation of trust funds was "innocent." **App. 622, 629; 77; 133-134 (Tr. 176-177)**. Respondent denied all other charges of professional misconduct at the time of the hearing. **App. 629, 85, 87**.

A written decision of the disciplinary hearing panel[1] was issued in December 2017.

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[1] Joe Whisler, Esq. participated in the disciplinary hearing as an appointed panel member,

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App. 636. The panel found that a preponderance of the evidence supported virtually every violation of Rule 4 charged in the Information.[2] **App. 646-654**. Informant requested a disciplinary sanction of disbarment. **App. 40**. Respondent sought either an admonition, a reprimand, or a six-month stayed suspension with probation. **App. 623-633**. Having found misappropriation of trust funds and multiple examples of conduct involving dishonesty along with five other instances of violations of the Rules of Professional Conduct, a two-member majority of the panel recommended that Respondent's license be suspended for one year with such suspension stayed during a period of probation. **App. 656**. Respondent accepted the panel's recommendation, but Informant rejected it. **App. 658, 659**.

II. Background

Respondent has been licensed as an attorney in Missouri since 2005. **App. 94 (Tr. 20)**. Prior to that, Respondent practiced law in New York since 1992. **App. 94 (Tr. 20)**. Respondent's license in Missouri is currently active and in good standing. **App. 3, 84**. Respondent is also licensed in Kansas. **App. 3, 84**.

During most of the relevant time period for this matter (2011 to 2017), Respondent

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but did not sign the panel's decision. Mr. Whisler died on December 27, 2017, shortly after the panel's decision was issued.

[2] The exception was an alleged violation under Rule 4-1.5(a) regarding **collection** of an unreasonable fee. The panel found "no violation primarily because he did not actually collect a fee, but it was not for want of trying." **App. 654.**

has been a sole practitioner and has incorporated his law practice under various law firm names. **App. 96 (Tr. 25)**. Respondent's law office was physically located in Olathe, Kansas (a ten-minute drive across the state line from Kansas City, Missouri). **App. 94 (Tr. 19)**. Respondent oversees the activities of three assistants for the firm: his wife, Andrea Arnold, and Susan Hannah and Traci Anderson. **App. 96 (Tr. 25-26)**.[3]

III. Attorney-Client Agreements And Scope of Representation

On April 11, 2011, a Judgment Decree of Dissolution of Marriage (which also determined financial support, parenting time and custody of a minor child born during the marriage) was entered by default against Heather Cockrill in the Circuit Court of Clay County, Missouri. **App. 268**. On May 20, 2011, Heather Cockrill was also involved in a motor vehicle versus pedestrian accident in Platte County, Missouri in which Ms. Cockrill sustained bodily injuries. **App. 97-98 (Tr. 32-33); App. 331-334**.

Respondent met with Heather Cockrill at his Olathe, Kansas law office on July 1, 2011 to discuss potential legal representation for modification of the Judgment related to child custody, child support and parenting time. **App. 98–99 (Tr. 36–37)**; **4; 84**. At the

[3] Susan Hannah was called by Respondent to testify at the disciplinary hearing. **App. 175 (Tr. 334)**. Respondent's wife, Andrea Arnold, graduated from Stanford with a degree in financial accounting. **App. 96 (Tr. 26)**. Mrs. Arnold is the office manager and takes care of the operating account, taxes and accounting for her husband's law firm. **App. 96 (Tr. 26); 121 (Tr. 128); 375; 378; 579**. Respondent did not call upon his wife / office manager to testify at the hearing. Mrs. Arnold lives and works in Kansas. **App. 94 (Tr. 19-20)**.

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meeting of July 1, 2011, Respondent and Ms. Cockrill discussed both the family law matter and also potential legal representation of Ms. Cockrill for a personal injury claim against the driver of the motor vehicle. **App. 98 (Tr. 36)**.

At the meeting, two attorney-client agreements were signed by Ms. Cockrill: (1) a "Retainer Agreement" between Heather Cockrill and Arnold Pfanstiel LLC as her "exclusive attorney" [4] for the personal injury claim providing for a contingency fee of 33% of the settlement (plus reimbursement of expenses); and (2) a Retention Agreement for Limited Representation between Heather Cockrill and Arnold Pfanstiel LLC to attempt to set aside the default judgment and/or to modify the terms of the dissolution decree, based upon an hourly fee method of attorney compensation. **App. 99 (Tr. 40; 42-45); 335-339**.

The contingency fee agreement provided, in part: "I [Heather Cockrill] understand that I have a right to have any fees reviewed." **App. 335**. Respondent always places a provision in a contingency fee contract to confirm that the client has a right to have the attorney fees reviewed. **App. 100 (Tr. 43)**. Kansas has a rule of professional conduct which requires the lawyer to advise the client of a right to seek judicial review of the

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[4] Respondent interpreted that to mean that he personally would be the only attorney handling the matter. **App. 100 (Tr. 41-42)**. Arnold Pfanstiel LLC was a law firm owned in part by Respondent. The company was formed in Kansas in May 2011 and dissolved in May 2013. **App. 4, 84**. Arnold Pfanstiel LLC and the Arnold Law Firm LLC are separate legal entities formed by Respondent in Kansas. **App. 8, 84, 102 (Tr. 48–50)**.

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lawyer's compensation in a contingency fee matter.[5] **App. 100 (Tr. 44); 478**.

During the meeting with Ms. Cockrill on July 1, 2011, Respondent was in a hurry to complete the paperwork because he was late in leaving on a family vacation that day. **App. 183 (Tr. 363-364); 149 (Tr. 238-239)**. He charged the client $330 for the meeting. **App. 400**. Respondent acknowledged having other opportunities over the next 12½ months from July 2011 to July 2012 to clarify the fee agreements and to more fully document the arrangements for attorney compensation, but during that time "it was always roses." **App. 149 (Tr. 239)**. There were no other written agreements between the parties, and no amendments or modifications to the agreements. **App. 99 (Tr. 40–41); 554**.

There is no agreement, e-mail, note, memo or other document in the record authorizing Respondent to take a portion of the client's personal injury settlement proceeds to apply to the fees and billings accrued in the family law matter. **App. 101 (Tr. 48)**. There

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[5] The fee agreement was signed at Respondent's law office in Olathe, Kansas, but pertained to representation for a cause of action accruing in Missouri. **App. 100 (Tr. 43); 331**. Rule 1.5 of the Kansas Rules of Professional Conduct provides "(d) . . . Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement . . . [which] shall advise the client of the right to have the fee reviewed as provided in subsection (e). (e) Upon application by the client, all fee contracts shall be subject to review and approval by the appropriate court having jurisdiction of the matter and the court shall have authority to determine whether the contract is reasonable. If the court finds the contract is not reasonable, it shall set and allow a reasonable fee." **App. 478**.

were no cross references between the two agreements, meaning that the one-page personal injury contingency fee agreement does not mention the family law matter and it did not expressly provide that any portion of the personal injury claim proceeds would be applied towards payment of the fees accrued for the family law matter. **App. 101 (Tr. 46); 335**. Likewise, the family law retention agreement does not mention that the hourly fees were to be paid through the proceeds of the personal injury claim. **App. 101 (Tr. 46); 335–339**. Though the agreements were signed at the same time, the retention agreement regarding the modification of the dissolution decree provides that "We have not been retained to represent you for any other purpose." **App. 101 (Tr. 47); 336**.

The Retention Agreement for the modification case includes the following provisions:

> 1. No person other than "you and our firm" [Heather Cockrill and Arnold Pfanstiel LLC] has any rights hereunder.
>
> 2. "Our firm's representation of you . . . will be concluded and terminate at such time as the actual . . . cases themselves are finalized either by trial or settlement and/or entry of the Court's Order. . . .Our firm's agreement to represent you does not include representation with respect to any post-trial matters."
>
> 3. "We typically bill monthly . . . with charges summarized on the bill. Our fee statements will describe the activities for which you are charged each day, with the total daily time charged and resulting fees."
>
> 4. "Payment in full for each billing is due on receipt."

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App. 336-339.

In connection with the personal injury claim, in August 2011 Respondent sent two letters to the insurance company for the at-fault driver notifying the insurer of Respondent's representation of Ms. Cockrill through the Arnold Pfanstiel LLC law firm. **App. 109 (Tr. 77); 340-341**. The letters themselves do not expressly assert an attorney lien on the settlement proceeds and do not mention any client agreement or the lawyer's interest in the agreement or settlement proceeds. **App. 340-341**. Respondent did not typically send a letter to the insurer claiming an attorney lien. **App. 109 (Tr. 79)**.

IV. Admitted Misappropriation Of Client Settlement Proceeds

In June 2012, Respondent settled the injury claim on behalf of Ms. Cockrill for the $25,000 limits of the at-fault driver's insurance policy. **App. 111 (Tr. 85-87); 342-343; 348**. The payment from the insurance company was made by check payable to "Arnold Law Firm LLC and Heather Cockrill." **App. 346-347; 111 (Tr. 87)**.[6] Respondent testified that Ms. Cockrill was aware of the change in law firm names. **App. 111 (Tr. 87-88)**.

Respondent has had a Missouri IOLTA trust account at UMB Bank since 2005.

[6] The contingency fee agreement was between Ms. Cockrill and Arnold Pfanstiel LLC "as my exclusive attorney." **App. 335; 347**. Respondent provided no document memorializing an assignment or transfer of contract rights from Arnold Pfanstiel LLC to Arnold Law Firm LLC, a separate legal entity in Kansas. **App. 8, 84, 102 (Tr. 48–50)**. The settlement check was deposited into an IOLTA account denominated as "Missouri Lawyer Trust Account Foundation For Robert E. Arnold Attny." **App. 359**.

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App. 96 (Tr. 26-27). At all times since 2005, Respondent was familiar with the Missouri Rules of Professional Conduct involving trust accounts. **App. 96 (Tr. 27)**. In 2012, Respondent understood the difference between a lawyer trust account and a law office operating account. **App. 96 (Tr. 27-28)**.

The $25,000 settlement check was deposited into Respondent's trust account on June 18, 2012. **App. 112 (Tr. 90-91); 347; 359**. In 2012, Ms. Cockrill did not endorse the instrument even though she was named as a payee, and she did not even see the settlement check before it was deposited. **App. 112 (Tr. 89-90); 346-347**. Ms. Cockrill testified by deposition in the underlying civil matter[7] that she was **not aware** of the receipt of the settlement check by Respondent. **App. 492-493**. Ms. Cockrill testified: "He lied to me. I asked him about the check numerous times and he kept telling me he didn't have it." **App. 485-486**. Ms. Cockrill claimed that she asked about the settlement check at least twenty times. **App. 492-493**. In or about December 2012, Ms. Cockrill contacted the insurance adjuster and received a copy of the check directly from the insurance company. **App. 486**. According to her testimony, Ms. Cockrill said she confronted Respondent about the settlement check. **App. 486-487**. Ms. Cockrill stated that Respondent told her he would be disbarred if this situation were reported to the bar, and that he wanted to settle

[7] Heather Cockrill committed suicide on September 1, 2014. **App. 8, 86**. As her testimony was not available at the time of the disciplinary hearing in 2017, designated excerpts of her prior deposition testimony from May 2014 in a related civil action were offered and admitted into evidence. **App. 480-502**.

with her out of court. **App. 487**.

Respondent testified that he had a seven-minute telephone conversation with Ms. Cockrill on June 18, 2012, during which Ms. Cockrill gave verbal consent to the deposit without her signature on the check. **App. 126 (Tr. 147-148)**. While Respondent produced a cell phone log for the call, he was unable to produce a copy of the deposit receipt to show the exact time the settlement check was deposited in relation to the phone call. **App. 126 (Tr. 147); 349; 112 (Tr. 91-92)**. Respondent's billing record for June 18, 2012, does reflect a phone call with Ms. Cockrill, but the entry does not reflect the substance of the call. **App. 354**. Respondent makes no claim that there is a document by which Ms. Cockrill consented to have Respondent deposit the settlement check without her endorsement. **App. 112 (Tr. 90)**.

An employee in Respondent's office sent an e-mail to Ms. Cockrill within minutes after the June 18, 2012 telephone call. **App. 126-127 (Tr. 148-149); 350.** The e-mail does not mention receipt of a settlement check, permission to deposit the check without the client's endorsement, or an agreement for Respondent to take the entire $25,000 settlement amount as his fees. **App. 350**. Respondent testified that he did not feel the need to confirm these matters in writing with the client, and suggested to have done so would have been a waste of his time. **App. 127 (Tr. 149-150)**.

Respondent claimed that he reached a verbal agreement with Ms. Cockrill during the seven-minute telephone conversation on June 18, 2012 that he could keep the entire $25,000 settlement amount. **App. 561**. He testified: "That's when the agreement I had with her was. . . . She knew that none of those proceeds were—she wasn't getting a penny

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of any that money, it wasn't her funds, and she was well aware of that and agreed to that." **App. 561**. "She says, that's fine, you guys are doing a great job, thank you very much, no problem, can you just deposit it without my signature." **App. 563**.

There is nothing - from the beginning of the attorney-client relationship on July 1, 2011 to the time of the termination of the attorney-client relationship on or about April 30, 2013 - which memorializes any agreement or consent by Ms. Cockrill to have her portion of the personal injury settlement proceeds applied to the billings or account balance accruing for the domestic modification matter, and there is no document provided to Ms. Cockrill disclosing the receipt or disbursement of the $25,000 settlement proceeds until April 25, 2013. **App. 565-568**. At no time prior to Ms. Cockrill's death on September 1, 2014 had Ms. Cockrill ever provided any document ratifying Respondent's actions to obtain the entire $25,000 settlement funds. **App. 148 (Tr. 234)**.

The $25,000 settlement check from the insurance company cleared through normal banking channels. **App. 113 (Tr. 94)**. The entirety of the trust funds remained in Respondent's IOLTA account throughout June 2012, for a period of over thirty days. **App. 113 (Tr. 93-94)**. On July 23, 2012, Respondent made an intentional decision to transfer the entire $25,000 settlement proceeds into his own law firm business operating account as part of a $275,947.17 debit[8] to the trust account. **App. 113 (Tr. 94-95); 137 (Tr. 191)**.

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[8] Respondent characterized the $275,947.17 transfer as an "equalization" transfer to get cashier's checks tied to his operating account so as to distribute settlement payments to other clients. **App. 115 (Tr. 102-103)**. Respondent was unable to produce any documents

Immediately after the transfer, the balance in Respondent's trust account dropped to $13,151 and the trust account balance ultimately was reduced down to $1,366 by September 30, 2012. **App. 360-362**.

The transfer of the $25,000 to the operating account on July 23, 2012 was not accompanied by any document memorializing the client's written consent to the transfer. **App. 126 (Tr. 145-146)**. Respondent claimed he had the client's verbal consent for the transfer. **App. 126 (Tr. 146)**. Respondent testified that when he transferred the entire $25,000 settlement amount to his operating account on July 23, 2012, "she [Ms. Cockrill] got credit for the payment." **App. 564**. However, none of billing invoices submitted to Ms. Cockrill after this transfer showed this credit. **App. 413-428**.[9] There was no written

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showing how and why the $275,947 "equalization" transfer was made or where the $275,947 went after it was subtracted from the trust account. **App. 115-116 (Tr. 104-106)**. Respondent's testimony was as follows: "Q. What was check number 3454 for, for $275,947.17. A. I don't recall exactly. . . . Q. Well, what I'm asking is, do you know if Check 3454 was written to you or to a client or to some third party. A. Without the check, I can't answer that question." **App. 559**. Respondent's wife and office manager, Andrea Arnold, has a degree in financial accounting from Stanford and handles the operating account and accounting for the law firm. **App. 96 (Tr. 26)**. Mrs. Arnold did not testify at the disciplinary hearing. Mrs. Arnold lives and works in Kansas. **App. 94 (Tr. 19-20)**.

[9] The June 1, 2012 invoice submitted to Ms. Cockrill showed a "balance due" of $7,404.02. **App. 412**. The July 2, 2012 invoice submitted to Ms. Cockrill showed a "balance due" of

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communication with Ms. Cockrill as to the disposition of the $25,000 settlement proceeds. **App. 567**. "I knew I was never going to get any money from Heather Cockrill . . . I was never going to try to collect or get any money from her." **App. 564**.

Respondent denied that he was trying to hide the previous disbursement of the entire $25,000 settlement from the client by not showing a credit on her bills. **App. 168 (Tr. 315)**. Respondent claimed that the portion of the bills showing a "balance due" meant nothing. **App. 168 (Tr. 316)**. Respondent sent Ms. Cockrill a final bill dated May 1, 2013 showing a "balance due" of $15,705.07. **App. 396-398**. The final bill did not show any credit for any portion of the $25,000 settlement**. App. 170 (Tr. 321)**. The next day Respondent filed a circuit court lawsuit against Ms. Cockrill. **App. 261**.

Subject to a hearsay objection made by Informant, Stephen Taylor, a lawyer in Clay County, Missouri, testified that on August 30, 2012 he overheard Ms. Cockrill state that she was able to afford the legal fees and expenses in the domestic relations matter because of a car wreck settlement and that she and Respondent had all of the money needed to prevail on the motion to modify. **App. 595-596 (P. 16-19)**. Mr. Taylor assumed that Ms. Cockrill was talking about money in a lawyer trust account, but she did not actually

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$8,493.37, including $1,089.35 in new charges but no credit for the initial $25,000 deposit of the settlement check. **App. 414**. The August 17, 2012 invoice submitted to Ms. Cockrill showed a "balance due" of $8,518.17, including $65 in new charges, a credit for $132 for overpayment of a filing fee, but no credit for the disbursement on July 23, 2012 of the entire $25,000 settlement amount. **App. 415-416**.

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mention anything about trust funds. **App. 597 (P. 21); 599 (P. 31)**. Ms. Cockrill did not mention to Mr. Taylor that she had an agreement with Respondent for him to use the settlement money for the legal bills in the modification case. **App. 597 (P. 21)**. Ms. Cockrill did not mention how much money she was talking about. **App. 597 (P. 22)**. Ms. Cockrill did not tell Mr. Taylor the amount of her settlement. **App. 597 (P. 22)**.

Other than the monthly account statement from UMB Bank, Respondent provided no other document to Informant or the panel regarding the transfer of the $25,000 to the operating account on July 23, 2012. **App. 116 (Tr. 106-107)**. By April 1, 2017, Respondent still had not examined the bank statements from the operating account to piece together what happened to the settlement money. **App. 116 (Tr. 107)**. Respondent did not keep an internal accounting ledger to track the proceeds from the $25,000 settlement, claiming that Ms. Cockrill never had a trust balance. **App. 116 (Tr. 108)**. No internal accounting records were generated by Respondent to track the disbursement of the $25,000 settlement once the check was deposited into his trust account. **App. 116 (Tr. 108)**.

Respondent did not recall researching or relying upon any case law authorizing a Missouri attorney to obtain a consensual or contractual lien on a client's personal injury claim outside of R.S.Mo. § 484.130 and § 484.140. **App. 123 (Tr. 135)**. Respondent testified that he does not believe an agreement for an attorney to be paid 100% of a client's personal injury settlement proceeds is unreasonable. **App. 137 (Tr. 190-191)**. Respondent testified: "It was her money and her decision to spend and hire a lawyer to do what she wanted to have done." **App. 137 (Tr. 191)**.

Ms. Cockrill denied any agreement with Respondent to pledge the personal injury

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settlement proceeds to Respondent for application to the billings for the family law modification case. **App. 497**. Ms. Cockrill stated that the two legal matters handled by Respondent "were never intertwined." **App. 501**. She testified: "I've never said that you can use my car accident money to pay for my child modification. Those are two separate cases. I never said anything, I never signed anything agreeing to it, I've never said anything." **App. 501**.

On January 16, 2012, Ms. Cockrill signed a form from the doctor's office directing Respondent to pay the chiropractic bills upon settlement. **App. 377; 494-496**. This form was received by Respondent by mail in January 2012 and by fax in August 2012. **App. 376-380; 570**. Ms. Cockrill expected Respondent pay the lien claims out of the settlement proceeds, and she requested Respondent to pay the chiropractor. **App. 498-499**. Respondent testified that Ms. Cockrill was aware that there would be subsequent negotiations for reduction of liens. **App. 147 (Tr. 232)**.

At the time of the settlement, Respondent was aware that Ms. Cockrill's health care providers claimed liens on the settlement proceeds of slightly more than $11,000. **App 116–117 (Tr. 108-109); App. 376-386; 541; 570; 572**. At the time of the transfer from the trust account to the operating account on July 23, 2012, Respondent knew he had an obligation to pay health care liens. **App. 223 (Tr. 526)**. In July of 2012 and forward, Respondent knew he was going to have to pay something for the health care liens. **App. 121 (Tr. 127)**. Respondent acknowledged that lawyers have a professional obligation to protect valid liens on settlement proceeds. **App. 574-575**. In subsequent litigation (discussed below), the two medical liens were judicially determined to total $6,350.01.

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App. 316-322. Respondent admitted that the portion of the settlement proceeds needed to satisfy health care liens "are funds that belong to the doctors." **App. 569**. Respondent understood that personal injury attorneys should keep track of liens. **App. 118 (Tr. 115)**.

The insurance company which paid the settlement expected Respondent to handle any lien claims arising with respect to the settlement proceeds. **App. 119 (Tr. 117); 348**. Respondent sent written communication to Hartford Insurance confirming that he would handle any and all liens. **App. 573**. Respondent stated that he "had no problem admitting that the [claims of the two health care providers] were determined judicially to be valid liens" on the settlement proceeds. **App. 124-126 (Tr. 139-145)**.

By the time Respondent satisfied his own purported "lien" on the proceeds, there were no proceeds remaining to satisfy other liens. **App. 455 (¶12)**. With respect to Respondent's action in transferring money from his trust account to the operating account, Respondent testified:

> Q. Do you admit that in the face of communications raising the possibility of liens on the settlement proceeds that you made an intentional decision to take the money out of your trust account and put it in your personal operating account?
>
> A. I did.
>
> Q. And did you make an intentional decision that, if anyone was going to have a lien on those proceeds, that you wanted to make sure that your lien took a higher priority?
>
> A. Well, yes and no, because I knew that at some point, whether I lost

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> money or not, that we were going to pay some money out to the doctors. And that's why I kind of -- in that spreadsheet, September, said that's what money was left. So I was hoping to pay some money, so -- but, in essence, the spirit of that, yes, I wanted to provide her through my work and through being paid out of that money to obtain her goal in the family law case.

App. 575.

It is common for a claimant's attorney to negotiate for a reduction of the medical lien amount. **App. 118 (Tr. 115)**. Respondent testified that Ms. Cockrill understood that she would not receive any portion of the settlement even if the liens were reduced. **App. 147 (Tr. 232)**. Respondent testified that he did not make lien negotiations a priority and "didn't bend over backwards" to negotiate with the lienholders. **App. 118-119 (Tr. 116-117)**. The amounts of the health care liens were not agreed upon until March 2015, approximately 32 months after Respondent transferred the proceeds to an operating account**. App. 123-124 (Tr. 136-137)**. Because the amounts paid to the health care providers to satisfy the liens were determined by negotiation and stipulation, the payments to the lienholders did not include a sum specified for interest accrued from July 2012 to March 2015. **App. 219-220 (Tr. 510-511)**.

Respondent admitted that he should not have transferred the funds necessary to satisfy potential lien claims out of his trust account. **App. 121 (Tr. 127)**. Respondent testified that he preferred to pay lien claims from an operating account, rather than a trust account, to make it easier to issue Form 1099 tax statements to the health care providers. **App. 121 (Tr. 128); 557; 559; 569; 576-577**. Respondent mentioned the difficulty and

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burden in managing multiple checkbooks. **App. 577**.

After considering the testimony from Respondent, Ms. Cockrill and Mr. Taylor, the disciplinary hearing panel found that Ms. Cockrill generally understood the agreement as to fees owed to Respondent, but that there was no clear agreement on how the settlement proceeds would be divided between Respondent, Ms. Cockrill and the health care providers. **App. 647**. A 33% contractual contingent fee of the $25,000 personal injury settlement amount equals $8,250. **App. 113 (Tr. 96)**. Respondent was also entitled to be reimbursed $197.07 for case expenses. **App. 113 (Tr. 96)**. Accordingly, pursuant to the written contingency fee contract, Respondent was entitled to receive $8,447.07 from the settlement proceeds. **App. 113 (Tr. 96)**.[10] The balance of approximately $16,550 was

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[10] In subsequent civil litigation concluded by final a judgment, Respondent was judicially declared to have been entitled to receive $10,373.53 of the settlement proceeds, rather than $8,447.07. **App. 319**. Since the judgment amount was determined by stipulation amongst all interested parties and since the jury verdict did not calculate an amount attributed to the lien claims, neither the disciplinary hearing panel nor Informant were able to determine the actual basis for the higher amount awarded to Respondent. **App. 316, 646**. There was evidence that Respondent paid a total of $1,800 in out-of-pocket payments to a guardian *ad litem* and to a mediator on behalf of Ms. Cockrill in connection with the family law matter. **App. 108 (Tr. 74-76); 203 (Tr. 444)**. However, Ms. Cockrill also paid $1,250 to Respondent towards the "retainer amount" in the domestic modification matter, which was supposed to cover some of the expenses. **App. 106 (Tr. 66)**.

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transferred to Respondent's operating account on July 23, 2012 and then spent by Respondent prior to May 2013. **App. 115 (Tr. 102)**.

In connection with the disposition of the settlement funds, the disciplinary hearing panel found that Respondent violated Rule 4-1.15(i) (failure to promptly deliver trust funds to client or third persons; 2012 version) and Rule 4-8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). **App. 646-648**. The panel found that Respondent misappropriated approximately $16,550 owed to the client and third parties, which was a "clear violation of trust account rules." **App. 646**. The panel stated, "By unilaterally withdrawing the entire amount of the settlement proceeds from his trust account, Respondent demonstrated that his personal needs took preceden[ce] over those of his client or third parties." **App. 648**. Respondent accepted the written decision of the Disciplinary Hearing Panel. **App. 659**.

V. Termination of Representation, Lawsuit against Client and Conversion Claim

There were several communications exchanged between Respondent and Ms. Cockrill in April 2013 following the trial on the modification, which occurred on April 10, 2013. **App. 396**. Ms. Cockrill sent an e-mail to Respondent on April 12th inquiring about information needed to file bankruptcy. **App. 386-387**. In the e-mail she thanked Respondent for "everything you have done for me these past couple of years. . . . You guys are amazing." **App. 387**. On April 12, 2013, the judge in the modification matter held a conference wherein he announced his rulings[11] and requested counsel to prepare a proposed

[11] The trial court denied the Motion to Open and Set Aside the Default Judgment

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judgment within 30 days. **App. 542**. Eleven days later, Ms. Cockrill asked for an itemization of the settlement proceeds. **App. 386**. Ms. Cockrill asserted that Respondent had done something wrong. **App. 388**.

In response, on April 25, 2013, Respondent's office notified Ms. Cockrill by e-mail of the following:

1. Ms. Cockrill had failed to abide by the terms and conditions of the retainer agreement for deposit and retainer amounts;

2. Respondent was now asserting an attorney's lien for fees out of the proceeds of the personal injury claim;

3. The amount currently owed for the modification case was

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previously entered against Ms. Cockrill. **App. 518**. The court also denied Ms. Cockrill's Motion to Modify Child Custody and Child Support. **App. 518**. Counsel for the ex-husband testified that Mr. Cockrill prevailed in the modification trial but that the judge "could have treated [Ms. Cockrill] much worse than what turned out in the judgment." **App. 599 (P. 29)**. Mr. Taylor testified that Ms. Cockrill did not come out any better in the modification than the previous judgment. **App. 599 (P. 32)**. Counsel for the ex-husband did not believe that Respondent obtained great results for his client. **App. 599 (P. 31)**. Mr. Taylor stated that since "she still walked away with joint physical [custody and unsupervised parenting time] after all of the shenanigans, maybe it does show that [Respondent] did a half-ass job for her." **App. 599 (P. 32); 270-272**. Respondent testified that he obtained "great results" for his client in the modification case. **App. 217 (Tr. 501)**.

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$12,298.87 plus an additional deposit of $1,000;

4. Respondent was going to file a motion to withdraw in the modification case after the judge signed the Judgment; and

5. The liens on the personal injury settlement proceeds have not been paid.

App. 388.

On April 29, 2013, Ms. Cockrill responded with a proposal stating she wanted a cashier's check for $13,607.05 and her medical bills to be paid in full. **App. 392-393**. Also in this e-mail dated April 29, 2013, Ms. Cockrill accused Respondent of unethical conduct and threatened legal action against him. **App. 393; 550**. She stated:

> "You do not have the right to take advantage of your clients Bob. It is wrong and unethical. You knew I at one point in my life a couple of years ago was in an emotional state, and I am a single mother, and you took advantage of that. You thought you could get away with this but you were wrong. I honestly hope that in the future you think about what you are doing before you do it. Treat people the way you want to be treated. Just because you are an attorney does not mean you rule the world and you can do whatever you please."

App. 393; 550.

Respondent was upset with the e-mail Ms. Cockrill sent to him on April 29, 2013

requesting a monetary payment. **App. 193 (Tr. 403)**. He felt her e-mail was extortion.[12] **App. 191 (Tr. 396-398)**. Respondent testified that he could have paid her the $13,600 she requested, but it would not have been in "good conscious" after he worked so hard for her. **App. 217 (Tr. 501)**. Testifying in August 2017, Respondent still does not understand why Ms. Cockrill thought Respondent was trying to get away with having taken her settlement money. **App. 197 (Tr. 419)**. Respondent believes that Ms. Cockrill's e-mail was based upon inappropriate advice from another attorney. **App. 197 (Tr. 420)**.

In light of Ms. Cockrill's e-mails, Respondent decided that he needed to file a lawsuit against his client to bring everything "out in the open." **App. 170 (Tr. 322); 193 (Tr. 403-406)**. On April 29, 2013 and April 30, 2013, Respondent worked at least 5.7 hours on the research and documents for the lawsuit to be filed against Ms. Cockrill. **App. 399**. On May 1, 2013, Respondent's assistant sent a "statement for legal services" to Ms. Cockrill by e-mail. **App. 391**. The invoice showed a "balance due" of $15,705.07. The invoice showed no credits to the balance for any portion of the personal injury settlement proceeds. **App. 396-398**. The invoice shows billable charges up through and including April 30, 2013. **App. 396-398**. Then Respondent went out of town on or about May 1, 2013, and his office advised Ms. Cockrill that he would be unable to respond to her until May 8, 2013. **App. 392**.

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[12] Testifying in August 2017, Respondent still believed that Ms. Cockrill's demand for payment of a portion of the settlement proceeds was "extortion" because she was trying to take advantage of Respondent's lack of documentation. **App. 191 (Tr. 398)**.

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On May 1, 2013, Respondent signed for filing in the *Cockrill v. Cockrill* modification case a "Notice of Attorney's Lien" in the amount of $15,705.97 "pursuant to Sections 484.130 and 484.140 RSMo." "upon any and all property in which Respondent Heather L. Cockrill has an interest." **App. 394-395**. The Notice of Attorney's Lien does not mention there was a verbal agreement with the client, but rather claims the lien arises "per a written Retention Agreement for Limited Representation." **App. 394-395**. There was no money, property or financial benefits awarded to Ms. Cockrill in the modification to attach the lien. **App. 599 (P. 29-31)**.

On May 2, 2013, Respondent filed a civil "interpleader" action in the Circuit Court of Clay County, Missouri against Ms. Cockrill regarding the $25,000 settlement proceeds. **App. 7; 86; 261-293; 503-509**. The Petition in *Arnold v. Cockrill* primarily called upon the court "to determine when, how, and to whom the $25,000 should be paid" (although the entire $25,000 had already been distributed to Respondent's own operating account nine months earlier). **App. 264, ¶23**. In *Arnold v. Cockrill*, Respondent sought to enjoin the client from proceeding against Respondent and his law firm in connection with the $25,000 settlement proceeds. **App. 261, 264.**

The case was captioned as *Robert E. Arnold III, Plaintiff vs. Heather Lynn Cockrill, Defendant*, Case No. 13CY-CV04343, the Honorable Janet Sutton presiding ("*Arnold v. Cockrill*"). **App. 7; 86**; **261-293; 503-509.** The lawsuit was filed while Respondent was out of town, with "stamped" signatures of Respondent on the pleading and affidavit dated May 1, 2013. **App. 261-267; 390; 392.** The initial pleading did not name the health care providers as defendants or join them as potential interested parties to the settlement

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proceeds. **App. 261**. The lien claimants were added by an amended pleading filed on July 25, 2013. **App. 508**.

The initial Petition in *Arnold v. Cockrill* was filed under Respondent's signature and Missouri Bar Number and was thirty-three pages long. **App. 261-293**. The Petition consisted of four pages of allegations (with twenty-five numbered paragraphs) against his own client, a three-page affidavit (with nineteen numbered paragraphs) signed by Respondent in support of the allegations, a twenty-one page proposed judgment with findings and rulings against Ms. Cockrill from the underlying domestic relations matter,[13] a one page affidavit from an employee of Respondent's office regarding the client, and four pages of e-mails exchanged between attorney and client. **App. 261-293**. These documents contained personal information about Ms. Cockrill related to Respondent's representation of his client in the domestic modification litigation. **App. 261-293**.

The Petition, which primarily called upon the court "to determine when, how, and to whom the $25,000 should be paid" (**App. 264, ¶23**), makes the following statements concerning Respondent's representation of his client:

1. Ms. Cockrill was attempting to extort money from Respondent. **App. 262-263 (¶¶ 8, 13)**;

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[13] The Judgment in *Cockrill v. Cockrill* is dated April 30, 2013, and was issued two days before the *Arnold v. Cockrill* Petition was filed, while the ruling was still under the control of the trial judge and while Respondent was still counsel of record for Ms. Cockrill. **App. 268**.

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2. Ms. Cockrill was "deceiving her own attorney as well as the Court until this point by concealing the parentage of her child." **App. 265 (¶2)**;

3. Ms. Cockrill failed to advise her then husband (James Cockrill) of her sexual relationship with another man. **App. 265 (¶5(c))**;

4. Ms. Cockrill "admitted in open Court to committing a fraud on the Court and further admitted to previously lying under oath." **App. 265 ¶5(d)**;

5. Ms. Cockrill withheld information from Respondent and was noncompliant with Respondent's instructions and directives. **App. 265-266 ¶6**;

6. Ms. Cockrill threatened to have Respondent's attorney license revoked. **App. 266, ¶17**; and

7. Ms. Cockrill was contemplating filing bankruptcy. **App. 290**.

At the time of the May 2, 2013 petition, Respondent considered the attorney-client relationship between himself and Ms. Cockrill to have been terminated. **App. 213 (Tr. 483)**. Legal services were last provided to Ms. Cockrill on April 30, 2013. **App. 449; App. 396-398**. However, Respondent did not file a motion to withdraw in *Cockrill v. Cockrill* until May 6, 2013, and such motion was not granted until May 7, 2013. **App. 538-540; 542**.

At the disciplinary hearing in August 2017, Respondent stated that he believed that everything in the Petition was reasonably necessary to state a claim for relief against his

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client. **App. 199 (Tr. 429)**. He also stated that the personal allegations about Ms. Cockrill in the pleading were necessary for purposes of showing that his client lacked credibility. **App. 195 (Tr. 414)**. Respondent continued to deny that the Petition he filed against his client violated Rule 4-1.6. **App. 199 (Tr. 427-428)**. The disciplinary hearing panel found that Respondent violated Rule 4-8.4(d) by revealing, in a public filing in connection with a lawsuit petition, private information about his client relating to matters not directly related to the distribution of the proceeds from the settlement of the personal injury claim, without consent or other authorization.[14] **App. 654**. Respondent accepted the decision of the disciplinary hearing panel. **App. 659**.

Ms. Cockrill filed a counterclaim against Respondent, including a claim for the tort of conversion for wrongfully taking a portion of her settlement proceeds and a claim for violation of the Missouri Merchandising Practices Act. **App. 149 (Tr. 240); 509; 297-308**. On July 29, 2014, a Clay County, Missouri jury returned a verdict against Respondent on the conversion claim for actual damages in taking $8,276.46 of Ms. Cockrill's property along with a verdict awarding $25,000 in punitive damages against Respondent under the Missouri Merchandising Practices Act. **App. 150 (Tr. 244)**; **469-470**. On September 4, 2014,[15] the trial judge entered judgment upholding the verdict on the conversion claim, but

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[14] The panel's written decision also cites Rule 4-1.6 (confidentiality), but it is unclear if the panel found a violation of this rule as well as Rule 8-4(d) with regard to disclosure of client information. **App. 654**.

[15] Ms. Cockrill committed suicide on September 1, 2014. She was survived by a minor

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reversed the punitive damage award because the jury verdict did not include a separate finding of actual damages under the MMPA to support such a verdict. **App. 471-473**.

After Ms. Cockrill's death, the Judgment on the conversion claim against Respondent was set aside based upon a stipulation of the parties. **App. 319**. On March 12, 2015, the trial judge entered a substitute Judgment regarding the respective claims, ordering that (a) [Ms. Cockrill's minor child] was entitled to $8,276.46 (the same amount found by the jury on the conversion claim); (b) Respondent was entitled to $10,373.53; and (c) a total of $6,350.01 was owed to health care providers. **App. 9; 86; 316-322**. The final Judgment of March 12, 2015 conclusively shows that Respondent received $14,626.47 ($8,276.46 owed to Ms. Cockrill's heir plus $6,350.01 owed to satisfy health care liens) from the settlement proceeds that he had to pay back. **App. 152 (Tr. 250-251)**.

In connection with the *Arnold v. Cockrill* lawsuit, at no time in the three-year history of the litigation did Respondent file a motion seeking to deposit funds into the registry of the court[16] pending a court-ordered distribution. **App. 135-136 (Tr. 184-185)**. On some unknown date at least two months after the lawsuit had been filed (after the entry of

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child as her sole heir. James Cockrill, one of the complainants herein, was appointed as the "next friend" for the minor child for purposes of receiving a distribution of the monies owed to Ms. Cockrill. **App. 8; 86**.

[16] The Circuit Court of Clay County, Missouri maintains a registry for the deposit of funds. For instance, in the *Cockrill v. Cockrill* matter, Respondent was ordered to deposit funds with the Circuit Clerk's Office to be held in the Court's registry. **App. 543**.

appearance of David Larson, Esq. on behalf of Respondent on July 1, 2013), Respondent claimed to have tendered a check (without filing a motion or obtaining a court order) for approximately $15,000 to the clerk. **App. 134 (Tr. 177); 508**. Respondent did not produce the tendered trust account check to the disciplinary hearing panel, testifying that he subsequently destroyed the check because the clerk would not accept it. **App. 134 (Tr. 177-180)**. Respondent acknowledged that he did not have $15,000 in his trust account at the time the check was tendered to the clerk of the court. **App. 134-135 (Tr. 180-181)**.[17] Respondent did not segregate the tendered funds into any other sort of escrow account while the competing claims were being litigated. **App. 219 (Tr. 510).**

After some additional litigation over the next twelve months, the trial judge entered an Order on March 25, 2016 directing Respondent to make the $8,276.46 payment to James Cockrill as the next friend of [Ms. Cockrill's minor child] for the sole use and benefit of the child. **App. 9; 87; 329**. On or about April 28, 2016, Respondent made full payment to Mr. Cockrill. **App. 9; 87**. A Satisfaction of Judgment was filed in *Arnold v. Cockrill* to show full payment for the benefit of the minor child, concluding a jury trial and three years of litigation over the $25,000. **App. 9; 87; 330.** The payment did not include an express

[17] On April 30, 2013, the balance in Respondent's trust account was $2,385.65. **App. 365**. In May 2013 at the time of the *Arnold v. Cockrill* lawsuit, the balance in Respondent's trust account was between $2,385 and $2,885. **App. 366**. On June 30, 2013, the balance in Respondent's trust account was $1,885.49. **App. 367**. In July 2013, the balance did not exceed $3,000. **App. 368**.

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amount for interest on the misappropriated funds which had accrued in the 45 months from July 2012 to April 2016. **App. 219-220 (Tr. 509-511)**. The hearing panel found that the court-ordered restitution was neither an aggravating nor a mitigating factor. **App. 656**.

In March 2015, Respondent placed his own non-trust funds from his operating account into his trust account to satisfy the medical lien payments with trust account checks. **App. 135 (Tr. 182); App. 323-326**. The judge had not ordered the payments to be made from a lawyer trust account, and Respondent does not know why he paid the liens with trust account checks. **App. 135 (Tr. 183)**. The disciplinary hearing panel stated that "This begs the question of what other clients may have been harmed as Respondent borrowed from other funds or deposited his personal funds to replenish the amount he misappropriated in July 2012." **App. 651**.

VI. Failure To Provide Accounting of Settlement Distribution And Failure To Allow Judicial Review Of Attorney Compensation

By e-mail sent to Respondent on October 3, 2012 under the subject line of "I need to be contacted ASAP," Ms. Cockrill made a written demand for an accounting of the settlement proceeds. **App. 358**. She said, "I need to know where my car accident settlement is. . . . No one has any information regarding my settlement. . . . Please do not disregard this email. I want some answers please." **App. 358**. On April 23, 2013, Ms. Cockrill again requested an "itemized list of what bills need to be paid from settlement from my car accident." **App. 386**.

When asked why Ms. Cockrill would be asking for information about the settlement proceeds if there was an agreement to have the proceeds applied to her other legal bills,

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Respondent testified that Ms. Cockrill's mental health, manic state or memory problems, was the explanation. **App. 132-133 (Tr. 172-173)**. When asked whether Ms. Cockrill's mental challenges should have prompted him to ensure adequate documentation for his file, Respondent testified that "In hindsight, I wish I had documented and done things differently." **App. 133 (Tr. 173)**.

Respondent denied a violation of Rule 4-1.15(j) (2012 version) regarding the requirement to render a full accounting of the settlement proceeds upon request by the client. **App. 162 (Tr. 289)**. Respondent testified that his lawsuit petition filed against his client seven months after her October 3, 2012 e-mail described above satisfied this requirement. **App. 162 (Tr. 290)**. The lawsuit petition contains no statement indicating that the entire $25,000 settlement payment was transferred to Respondent's operating account on July 23, 2012. **App. 261-293**.

Respondent admitted that the information provided to the client regarding the accounting for the settlement proceeds was not sufficient. **App. 165 (Tr. 303)**. Respondent apologized for not having better documentation accounting for the settlement proceeds, but claimed that the client was not damaged by this. **App. 165 (Tr. 303-304)**. The panel found that Respondent failed to provide the client with an accounting of the settlement proceeds when it was requested in October 2012. **App. 647**. The panel found that this omission constituted conduct involving dishonesty, fraud, deceit or misrepresentation under Rule 4-8.4(c). **App. 649**. Respondent accepted the written decision of the Disciplinary Hearing Panel. **App. 659**.

Respondent's standard practice is to have the client sign a settlement distribution

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sheet before disbursing settlement proceeds. **App. 127 (Tr. 150)**. At the time of the settlement, Respondent was aware of the Missouri Rules of Professional Conduct that require a settlement remittance sheet be provided to the client in conjunction with a contingency fee settlement. **App. 127 (Tr. 151)**. Respondent did not provide a settlement disbursement statement to the client in June 2012 when the settlement was finalized nor in July 2012 when he disbursed the settlement proceeds. **App. 128 (Tr. 153-154)**; **129 (Tr. 160)**. Respondent testified that the information did not matter to the client because the client knew she was not getting any of the $25,000. **App. 128 (Tr. 154)**.

The panel found Respondent violated Rule 4-1.5(c) by failing to promptly provide Ms. Cockrill with a written statement stating the outcome of the matter, the remittance to the client and the method of its determination. **App. 653**. The panel decided that Respondent should have provided the client with an itemized statement at the conclusion of the personal injury matter and prior to the withdrawal of his fee. **App. 653**. Respondent accepted the written decision of the Disciplinary Hearing Panel. **App. 659**.

Respondent produced an unsigned draft of a document titled "Settlement Distribution Sheet," which had been prepared in September 2012. **App. 370; App. 131 (Tr. 165)**. The Settlement Disbursement Sheet was not used by Respondent to comply with the Rules of Professional Conduct. **App. 129 (Tr. 158-160)**. The sheet was not used for purposes of allowing the client to make an informed decision. **App. 129 (Tr. 160)**.

Respondent testified that he sent the disbursement sheet by e-mail to the client in

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late September or early October 2012 as a "work in progress,"[18] and also provided her with a copy in person in November. **App. 128 (Tr. 153-154); 129 (Tr. 158)**. Ms. Cockrill denied seeing the document until April 2013. **App. 488-489; 491**. Respondent could not find an e-mail transmitting the draft of the settlement distribution sheet to the client in October 2012. **App. 128 (Tr. 154)**. When Ms. Cockrill did see the distribution sheet, she disagreed with it and refused to sign it. **App. 489, 500**. The disciplinary hearing panel found that the Respondent was unable to show that he provided the document to the client prior to April 2013. **App. 647**.

While the sheet references "invoices" and "separate checks," there are no attachments to the document. **App. 370**. Among other things, the document contained inaccurate information regarding the calculation of the contingency fee percentage (33.33% instead of 33%) and misstated the amount from the settlement "held back"[19] in the trust account. **App. 370**. Although showing various "disbursements," the sheet does

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[18] Respondent's October 2, 2012 "invoice submitted to Heather Cockrill" shows work performed on September 11, 2012 on a "settlement spreadsheet" but provides no time entry indicating the spreadsheet was sent to the client. **App. 431**.

[19] The statement, dated 09/24/2012, shows $4,490.56 being "held back in escrow" for medical bills, but the entire $25,000 had already been disbursed in July 2012, leaving $0 actually held back to satisfy health care liens. **App. 370**. Additionally, the sheet shows a potential lien claim for St. Luke's in the amount of $8,614.95, while the actual claim was for $8,876.95. **App. 371; 382; 374; 375**.

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not disclose a disbursement of $25,000 on July 23, 2013 as part of a $275,000 transfer to the operating account. **App. 370**. Respondent never prepared a final or corrected version of the document. **App. 131 (Tr. 165)**.

Respondent submitted monthly invoices to Ms. Cockrill from June 2012 through April 2013. **App. 166 (Tr. 307); 396-428**. However, none of the bills showed a credit for the application of the personal injury proceeds to the fees accumulated in the modification case. **App. 166 (Tr. 307); 396-428**. For instance, the January 2013 bill requested payment of $12,667.37 from Ms. Cockrill even though Respondent had already distributed the entire $25,000 settlement to himself. **App. 166 (Tr. 308); 423**.

Respondent claimed that Ms. Cockrill "wasn't a typical, monthly hourly paying client." **App. 168 (Tr. 313)**. When asked why he did not include a notation on the billing that expressly stated that no payment was expected, Respondent claimed that he did not have time to make those client-specific personal notations on his bills. **App. 185 (Tr. 373)**.

Respondent continued to deny a violation of Rule 4-1.15(d) (recordkeeping; 2012 version), but he did admit at the hearing that his recordkeeping of the trust funds was "poor" and was not accurate and complete. **App. 199 (Tr. 430); 216 (Tr. 498)**. The disciplinary hearing panel found that Respondent violated Rule 4-1.15(d) by failing to maintain complete records of Ms. Cockrill's trust funds. **App. 650**. The disciplinary hearing panel stated "The lack of complete records pertaining to the client trust account detracts from Respondent's credibility and creates an inference of dishonesty and deceit." **App. 650**. Respondent accepted the written decision of the Disciplinary Hearing Panel. **App. 659**.

Respondent did not give Ms. Cockrill an opportunity to have the attorney fees

reviewed by a judge before Respondent made the distribution of the entire $25,000 settlement proceeds to his operating account in July 2012. **App. 131 (Tr. 165)**. The disciplinary hearing panel found that Respondent violated Rule 4-8.4(d) by failing to allow the client to have the attorney fees reviewed under the clause in the fee agreement that gave the client the "right to have any fees reviewed." **App. 653**. The panel found that by unilaterally misappropriating all of the settlement money, including the contingency fee, he denied Ms. Cockrill the opportunity to have the fees reviewed. **App. 653**.

VII. Findings of Lack of Cooperation and Dishonesty During Investigation

On May 1, 2013, Respondent sent a report to OCDC stating that Ms. Cockrill was "attempting to extort money from me." **App. 446-452**. Right above Respondent's signature on the report, the following is stated: "I HEREBY CERTIFY WITH MY SIGNATURE THAT THE ABOVE INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE." **App. 452**. The report falsely stated that Respondent had been paid $0 on the personal injury matter when in fact he received $8,447.07 into his operating account on July 23, 2012 in satisfaction of the compensation due under the contingency fee agreement.[20] **App. 449**.

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[20] Given the opportunity at the disciplinary hearing, Respondent did not admit the falsity of this statement because the statement that he had been paid $0 is "identifying the issue that she [Ms. Cockrill] had changed her mind and didn't agree to it." **App. 205 (Tr. 453).** The panel found Respondent to have been dishonest, fraudulent, or deceitful with respect to the document submitted to OCDC and it questioned Respondent's credibility. **App. 649**.

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In August 2014, Respondent received a letter from OCDC regarding the initial disciplinary complaint arising out of the Cockrill settlement. **App. 432**. The letter recited that it "constitutes a demand, pursuant to Rule 4-8.1, that you provide this office with a complete response. . . . Should you fail to respond to the complaint . . . . You may be subject to separate discipline pursuant to Missouri Supreme Court Rule 4-8.1(c)." **App. 432**. On April 22, 2015, Informant wrote Respondent that it had not yet received a substantive response to the disciplinary complaint. **App. 434**. Informant requested a response within thirty days to several specific subject matters along with the production of certain identified documents, including complete documentation of the accounting of the $25,000 settlement proceeds and a "deposit ticket" for the settlement payment. **App. 438-439**. A written response was provided by Respondent on May 21, 2015**. App. 441-443**. The response promised that additional records and documents would be provided by Respondent upon receipt. **App. 441-443**.

The response dated May 21, 2015, stated "**I left a balance in the [trust] account to cover the medical liens . . . .**" **App. 442**. (emphasis added). This was a false statement[21] because Respondent did not leave any of the $25,000 in the trust account to

[21] Given the opportunity during his testimony at the disciplinary hearing, Respondent did not admit this was a false statement. **App. 139 (Tr. 198)**. "I was intending on paying lienholders 4,490, so I didn't hold that money in the escrow-or the IOLTA account—but that doesn't mean that's a misstatement." **App. 139 (Tr. 198)**. He further testified: "Q.

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cover medical liens. **App. 139 (Tr. 139)**. This false statement was not corrected by Respondent until his deposition on April 5, 2017, more than twenty-two months later. **App. 555-557**. A handwritten accounting of the settlement proceeds was prepared by Respondent and produced to Informant during the disciplinary investigation contains the following notation: "**On or about 7/23/12 disbursed all but $4,490.**" (emphasis added). **App. 138 (Tr. 193-194); 372**. The statement was also false because the entire $25,000 was disbursed on July 23, 2012. **App. 113 (Tr. 93-95)**.

The disciplinary hearing panel noted that "Despite the years of litigation concerning the settlement proceeds, Respondent did not admit [that the entire $25,000 settlement proceeds has been unilaterally disbursed from his trust account to his operating account in July 2012] until his deposition in April 5, 2017." **App. 641**. Respondent claimed that the delay in correcting the misstatement was due to the fact that he never reviewed the trust account statements provided to investigators and that he did not attempt to reconcile the $25,000 settlement funds until April 2017, nearly five years after the transfer into the operating account. **App. 216 (Tr. 498)**.

In the pleading from the *Arnold v. Cockrill* action, Respondent suggested that there was a $25,000 fund in need of release and distribution. **App. 202 (Tr. 440)**. This was a

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Is that sentence a true or false statement? A. It's true. Q. Well, how can it be true if you transferred all $25,000 on July 23rd, 2012? A. Well, the intent was to pay whatever the liens were then negotiated, so I guess saying I left a balance in the account was meant to say that I was responsible for it. That was my intention." **App. 200-201 (Tr. 434-435)**.

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false statement that Respondent admitted should have been worded differently. **App. 202 (Tr. 440)**. Respondent denied that he was purposely attempting to mislead the court that the $25,000 settlement proceeds were sitting in a trust account available for distribution. **App. 202 (Tr. 442)**.

In a sworn affidavit Respondent signed under penalty of perjury and submitted to the Clay County Circuit Court in *Arnold v. Cockrill* on May 2, 2013, Respondent stated "I am more than willing to disburse the funds from the personal injury case but Defendant refuses to approve the release of said funds." **App. 454-455**. When asked to explain whether this was a true statement as of May 2013, Respondent testified as follows:

> Q. Okay. Are you telling the Court that there is a problem with the release of the $25,000 funds?
>
> A. In filing that action I didn't know what to do, and it's asking the Court to make a decision and to give me advice on how to handle the situation. I -- a lot of these paragraphs I cut and pasted and I tried to be as inclusive as I could in identifying all the issues, and perhaps that particular paragraph 9, I don't know, isn't worded properly. I tried to do the best job I could.
>
> Q. Well, are you trying to suggest to the Court that there is a $25,000 fund in need of release and distribution?
>
> A. Yes.
>
> Q. And that's not a true statement because the funds were already disbursed?

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A. Not in terms of a fund, but that there's $25,000 of proceeds from the personal injury and that needed to be judicially determined because now the client has changed her mind after the disbursement. I guess I could have worded it a little bit differently, but I didn't."

App. 202 (Tr. 440-441).

Q. Let's go back to Exhibit 5 [May 2, 2013 Petition in *Arnold v. Cockrill*]. Direct your attention to paragraphs 22 and 23. Can you read those sentences into the record, please?

A. Plaintiffs have been ready, willing and able to disburse the funds in the personal injury case, but defendant has refused to approve the release of said funds. Plaintiffs have an interest in the $25,000 and assert they're entitled to payoff of their fees and costs from both cases and consequently causing the Court to determine when, how and to whom the $25,000 should be paid.

Q. How were you ready, willing and able to disburse the $25,000 funds if they had already been disbursed from your trust account to your operating account in July of 2012?

A. Well, I had $25,000 from whatever sources I needed to get them from and I was going to abide by whatever the Court determined that I should do.

* * *

Q. Do you feel there's anything deceptive or misleading about paragraphs 22 and 23 in asking the Court to determine how -- determine when, how and

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to whom the $25,000 should be paid if it was already disbursed in July of 2012?

A. If that's your reading, it was not intentional to mislead or sway or guide the Court. I had a problem, I brought it forth through an interpleader action to the judge and I did not intentionally try to mislead anybody about anything.

App. 205-206 (Tr. 454-456).

On April 9, 2015 Kansas disciplinary investigator Scott Nehrbass, Esq. sent an e-mail to Respondent with a specific question: "What happened with the money from that moment until the date it was deposited with the court?" **App. 583**. The same day Respondent replied to Mr. Nehrbass by stating "I deposited the [$25,000 settlement] check [on June 18, 2012]. **The funds were held in my IOLTA Account until the distribution of funds as per the final accounting from the Interpleader ruling just recently.**" (emphasis added). **App. 464**. The statement to the disciplinary investigator was false inasmuch as the entire $25,000 settlement deposit was transferred from the trust account to the operating account on July 23, 2012. **App. 437**.

Mr. Nehrbass has stated that "It was meaningful to my report that Mr. Arnold represented to me that he's left the questioned funds in the Missouri client trust account without interruption throughout the interpleader action." **App. 584**. Mr. Nehrbass stated "It is disappointing to me that Mr. Arnold misstated these important facts." **App. 584**.

Mr. Nehrbass provided a report to Stan Hazlett, the Kansas Disciplinary Administrator, containing findings and recommendation regarding his investigation of the

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Cockrill settlement.[22] **App. 583; 604 (P. 11); 608 (P. 26-27)**. Using a higher "clear and convincing" standard under Kansas law, the report prepared by Mr. Nehrbass concluded that Respondent did not violate KRPC 1.5(d) because, in his view, in "due time and along the way" Respondent did provide the required written statement to the client upon conclusion of a contingent fee matter. **App. 82; 604 (P. 11-12); 612-613 (P. 42-48)**. Mr. Nehrbass' report resulted in a letter dated September 20, 2016 from the Kansas disciplinary office to Respondent dismissing the complaint. **App. 583**. However, by e-mail sent to Mr. Nehrbass at 9:04 p.m. on April 4, 2017, Respondent reported a misstatement of fact he had previously made in the course of the Kansas disciplinary. **App. 615; 603 (P. 7); 604 (P. 10-11)**. Thus, the false information provided to the Kansas investigator on April 9, 2015 was not corrected by Respondent until April 4, 2017, six months after the Kansas investigation had been closed with a dismissal. **App. 583-586**. As a result of this "meaningful" misstatement of fact to a disciplinary investigator, Kansas has re-opened its investigation of the Cockrill settlement. **App. 581-587; 606 (P. 17-20); 607-608 (P. 24-25)**.

The panel found that various statements made by Respondent constituted conduct involving dishonesty, fraud, deceit or misrepresentation under Rule 4-8.4(c). **App. 649**. Specifically, these instances of dishonesty were identified as (a) the report to OCDC dated May 1, 2013); (b) the Petition filed in Clay County, Missouri Circuit Court on May 2, 2013

[22] The scope of the initial Kansas investigation did not involve misappropriation of trust funds or trust account recordkeeping. **App. 604-606 (P. 12-17)**.

accompanied by a sworn affidavit from Respondent; (c) the statement above made to the Kansas disciplinary investigator on April 9, 2015; and (d) the statement above made to the Missouri disciplinary investigator on May 21, 2015. **App. 649**. The disciplinary hearing panel stated that "[Respondent's] lack of forthrightness does not bode well for his credibility." **App. 649**. Respondent accepted the written decision of the Disciplinary Hearing Panel. **App. 659**.

In August 2016, Informant served a formal discovery request upon Respondent for production of documents, including:

> "3. All documents filed on behalf of any party or the court in the interpleader action (13CY-CV04343), including petitions, affidavits, motions, notices, briefs, certificates, judgments and orders";
>
> "4. All documents that would constitute the full accounting for the $25,000 settlement payment from Hartford Insurance. Rule 4-1.15(f) identifies the "complete records" a lawyer is expected to maintain with regard to trust funds. Please provide complete records to the extent identified in this rule";
>
> "5. Please provide a legible front and back copy of the following checks (a) any checks written to you or your law firm derived from Heather Cockrill's settlement proceeds"; . . .
>
> "7. All invoices, receipts, ledgers or other proof or evidence of any expense incurred by you or your law firm in connection with the investigation or settlement of the personal injury claim made on behalf of

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Heather Cockrill"; . . . and

"15. Any correspondence or notices you have received from the Kansas Disciplinary Administrator regarding any disciplinary matter or bar complaint since September 1, 2011."

App. 251-254.

Respondent did not disclose to Informant his April 4, 2017 (9:04 p.m.) e-mail correcting the erroneous statement previously made on April 9, 2015 to the Kansas investigator. **App. 615-617**. This information was not available to Informant at the time of Respondent's deposition the next morning, which commenced at 10:30 a.m. on April 5, 2017. **App. 551**. Informant did not become aware of the new Kansas investigation until 3:48 p.m. on April 26, 2017 (**App. 617**), approximately 15 hours before the disciplinary hearing herein commenced. **App. 92**. Counsel for Respondent apologized for the "oversight." **App. 615**.

On May 21, 2015 Respondent promised in writing to provide Informant with a copy of the trial transcript from the *Arnold v. Cockrill* trial. **App. 442**. Respondent obtained the transcript from the Kansas disciplinary investigator. **App. 208 (Tr. 466)**. However, as of the beginning of the second day of the disciplinary hearing in August 2017, Respondent still had not provided Informant with a copy of the trial transcript. **App. 207-208 (Tr. 462-465)**. Without having previously disclosed the transcript to Informant, Respondent offered the trial transcript into evidence at the disciplinary hearing, to which Informant objected on the basis of prejudicial surprise. **App. 207-209 (Tr. 462-469)**.

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In the Petition signed by Respondent in the *Arnold v. Cockrill* lawsuit, Respondent alleged that Arnold Pfanstiel LLC merged into Arnold Law Firm LLC. **App. 261**. In August 2016, Informant served a formal discovery request to Respondent for production of documents, including "All documents showing that Arnold Pfanstiel LLC merged into Arnold Law Firm LLC." **App. 252-253**. At his deposition, Respondent testified that there was no merger. **App. 95 (Tr. 23-24)**. At the disciplinary hearing, however, Respondent provided the opposite answer. **App. 95 (Tr. 23-24)**. At the disciplinary hearing, Respondent stated that there was a "memorandum" between himself and his former law partner related to the merger, but he was not able to locate the document. **App. 95 (Tr. 23)**. The "memorandum" was a handwritten note dividing a list of cases between the lawyers, not a formal merger document filed with the Secretary of State's office. **App. 101-102 (Tr. 48-49)**.[23] Addressing the missing merger document, the disciplinary hearing

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[23] On April 4, 2017, Informant again inquired about law firm merger documents. **App. 618**. At his deposition on April 5, 2017, Respondent promised to bring the "merger agreement" to the disciplinary hearing. **App. 38**. The following exchange occurred at Respondent's deposition: "Q. But I'm talking about merger in a formal legal sense as a matter of business law. You understand what a merger is? A. Well, there was a formal agreement to merge Arnold Pfanstiel and work the cases into Arnold Law Firm except for there was a carve-out for two or three cases. So there was a formal agreement that was signed between the two partners to take care of the practice and who is responsible for the liabilities, debts, assets, and cases. And that was into Arnold Law Firm. Q. And you

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panel stated: "Finally, Respondent did not produce, after promising he would, a merger agreement for Arnold Pfanstiel LLC and Arnold Law Firm LLC. He finally indicated there was no written "merger" agreement. Respondent knew or should have known whether the requested documents existed at the time of the initial request." **App. 652**.

The disciplinary hearing panel found that Respondent violated Rule 4-8.1(c) by knowingly failing to respond to a lawful demand for information from a disciplinary authority. **App. 651**. The panel found that Respondent failed to produce several requested documents, including a merger agreement between Respondent's two law firms, a trial transcript, a bank deposit receipt,[24] and an accounting of the $25,000 settlement funds. **App. 652**. Respondent accepted the written decision of the Disciplinary Hearing Panel. **App. 659**.

VIII. Additional Mitigating and Aggravating Factors

From the beginning of the legal representation, Ms. Cockrill suffered from several mental health problems, including PTSD, depression, bi-polar disorder and ADHD. **App. 104 (Tr. 59)**. During the course of the representation, Ms. Cockrill was hospitalized following a suicide attempt. **App. 104 (Tr. 59)**. At times during the representation, Ms.

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consider that to be some type of merger agreement? A. I do. Q. Do you still have a copy of that? A. I am sure I have it somewhere, and I'm thinking of the file which is in my office, so it should be in there. If not, I should have an electronic version."

[24] The receipt was specifically requested by e-mail on April 4, 2017 prior to the first day of the hearing. **App. 588**.

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Cockrill was under financial distress, especially in 2013. **App. 104-105 (Tr. 60-61)**. The panel found that Ms. Cockrill was a vulnerable victim. **App. 655**.

Ms. Cockrill did commit suicide on September 1, 2014 (**App. 8, 86**), approximately one month after achieving jury verdicts against Respondent of over $33,000 ($8,200 for conversion and $25,000 for punitive damages) **(App. 469-470)**, and after having spent a portion of the final sixteen months of her life in litigation with Respondent defending against allegations that she was engaged in an effort to extort money from Respondent (**App. 262-263**) by requesting a disbursement of a portion of the settlement and pursuing a counterclaim that Respondent tortiously converted her settlement proceeds (**App. 304-305**). **App. 505-509**.

Respondent presented testimony from five witnesses who described Respondent's character and reputation. Daniel Tarwater is a legislator from Jackson County, Missouri. **App. 139 – 140 (Tr. 200-201)**. Mr. Tarwater is a social acquaintance of Respondent, but has not been a client. **App. 140-141 (Tr. 201-207)**. Mr. Tarwater stated that Respondent was nurturing and helpful. **App. 141 (Tr. 205)**. Mr. Tarwater had spent a couple of hours with Respondent in a professional setting. **App. 141 (Tr. 208)**. Respondent made no disclosure to Mr. Tarwater prior to his testimony concerning the allegations set forth in the disciplinary proceeding. **App. 141 (Tr. 206)**.

David Cook is a professor and university chancellor in Overland Park, Kansas. **App. 142 (Tr. 209)**. Dr. Cook has known Respondent socially for six years through their sons' involvement in youth hockey. **App. 142 (Tr. 210)**. Dr. Cook testified that Respondent has demonstrated genuine caring towards children as a volunteer for the team.

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App. 142 (Tr. 211-213). Dr. Cook testified that Respondent is a person of integrity. **App. 143 (Tr. 214)**. Dr. Cook had very little knowledge of the allegations and evidence involved in the disciplinary proceeding against Respondent. **App. 143 (Tr. 215-216)**. Dr. Cook has never been a client of Respondent. **App. 143 (Tr. 216)**. Dr. Cook did not know anything about Respondent's reputation in the legal community. **App. 144 (Tr. 217)**. Dr. Cook did not have any opinions about Respondent pertaining to legal matters. **App. 144 (Tr. 217)**.

Charles Cobb is a retired dentist and professor and served in the military. **App. 144 (Tr. 219-220)**. Dr. Cobb has known Respondent for six years and has consulted with Respondent in referring clients to Respondent for potential litigation. **App. 144-145 (Tr. 220-221)**. Dr. Cobb believes that Respondent has a good philosophical basis for professional ethics. **App. 145 (Tr. 223-223)**. Dr. Cobb questioned the ethics of the charges brought against Respondent, suggesting the Informant could be engaging in a "witch hunt." **App. 145-147 (Tr. 223-230)**. Dr. Cobb would trust Respondent with his own legal affairs, but has never been a client. **App. 145-146 (Tr. 224-225)**. Dr. Cobb holds Respondent in high esteem. **App. 145 (Tr. 224)**. Dr. Cobb is not familiar with Respondent's reputation in the legal community. **App. 146 (Tr. 225)**. Dr. Cobb and Respondent do not share personal confidences with each other. **App. 146 (Tr. 226)**. Respondent did not tell Dr. Cobb about the nature of allegations charged in this matter. **App. 146 (Tr. 226)**. Dr. Cobb testified that the allegations in the Information were none of his business and that he did not desire to learn anything about the disciplinary matter. **App. 146 (Tr. 228)**.

Michael Rader is an attorney in Kansas City. **App. 153 (Tr. 256)**. He refers

domestic cases to Respondent. **App. 154 (Tr. 258)**. He has received positive feedback about Respondent from those referrals. **App. 154 (Tr. 259)**. Mr. Rader has never heard anything negative about Respondent's character or reputation. **App. 154 (Tr. 260)**. Mr. Rader believes that Respondent is a good person, both personally and professionally. **App. 155 (Tr. 261)**. Mr. Rader would not hesitate to retain Respondent if the need arose. **App. 155 (Tr. 261)**. Respondent did not discuss the subject matter of the disciplinary proceeding with Mr. Rader. **App. 155 (Tr. 263)**. Mr. Rader had a little bit of curiosity about the charges against Respondent, but since he works 60 hours a week he did not have time to "meddle in other people's stuff." **App. 155 (Tr. 264)**. Mr. Rader is a plaintiff's personal injury attorney. **App. 156 (Tr. 265)**. Respondent did not discuss with Mr. Rader the content or adequacy of the unsigned draft of the settlement distribution sheet, or the circumstances involving Respondent's admitted misappropriation of settlement funds needed to satisfy health care liens, or Respondent's admitted misconduct involving dishonesty, deceit, fraud or misrepresentation in not accounting for the personal injury settlement proceeds received on behalf of the client. **App. 156 (Tr. 265-266)**.

Timothy Keck is a cabinet level secretary for the State of Kansas and an attorney. **App. 156 (Tr. 268)**. Mr. Keck previously worked at two law firms with Respondent. **App. 157 (Tr. 269-270)**. They are friends and former law firm partners. **App. 157 (Tr. 270-272)**. Mr. Keck testified that Respondent fights very hard for his clients**. App. 157 (Tr. 271)**. Mr. Keck trusts Respondent. **App. 157 (Tr. 272)**. Mr. Keck does not have any reservations or qualms about Respondent's character and reputation. **App. 157 (Tr. 272)**. Mr. Keck has never seen Respondent cause harm to a client. **App. 158 (Tr. 274)**. At the

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time of the disciplinary hearing, Respondent and Mr. Keck were both defendants in two separate legal malpractice cases in Johnson County, Kansas. **App. 158 (Tr. 276)**. Mr. Keck and Respondent shared personal and confidential information with each other while they were law firm partners, and such relationship continues at times up through the hearing. **App. 159 (Tr. 277)**. Mr. Keck does not recall anything Respondent disclosed to him about the charges in this disciplinary matter. **App. 159 (Tr. 278)**. Mr. Keck did not ask Respondent anything about the disciplinary matter. **App. 159 (Tr. 278)**. Respondent had not reviewed the Information or any of the documents admitted into evidence in the case and he had not discussed anything with Respondent regarding the representation of Ms. Cockrill. **App. 159 (Tr. 278)**. Mr. Keck has never looked into the merits of the claims filed in Clay County, Missouri Circuit Court against Respondent by Ms. Cockrill. **App. 159 (Tr. 279)**.

Stephen Taylor has been a domestic relations attorney in Clay County, Missouri for ten to fifteen years. **App. 593 (P. 5-6); 600 (P. 34)**. He represented James Cockrill, Ms. Cockrill's former husband and a complainant in this disciplinary matter. **App. 593 (P. 6)**. His interactions with Respondent in the *Cockrill v. Cockrill* domestic relations matter were very acrimonious. **App. 594 (P. 11)**. There was a shouting match between Mr. Taylor and Respondent in court. **App. 594 (P. 11)**. Mr. Taylor does not like Respondent, calling him a "loud mouth." **App. 594 (P. 11); 598 (P. 27)**. Mr. Taylor stated that his experiences with Respondent were not like his experiences with other attorneys. **App. 598 (P. 27)**. Mr. Taylor does not think Respondent obtained a great result for his client in the modification case. **App. 599 (P. 31)**. However, he thought Respondent did at least a "half-ass" job.

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App. 599 (P. 32).

When asked if Respondent wished to make any expression of remorse with regard to the way he handled the medical liens on the settlement proceeds, Respondent stated "I absolutely admit readily that I made a mistake. . . The money belonged to third parties and I am absolutely remorseful about [that]. . . I've made the admission that I transferred the money inappropriately . . . And I'm sorry." **App. 148-149 (Tr. 236-237)**.

At the disciplinary hearing, Respondent denied that he misappropriated $8,276.46 (the amount of damages found by the jury in the conversion claim and the amount judicially ordered to be returned) from Ms. Cockrill's settlement proceeds. **App. 152-153 (Tr. 252-253)**. Respondent, however, did express "regret" for having transferred any funds in excess of his contingency fee out of the settlement proceeds. **App. 622**. Respondent did claim to be "remorseful" about the circumstances of how he handled the trust funds and about the lack of documentation for his agreements with Ms. Cockrill. **App. 499 (Tr. 499-500)**.

The disciplinary hearing panel found "no clear evidence of dishonest or selfish motive." **App. 655**. However, the panel did find that the misappropriation of trust funds and various other misconduct involved dishonesty, fraud, deceit or misrepresentation and the panel further stated, "By unilaterally withdrawing the entire amount of the settlement proceeds from his trust account, Respondent demonstrated that his personal needs took preceden[ce] over those of his client or third parties." **App. 648**.

Respondent has no prior disciplinary history in Missouri. **App. 217 (Tr. 499)**. There is a pending disciplinary investigation in Kansas involving some of the circumstances at issue here, including a self-reported incident wherein Respondent may

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have made a misstatement of fact to a Kansas disciplinary investigator about Respondent's disposition of the client's settlement proceeds at issue herein. **App. 96-97 (Tr. 27-31); 581-587; 606-607**. The pending Kansas investigation will also involve an examination of Respondent's trust account and potential misappropriation of trust funds.[25] **App. 606 (P. 19-20)**. Respondent has substantial experience in family law and personal injury law. **App. 94-95 (Tr. 20-21)**.

[25] Testifying on behalf of the Kansas Disciplinary Administrator, Kimberly Knoll, Esq. stated: "Any time we learn of a lawyer that is not properly utilizing the trust account, it causes great concerns because in the vast majority of cases, there's theft of client money, and that in Kansas is—I can't say we have a bright line rule, but it has been traditional that anyone that misappropriates any kind of money, the punishment is disbarment. The [Kansas Supreme] Court takes it extraordinarily serious." **App. 607 (P. 22)**. Kansas has decided to allow Missouri to take the lead with regard to the dual complaints. **App. 607 (P. 24)**.

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POINT RELIED ON

I.

RESPONDENT IS SUBJECT TO DISCIPLINE BECAUSE THE PREPONDERANCE OF EVIDENCE, INCLUDING ADMISSIONS, ESTABLISHES THAT RESPONDENT IS GUILTY OF NUMEROUS INSTANCES OF PROFESSIONAL MISCONDUCT, AS FOLLOWS:

(A) RESPONDENT VIOLATED RULES 4-1.15(i) (2012 VERSION) AND 4-8.4(c) IN THAT HE MISAPPROPRIATED $16,550 IN TRUST FUNDS FROM THE CLIENT'S PERSONAL INJURY SETTLEMENT AND FAILED TO PROMPTLY DELIVER THE FUNDS TO THE PERSONS ENTITLED TO RECEIVE THEM, INCLUDING THE CLIENT AND TWO HEALTH CARE PROVIDERS HOLDING LIENS ON THE PROCEEDS;

(B) RESPONDENT VIOLATED RULE 4-8.4(c) BY ENGAGING IN MULTIPLE ACTS OF DECEIT, DISHONESTY AND FRAUD IN A COVER-UP THAT LASTED FROM JULY 2013 TO APRIL 2017 TO HIDE THE FACT FROM HIS CLIENT, DISCIPLINARY INVESTIGATORS, AND A CIRCUIT COURT TRIAL

JUDGE, THAT RESPONDENT MISAPPROPRIATED THE SETTLEMENT PROCEEDS;

(C) RESPONDENT VIOLATED RULE 4-1.15(d) BY FAILING TO MAINTAIN COMPLETE RECORDS OF THE TRUST FUNDS RECEIVED IN JUNE 2012 ON BEHALF OF THE CLIENT;

(D) RESPONDENT VIOLATED RULES 4-1.15(i), 4-8.4(d), 4-8.4(c), AND 4-1.5(c) BY FAILING TO PROVIDE THE CLIENT WITH AN ACCURATE AND TRUTHFUL ACCOUNTING OF THE SETTLEMENT FUNDS UPON CONCLUSION OF THE CONTINGENT FEE MATTER IN JUNE / JULY 2012 AND UPON THE CLIENT'S REQUEST IN OCTOBER 2012, AND BY FAILING TO GIVE THE CLIENT AN OPPORTUNITY TO SEEK JUDICIAL REVIEW OF THE FEES BEFORE DISBURSING THE ENTIRE $25,000 SETTLEMENT PAYMENT INTO HIS OPERATING ACCOUNT;

(E) RESPONDENT VIOLATED RULE 4-8.1(c) BY FAILING TO PROVIDE COOPERATION AND TIMELY INFORMATION AND DOCUMENTS TO INFORMANT FOLLOWING A LAWFUL DEMAND;

(F) RESPONDENT VIOLATED RULES 4-1.6

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AND 4-8.4(d) IN FILING A 33-PAGE LAWSUIT PETITION AGAINST HIS CLIENT WHICH WAS FILLED WITH NUMEROUS INSTANCES OF INFORMATION RELATED TO THE REPRESENTATION OF A CLIENT WHICH WAS NOT NECESSARY TO STATE A CLAIM FOR RELIEF REGARDING PAYMENT OF THE $25,000 SETTLEMENT FUNDS; AND

(G) RESPONDENT VIOLATED RULES 4-1.5(a) AND 4-8.4(a) BY CHARGING, COLLECTING AND/OR ATTEMPTING TO CHARGE OR COLLECT AN UNREASONABLE FEE.

Carlson v. Carlson, 275 S.W.3d 356 (Mo. App. 2008)

Dillard v. Payne, 615 S.W.2d 53 (Mo. 1981)

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

In re Griffey, 873 S.W.2d 600 (Mo. banc 1994)

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II.

IN ORDER TO PROTECT THE PUBLIC AND MAINTAIN THE INTEGRITY OF THE LEGAL PROFESSION, THE COURT SHOULD REMOVE RESPONDENT FROM THE PRACTICE OF LAW BY DISBARMENT.

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

In re Ehler, 319 S.W.3d 442 (Mo. banc 2010)

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

In re McMillin, 521 S.W.3d 604 (Mo. banc 2017)

ARGUMENT

I.

RESPONDENT IS SUBJECT TO DISCIPLINE BECAUSE THE PREPONDERANCE OF EVIDENCE, INCLUDING ADMISSIONS, ESTABLISHES THAT RESPONDENT IS GUILTY OF NUMEROUS INSTANCES OF PROFESSIONAL MISCONDUCT, AS FOLLOWS:

(A) RESPONDENT VIOLATED RULES 4-1.15(i) (2012 VERSION) AND 4-8.4(c) IN THAT HE MISAPPROPRIATED $16,550 IN TRUST FUNDS FROM THE CLIENT'S PERSONAL INJURY SETTLEMENT AND FAILED TO PROMPTLY DELIVER THE FUNDS TO THE PERSONS ENTITLED TO RECEIVE THEM, INCLUDING THE CLIENT AND TWO HEALTH CARE PROVIDERS HOLDING LIENS ON THE PROCEEDS;

(B) RESPONDENT VIOLATED RULE 4-8.4(c) BY ENGAGING IN MULTIPLE ACTS OF DECEIT, DISHONESTY AND FRAUD IN A COVER-UP THAT LASTED FROM JUNE 2013 TO APRIL 2017 TO HIDE THE FACT FROM HIS CLIENT, DISCIPLINARY INVESTIGATORS, AND A CIRCUIT COURT TRIAL

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JUDGE, THAT RESPONDENT MISAPPROPRIATED THE SETTLEMENT PROCEEDS;

(C) RESPONDENT VIOLATED RULE 4-1.15(d) BY FAILING TO MAINTAIN COMPLETE RECORDS OF THE TRUST FUNDS RECEIVED IN JUNE 2012 ON BEHALF OF THE CLIENT;

(D) RESPONDENT VIOLATED RULES 4-1.15(i), 4-8.4(d), 4-8.4(c), AND 4-1.5(c) BY FAILING TO PROVIDE THE CLIENT WITH AN ACCURATE AND TRUTHFUL ACCOUNTING OF THE SETTLEMENT FUNDS UPON CONCLUSION OF THE CONTINGENT FEE MATTER IN JUNE / JULY 2012 AND UPON THE CLIENT'S REQUEST IN OCTOBER 2012, AND BY FAILING TO GIVE THE CLIENT AN OPPORTUNITY TO SEEK JUDICIAL REVIEW OF THE FEES BEFORE DISBURSING THE ENTIRE $25,000 SETTLEMENT PAYMENT INTO HIS OPERATING ACCOUNT;

(E) RESPONDENT VIOLATED RULE 4-8.1(c) BY FAILING TO PROVIDE COOPERATION AND TIMELY INFORMATION AND DOCUMENTS TO INFORMANT FOLLOWING A LAWFUL DEMAND;

(F) RESPONDENT VIOLATED RULES 4-1.6

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AND 4-8.4(d) IN FILING A 33-PAGE LAWSUIT PETITION AGAINST HIS CLIENT WHICH WAS FILLED WITH NUMEROUS INSTANCES OF INFORMATION RELATED TO THE REPRESENTATION OF A CLIENT WHICH WAS NOT NECESSARY TO STATE A CLAIM FOR RELIEF REGARDING PAYMENT OF THE $25,000 SETTLEMENT FUNDS; AND

(G) RESPONDENT VIOLATED RULES 4-1.5(a) AND 4-8.4(a) BY CHARGING, COLLECTING AND/OR ATTEMPTING TO CHARGE OR COLLECT AN UNREASONABLE FEE.

The disciplinary hearing panel found that the preponderance of evidence established that Respondent engaged in multiple acts of professional misconduct, including misappropriation of trust funds and conduct involving dishonesty, deceit, fraud or misrepresentation. In this case, Respondent is guilty of taking money both from lienholders and from his client in violation of the duty under Rule 4-1.15(i) (2012 version) to "promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive." Misappropriation is the most serious form of breach of fiduciary duty and one of the most serious forms of professional misconduct.

By unilaterally transferring all of the $25,000 settlement proceeds from the trust account to his operating account on July 23, 2012, Respondent misappropriated at least

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$8,276.46 in money belonging to and owned by the client. As shown by the Jury Verdict A and the Judgment entered thereon, Respondent "took" and converted his client's money. By unilaterally transferring all of the $25,000 settlement proceeds from the trust account to his operating account on July 23, 2012, Respondent misappropriated at least $6,350.01 in money belonging to lienholders.

Conversion is the unauthorized assumption of the right of ownership over the personal property of another to the exclusion of the owner's rights. ***Lappe & Associates, Inc. v. Palmen***, 811 S.W.2d 468, 471 (Mo. App. 1991) (stockbroker who diverted client's special purpose check for stockbroker's personal benefit is guilty of conversion); ***Dillard v. Payne***, 615 S.W.2d 53 (Mo. 1981) (funds placed in the custody of lawyer for a specific purpose and their diversion for other than such specified purpose subjects the attorney / holder to liability in conversion). In the present case, conversion, theft and misappropriation are synonymous terms to describe Respondent's conduct of removing client and third party funds from the trust account to pay his personal and business expenses in violation of Rule 4-1.15(i) (2012 version).

Respondent admitted that the transfer from the trust account to the operating account was an intentional decision on his part with specific knowledge that there were liens and/or lien claims on the settlement proceeds. Thus, at the hearing, Respondent admitted some degree of misappropriation under 4-1.15, albeit still refusing to acknowledge a theft of the client's portion of the settlement proceeds. Taking money that belongs to doctors is just as much of an offense under Rule 4-1.15 as taking client money.

Curiously, Respondent admitted his dishonesty involved in moving funds out of the

trust account (**App. 77; 133-134; 622**), but he still appears to claim an "innocent" misappropriation. **App. 629**. Simply put, there is no such thing as an innocent misappropriation. Misappropriation of "client funds necessarily involves deceit and misrepresentation." ***In re Ehler***, 319 S.W.3d 442, 451 (Mo. banc 2010). Moreover, Respondent has accepted the disciplinary hearing panel's decision without reservation, qualification or limitation. Such acceptance of the panel's decision by Respondent supersedes his preliminary denials of misconduct in the Answer and on the record at the disciplinary hearing. Accordingly, Informant contends that the findings of professional misconduct regarding violations of Rule 4 made by the disciplinary hearing panel should be deemed uncontested for purposes of this Court's review.

In evaluating the circumstances of misappropriation in this case, a few aspects merit special consideration. There are just too many facts and inferences which point to the intentional exploitation of a very vulnerable client by Respondent. There are adverse inferences suggesting more than a misunderstanding over the disbursement of the settlement proceeds. When viewed as a whole, the processes used by Respondent to deposit the settlement check without the client even seeing the check, and then disbursing the money without any actual knowledge or involvement of the client, and then standing mute on the subject for month after month while sending client bills with increasing balances due, suggest a sinister scenario.

Even more concerning is that Respondent could not, or perhaps would not, adequately explain the $275,000 transfer from the trust account to the operating account. While the present case focuses nearly exclusively on a $25,000 settlement, there is a

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residual concern over the apparent inability to explain and document a $275,000 trust account transaction. A review of the trust account statements reveals that this "equalization" transfer of $275,000 was very atypical of Respondent's trust account activity. The Court should not ignore the absence of documentation and testimony on Respondent's behalf explaining this bizarre "equalization" transfer from the trust account into the operating account.

Rule 4-1.15(d) (2012 version) requires a lawyer to maintain and preserve complete records of client trust accounts. The Rule identifies examples of the necessary types of records required to be kept. These records are required to meet a standard of "generally accepted accounting practices." ***See Rule 4-1.15, Comment 1***. One purpose of Rule 4-1.15(d) is to ensure that, if a problem arises with an attorney's trust account, the OCDC and this Court are not forced to depend on the attorney's self-serving memory and claims of innocence. ***In re Farris***, 472 S.W.3d 549 (Mo. banc 2015).

For lawyers who handle contingency fee matters such as this, there is a special rule of accounting set forth in Rule 4-1.5(c): "Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of determination." Such a "remittance statement" is also reflected in the requirement in Rule 4 to maintain "complete records" of trust funds. ***See Rule 4-1.15(d)*** ("complete records" include "statements of disbursement" which "clearly and expressly" reflect the date, amount and explanation for all "deliveries and disbursements" of the funds). This type of "full accounting" must also be provided to the client upon request. ***Rule 4-1.15(i)***. It is

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also incumbent upon the lawyer to provide such records and information to the disciplinary office when requested. ***Rule 4-8.1(c)***.

Lawyers are given wide latitude to handle trust account transactions largely without oversight by clients, judges and disciplinary authorities. When a lawyer is alone with a pen and a checkbook, there are often no contemporaneous eyewitness accounts as to the manner and methods of how the trust funds are treated. All too often, dishonest and unfit lawyers cannot resist the temptation to dip into the trust account for personal gain, especially when it may go unnoticed. In these cases, clients have little control over the deposit and receipt of settlement checks, and even less control over the disbursement of those funds. When questions arise, lawyers must be able to provide adequate recordkeeping and honest, credible explanations for each expenditure. Sadly, that never happened in this case. It didn't happen while the client was alive and it didn't happen during the two days of the disciplinary hearing. "The Court abandons the purposes of Rule 4-1.15(d) if it allows a lawyer's failure to maintain the required records to work to that attorney's benefit. To avoid this result, the failure to comply with Rule 4-1.15(d) must give rise to an inference of knowledge, particularly when the attorney tries to defend a charge of misappropriating trust account funds on grounds that the required documents plainly would support or refute had the attorney kept them." I***n re Farris***, 472 S.W.3d 549 (Mo. banc 2015).

A negative inference also arises by the failure of Respondent to present testimony from his wife, Andrea, who has a degree in financial accounting from Stanford University and is also the office manager who handles the accounting for the firm. It can be inferred

that the testimony of Mrs. Arnold as to circumstances of the accounting involved in the $275,000 transfer to the operating account would not have been favorable to the claim of an "innocent" misappropriation. ***See Kelly by Kelly v. Jackson***, 798 S.W.2d 699, 701 (Mo. banc 1990) (the failure of a party to call a witness who has knowledge of facts and circumstances vital to the case generally raises the presumption that the testimony will be unfavorable to the party failing to offer the testimony); ***Hill v. Boles***, 583 S.W.2d 141, 145-46 (Mo. banc 1979) (noting the relationship of the witness to the party is one of the factors to be balanced in determining when a witness is equally available); ***State v. Washington***, 444 S.W.3d 532 (Mo. App. 2014) (an adverse inference arises when the missing witness is "peculiarly available" to one of the parties); ***Porter v. Toys `R' Us-Delaware, Inc.***, 152 S.W.3d 310 (Mo. App. 2004) (unless the witness is equally available to each side, the failure of a party to call a witness who has knowledge of facts and circumstances vital to the case generally raises a presumption or inference that the testimony would be unfavorable to the party failing to offer it).

While Mrs. Arnold was not available to Informant because she lived and worked in Kansas outside of the subpoena jurisdiction of the hearing, it would naturally be assumed that she would have voluntarily testified in the hearing at Respondent's behest as to the accounting if the circumstances of the transfer and disposition of trust funds were innocent and genuinely explainable. Similar adverse inferences arise by the failure to provide the bank deposit receipt, which would show whether the settlement check was deposited into the trust account before or after the phone call with the client on the date of the deposit; and by Respondent's failure to provide Informant with a copy of the trial transcript in the

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underlying civil action, which would have contained the complete testimony of the client prior to her death and possible inconsistencies in Respondent's position.

Respondent's explanations for his conduct seem a bit thin. The claim that the money was transferred to the operating account to make it easier to issue 1099s to the health care providers stretches incredulity. Further, the idea that Respondent did not want to "waste time" to document the purported compensation agreement does little to suggest an "innocent" misappropriation. Likewise, Respondent's claim that he was too busy to make a personal notation on the client's bills showing that the account balances had been credited through payment received on the personal injury settlement is not credible. The haphazard "settlement distribution sheet" belatedly provided to the client was full of errors, omissions and untruths.

When finally confronted with the truth by the client in April 2013, Respondent was acutely aware that he faced disbarment if the truth were exposed. He even made such a comment to the client, which is indicative of guilt. Rather than self-reporting the circumstances of the misappropriation to OCDC, in an extraordinary act of desperation, Respondent actually reported to OCDC that he was being extorted by his client. Two separate tribunals have rejected the charade, first by a jury in Clay County, Missouri and then by a disciplinary hearing panel three years later. There was no extortion by the client. The client's demand for $13,607 was considerably less than the $32,000 ultimately awarded to her by the jury. The only unlawful conduct was from Respondent, and that involved Respondent's theft and conversion of $16,500 from the settlement money.

Close attention to the jury verdict is warranted. The record shows that the trial judge

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entered initially entered judgment on the conversion claim, meaning that the trial judge found no legal grounds to overturn that portion of the verdict. The jury rendered a verdict for $8,200 in actual damages for the tort of conversion with $0 punitive damages while simultaneously awarding actual damages of $0 under the MMPA but $25,000 in punitive damages for the MMPA claim.

The exact testimony which compelled a jury to award punitive damages remains something of a mystery. Despite having obtained a copy of the trial transcript, Respondent never made good on his promise to provide the transcript to Informant.

Respondent is quick to point out that the jury verdict and judgment against him were later set aside by agreement of the parties. This was only accomplished after two years of litigation and after the victim of the theft had died leaving her minor child as her only heir. The verdict is not conclusive in the sense of res judicata or collateral estoppel, but that is partly due to the manner in which the jury instructions were packaged.

Significantly, both a jury and a disciplinary hearing panel recognized the improper method in which Respondent handled the trust funds by transferring them to himself on July 23, 2012 without client authorization or knowledge.

A lawyer is required to hold property of both clients **and** third persons obtained in connection with a client matter separate from the lawyer's own property. ***Rule 4-1.15(c)***. To keep the funds of clients / third parties separate from a lawyer's own funds, the lawyer must use a client trust account. ***Rule 4-1.15(c)***. The Rule contemplates that the trust account is properly used to hold funds belonging not only to the client but also to other third parties. ***Id***. The Comment to the Rule expressly acknowledges that such a "third

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party" might be a client's creditor who has a lien on funds recovered in a personal injury action. ***Rule 4-1.15, Comment 3***.

The Rule also contemplates that the lawyer and/or the lawyer's client may end up in a dispute with the third party over entitlement to those funds. The Rule also contemplates that the lawyer and the lawyer's own client may end up in a dispute over entitlement to trust funds. What is a lawyer expected to do in these situations? When the dispute is between the lawyer and client, the lawyer can suggest alternative means for a prompt resolution of the dispute, such as arbitration. ***Comment 3, Rule 4-1.15***. When there is a non-frivolous third-party claim to trust funds, the lawyer must refuse to surrender the property to the client or to himself. ***Comment 4, Rule 4-1.15***. In settlement of personal injury claims, it is common for attorneys to negotiate the amount of the health care liens to provide additional benefits and compensation to the client. Some liens, such as chiropractor liens, can be challenged. Rule 4-1.15 requires the settlement proceeds to remain in the trust account until the validity and amount of the lien has been resolved. The lawyer must keep the property separate in the trust account at all times until the dispute is resolved. ***Rule 4-1.15(j)***. Informant is not aware of any commentary, rule, legal authority or statements of "best practices" recommending that a lawyer pay health care liens on settlement proceeds from an operating account. One thing a lawyer must never do is to allow himself to become the sole arbiter of a dispute regarding distribution of the funds. "A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party." ***Comment 4, Rule 4-1.15***.

Sometimes it is necessary for a lawyer to file an action to have a court resolve the

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dispute over liens and entitlement to settlement proceeds. If the lawyer unilaterally disburses property or funds to the wrong party, he opens himself up to liability for the tort of conversion. See MAI 23.12 (jury instruction suitable for conversion of special purpose trust funds); ***Dillard v. Payne***, 615 S.W.2d 53 (Mo. 1981) (funds placed in the custody of lawyer for a specific purpose and their diversion for other than such specified purpose subjects the attorney / holder to liability in conversion). The lawyer would also violate 4-1.15(i) if he fails to promptly "deliver to the client or third person any funds" that such person is entitled to receive.

To avoid both the tort of conversion and the misappropriation of trust funds, the common sense approach in cases of an unresolved dispute is for the lawyer to file an "interpleader action" (a species of an action for declaratory judgment) **before** making a distribution of the disputed portion of the settlement proceeds. ***See Cervantes v. Ryan***, 799 S.W.2d 111 (Mo. App. 1990) (lawyer withheld $140,937.29 from proceeds of a judgment and took no fee from these funds, then brought an interpleader action in circuit court seeking attorney's fees); ***Kelly v. Marvin's Midtown Chiropractic, LLC***, 351 S.W.3d 833 (Mo. App. 2011) ("this case arose from two interpleader actions filed by the Castle Law Firm to determine the ownership of certain insurance settlement proceeds"). ***See also American Family Mut. Ins. Co. v. Ward,*** 774 S.W.2d 135 (Mo. 1989) (insurance company filed suit in interpleader to determine distribution of $25,000 policy limit settlement proceeds in a wrongful death case in light of disputed hospital lien under R.S.Mo. § 430.230); ***Dale By and Through Dale v. Gubin***, 879 S.W.2d 699 (Mo. App. 1994) (med mal defendant filed an interpleader by which they paid portion of settlement proceeds in to

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the court to determine attorney fees and Medicaid lien); ***Shanks v. Kilgore***, 589 S.W.2d 318 (Mo. App. 1979) (husband filed interpleader petition in circuit court admitting indebtedness to ex-wife, seeking direction as to payment for attorney lien).

The primary health care lien statute in Missouri is R.S.Mo. §§ 430.225 and 430.230. The evidence in this case show the existence of two non-frivolous lien claims, one asserted by a hospital and one asserted by a chiropractor. Chiropractor liens have been litigated in Missouri in two relatively recent appellate decisions. ***Kelly v. Marvin's Midtown Chiropractic***, 351 S.W.3d 833 (Mo. App. 2011) (holding chiropractors can obtain a lien to the same extent as a hospital under § 430.230); and ***Huey v. Meek***, 419 S.W.3d 875 (Mo. App. 2013)[26] (no common law consensual chiropractor lien because statute is exclusive remedy).

Respondent recognized the potential validity of the two lien claims and had actual knowledge of the lien claims before making a distribution of the settlement proceeds. Whether or not either of the liens were independently valid is not the controlling issue. Respondent entered into a binding stipulation which became part of a final judgment acknowledging that the liens were valid, but subject to a negotiated reduction in the original claimed amount. At the time of the personal injury settlement in June 2012, there was slightly more than $11,000 in third party lien claims (i.e. health care liens) to the settlement

[26] This appellate decision was handed down on April 29, 2013 and could not have been relied upon by Respondent at the time of the distribution of settlement proceeds nine months earlier on July 23, 2012.

proceeds. Respondent disbursed the entire $25,000 settlement proceeds to himself by unilateral action in July 2012 without actually holding back any money in the trust account to satisfy the lien claims. Once the money is transferred by the lawyer out of the trust account and commingled with the lawyer's own funds into an operating account in contravention of a known lien claim, there has been an intentional misappropriation of such funds.

Respondent is bound by the stipulation and judgment directing that $4,200 and $2,150.01 be paid to St. Luke's and Bowman / Back to Health, respectively, to satisfy their claims. ***See In re Caranchini***, 956 S.W.2d 910 (Mo. banc 1997) (under the doctrine of offensive, non-mutual collateral estoppel, prior adjudication resulting in a final judgment is binding and conclusive in a subsequent disciplinary proceeding). The unilateral disbursement of the settlement proceeds in July 2012 constitutes a violation of the duties set forth in Rule 4-1.15 to (a) segregate settlement proceeds in a trust account; and (b) to either promptly deliver the funds to the person(s) entitled to receive such funds or initiate a civil action to obtain a judicial determination as to entitlement to the funds by competing claimants.

Moreover, while the payments made years later to the lien creditors were paid by checks drawn from the trust account, the funds paid out are in no way traceable to the deposit of the $25,000 settlement check. A lawyer who (a) places his own non-trust funds into a trust account; (b) allows earned fees to linger in the trust account; or (c) uses another client's funds to satisfy the claim of a third-party lienor, has engaged in a separate act of misconduct either by commingling trust funds and non-trust funds or by "robbing Peter to

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pay Paul." Payment of lien claims from the trust account several years after disbursing the actual trust funds is just further evidence of a pattern by Respondent in misusing the trust account.

The Missouri Supreme Court has recently dealt with a case of an attorney who misappropriated funds earmarked for a client's health care creditor. ***See In re Farris***, 472 S.W.3d 549 (Mo. banc 2015). In ***Farris***, the Missouri Supreme Court ruled the lawyer "knowingly violated Rule 4–1.15(c) by failing to maintain more than $93,000 in his trust account as he promised for the benefit of Client A, Client B, and their medical creditors. He knowingly failed to distribute this property promptly to the rightful owners in violation of Rule 4–1.15(i)." Further, "this conduct constituted misconduct under Rule 4–8.4 because it involved dishonesty, fraud, deceit and misrepresentation." (quoting ***In re Ehler***, 319 S.W.3d 442, 450–51 for the proposition that converting client funds necessarily involves deceit and misrepresentation). ***See also In re Phillips***, 767 S.W.2d 16, 18 (Mo. banc 1989) (attorney engaged "in illegal and dishonest conduct when he received funds on behalf of [the client] and converted these funds to his own use by placing them in his office account without the consent of [the client]").

It remains unclear whether Respondent has attempted to justify his actions by virtue of some sort of statutory lien or contractual lien on the entire $25,000 settlement or by virtue of a verbal agreement with the client, or by some combination of the two. In any event, any such position cannot stand on sound footing. The situation is made even more egregious because the misappropriated property was compensation for bodily injuries and the pain and suffering experienced by another human being. In reference to "personal

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injury" settlement proceeds, it is axiomatic that the proceeds of the cause of action are the personal property of the injured party. The injured party is the owner of the settlement funds. ***Truman Med. Ctrs., Inc. v. McKay,*** 505 S.W.3d 799 (Mo. App. 2016) ("an attorney representing an injured client does not personally compensate the injured client but, rather, receives compensation on behalf of his or her client. The attorney's subsequent transfer of that compensation to its **rightful owner** cannot be deemed a separate act of making payment") (emphasis added). Funds in a client trust account do not belong to the attorney. The funds remain the property of the client, subject to legitimate liens, until disbursed.

This is especially true with respect to proceeds of a personal injury claim. In Missouri, personal injury claims have long been held to be non-assignable. ***See Scroggins v. Red Lobster***, 325 S.W.3d 389 (Mo. App. 2010); ***Huey v. Meek,*** 419 S.W.3d 875 (Mo. App. 2013). "There is every reason for holding that a cause of action for personal injuries, where the gist of the damages recovered is physical pain and mental anguish, should not be the subject of barter or trade, or a matter of profit to the creditors of the injured party." ***Beechwood v. Joplin-Pittsburg Railway Company***, 158 S.W. 868, 870 (Mo. App. 1913). Public policy prohibits the assignment of a personal injury claim in whole or in part. ***Hays v. Mo. Highways & Transp. Comm'n***, 62 S.W.3d 538, 540 (Mo. App. 2001). Such prohibition was adopted by the courts of this state to prevent unscrupulous people from purchasing causes of action and trafficking in lawsuits for pain and suffering. ***Marvin's Midtown Chiro. v. State Farm Mut.***, 142 S.W.3d 751 (Mo. App. 2004).

Any contractual arrangement allowing a creditor or non-injured party to receive the benefits of a cause of action for personal injury is suspect. ***Huey v. Meek***, 419 S.W.3d 875

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(Mo. App. 2013). Respondent did not rely upon any case law authorizing a Missouri attorney to obtain a consensual or contractual lien on a client's personal injury claim outside of R.S.Mo. §§ 484.130 and 484.140. **App. 123 (Tr. 135)**. Respondent testified that an agreement for an attorney to retain 100% of a client's personal injury settlement is not unreasonable. **App. 137 (Tr. 190-191)**. Respondent is wrong. Reaching an undocumented verbal agreement with a client regarding fees is one thing. But when the agreement touches upon matters of public policy, the lawyer must be careful not to overreach.

The commercial exploitation of a person's pain and suffering for the pecuniary gain of another is offensive to the public policy of this state. In ***Schweiss v. Sisters of Mercy***, 950 S.W.2d 537 (Mo. App. 1997), the court struck down a consensual lien upon the proceeds of a personal injury claim as against public policy. Any creditor who seeks to obtain a consensual lien upon or a security interest in the bodily injury claim, or an outright assignment of such claim or some other "reimbursement agreement" related to such claim violates the long-standing public policy of Missouri. ***See Hays v. Mo. Highways & Transp. Comm'n,*** 62 S.W.3d 538 (Mo. App. 2001) (noting longstanding policy in Missouri prohibiting the assignment, forced or otherwise, of a personal injury claim whether denominated an assignment, subrogation interest, or agreement to reimburse). Any creditor who seeks to obtain a security interest in, or an assignment of, a personal injury claim violates the public policy of Missouri. It becomes even more egregious when the injured party's own lawyer is the creditor who attempts to profit from the client's pain and suffering by some sort of suspect contractual arrangement.

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A lien is a recognized property interest, but it still does not rise to actual ownership or control of the *res*. ***Estate of Griffitts***, 938 S.W.2d 621 (Mo. App. 1997) (a lien is recognized to be a charge upon property, either real or personal, for the payment or discharge of a particular debt or duty in priority to the general debts or duties of the owner); ***Marvin v. State Farm Mut. Auto. Ins. Co.***, 894 S.W.2d 712, 713 (Mo.App. 1995) (a lien is a charge **on** property for payment or discharge of a debt or duty, while an assignment transfers to another all or part of one's property, interest, or rights; an assignment is a right **in** the property itself). Nevertheless, a lawyer can obtain a statutory lien on the proceeds of a personal injury claim. Thus, the primary exception to these well-established doctrines prohibiting the assignment and commercial trafficking of bodily injury claims is a statutorily recognized lien on the proceeds, such as a statutory attorney lien, a statutory hospital lien, a statutory Medicare or Medicaid lien or a statutory right of subrogation under ERISA. Even with an attorney lien, however, the client / injured party still remains the owner of the personal injury settlement funds until an agreed disbursement.

In Missouri, there are two attorney lien statutes. R.S.Mo. § 484.130 provides that: "**From the commencement of an action or the service of an answer containing a counterclaim**, the attorney who appears for a party has a lien upon his client's cause of action or counterclaim, which attaches to a verdict, report, decision or judgment in his client's favor, and the proceeds thereof in whosesoever hands they may come; and cannot be affected by any settlement between the parties before or after judgment." (emphasis added). The Cockrill injury claim was settled without litigation. Thus, there was no "commencement" of an action. ***See Passer v. U.S. Fidelity & Guaranty Co.***, 577 S.W.2d

639 (Mo. 1979) ("Passer did not file suit on behalf of McClean and does not assert a claim under § 484.130. We are not concerned with that section in this case"); and see ***Carlson v. Carlson***, 275 S.W.3d 356 (Mo. App. 2008) (before such a lien attaches, § 484.130 has been read to require that the attorney must commence an action or serve an answer containing a counterclaim).

R.S.Mo. § 484.130 did not give Respondent a lien on the settlement proceeds resulting from the injury claim. The simultaneous representation of Ms. Cockrill in a domestic modification case does not change this result. In the domestic case, Ms. Cockrill was attempting to obtain increased custody and parenting time. Unlike an injury claim, there was no monetary claim or potential financial recovery for Ms. Cockrill's benefit in the modification case. In other words, there were no proceeds nor recovery of property in the domestic case upon which Respondent's purported attorney lien could attach. ***See Ross v. American Telephone & Telegraph Communications Corp.***, 836 S.W.2d 952 (Mo. App. 1992) ("This is a judgment to which an attorney's lien cannot attach because it is not a judgment in favor of, nor does it have any pecuniary value to, Butts").

R.S.Mo. § 484.140 does arguably apply to Respondent's representation of Ms. Cockrill in reaching a settlement with the insurance company for the at-fault driver, even though no litigation was commenced on the injury claim. For purposes of this disciplinary action, there is no dispute[27] that such statute gave rise to an attorney lien on a specified

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[27] Arguably a fee contract with Arnold Pfanstiel LLC did not create a lien for Arnold Law Firm LLC absent a statutory merger or assignment of the fee contract. Moreover, the

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portion (33%) of the $25,000 settlement proceeds based upon the written retainer agreement providing for a contingency fee. The statute provides:

> "In all suits in equity and in all actions or proposed actions at law, whether arising ex contractu or ex delicto, it shall be lawful for an attorney at law either before suit or action is brought, or after suit or action is brought, to contract with his client for legal services rendered or to be rendered him for a certain portion or percentage of the proceeds of any settlement of his client's claim or cause of action, either before the institution of suit or action, or at any stage after the institution of suit or action, and upon notice in writing by the attorney who has made such agreement with his client, served upon the defendant or defendants, or proposed defendant or defendants,

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statute requires the attorney to notify the defendant / insurer of the "interest" in the cause of action. ***Passer v. U.S. Fidelity & Guaranty Co.***, 577 S.W.2d 639 (Mo. 1979) (the statute "obviously calls for something in addition to the statement, already required, that the attorney has a contingent fee contract. That additional something, consisting of the attorney's interest in his client's claim, is the percentage or amount which the contingent fee contract gives him."). The letters to the claims adjuster do not satisfy this requirement, but Informant concedes that Respondent's interest was nevertheless recognized by the adjuster when she made the law firm a payee on the settlement check.

> that he has such an agreement with his client, stating therein the interest he has in such claim or cause of action, then said agreement shall operate from the date of the service of said notice as a lien upon the claim or cause of action, and upon the proceeds of any settlement thereof for such attorney's portion or percentage thereof, which the client may have against the defendant or defendants, or proposed defendant or defendants, and cannot be affected by any settlement between the parties either before suit or action is brought, or before or after judgment therein . . ." Mo. Rev. Stat. § 484.140.

In order for § 484.140 to create a lien on settlement proceeds, (a) there must be a valid contract between attorney and client; and (b) the fee must be for a certain portion or percentage of the proceeds of the cause of action. Respondent did not have a lien under § 484.140 upon any portion of the settlement proceeds for payment of the fees incurred in the child support and custody modification case because (a) he had no such agreement with the client; (b) any such agreement would not be valid under Missouri law; and (c) he was to be compensated based upon an hourly fee of $275 per hour, not upon a contingency fee and his "interest" in the recovery was capped at 33% of the proceeds

With respect to collection of fees owed on the modification case, Respondent stood as a general unsecured creditor of his client. Having an attorney lien under R.S.Mo. § 484.140 in a contingency fee matter does not create a lien upon the proceeds beyond the extent of the percentage "interest" established by contract. Respondent had no statutory

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lien rights to unilaterally help himself to the settlement proceeds for application to the outstanding balance in the modification case. Such selfishness and greed was not only detrimental to his own client, he also prejudiced the legal interests of two of the client's creditors whose liens on the proceeds have been judicially established.

In fact, in order to reach a lawful agreement with the client to apply the settlement proceeds from one cause of action to the lawyer's bill from an unrelated legal matter, the lawyer would need to comply with Mo.Sup.Ct.R. 4-1.8(a) because such agreement would involve a transaction to acquire a pecuniary interest adverse to the client. Thus, there would need to be (a) a written agreement signed by the client which was "fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;" and (b) an opportunity for the client to seek the advice of independent counsel. Mo.Sup.Ct.R. 4-1.8(a). Neither safeguard was followed in the present case regarding any purported agreement to apply the settlement proceeds to the bill in the modification case. Moreover, any contractual arrangement allowing a third party to receive the benefits of a cause of action for personal injury is subjected to greater scrutiny. ***Huey v. Meek***, 419 S.W.3d 875 (Mo. App. 2013). In short, Rule 4-1.8(a) and the public policy of this state stand as safeguards to ensure that the lawyer and client are unable to reach a verbal agreement of the type claimed by Respondent herein.

The modification fee agreement does contain the following sentence: "To the extent allowed by law, you [Heather Cockrill] grant our firm [Arnold Pfanstiel LLC] a lien against any property of yours that we may have in our possession . . . to secure the payment of fees and expenses." Respondent has not indicated reliance on this part of the fee contract.

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Informant is not aware of any legal authorities in Missouri that would give recognition to this contract provision. In 1988, the Missouri Supreme Court Advisory Committee issued Formal Opinion #115, which concludes that liens asserted by the lawyer against the client outside of R.S.Mo. § 484.130 and 484.140, such as a so-called "common law retaining lien," are not permitted under the Rules of Professional Conduct. In ***Carlson v. Carlson***, 275 S.W.3d 356 (Mo. App. 2008), the appellate court struck down a non-statutory attorney lien. The court stated: "Father argues that the trial court erred in placing an attorney's lien on his option to purchase an interest in his employer's company to secure his payment of guardian ad litem fees. We agree, and remand with instructions to modify the judgment to eliminate references to the attorney's lien."

For over 4½ years (June 2012 to April 2017), Respondent has engaged in a deliberate charade to deceive his former client, a judge and disciplinary authorities about what happened to the settlement proceeds. Respondent has pretended that the settlement proceeds remained in his trust account until disbursed pursuant to a judgment in March 2015 and/or final court order in May 2016. However, it is now undisputed that all of the $25,000 settlement proceeds were disbursed in July 2012 (specifically July 23, 2012). Respondent finally admitted to this at his deposition just before the hearing in April 2017.

The scheme began in June 2012 with the deposit of the settlement check. Although the client / injured party's name was typed on the settlement check, the check was endorsed and deposited by Respondent without the signature of the client. Ms. Cockrill never saw the check. For at least six months after June 2012, she asked Respondent's staff

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approximately twenty times about the settlement check. She has testified[28] that Respondent lied to her about not receiving the check for at least six months. Respondent finally admitted to her that he had received the check and discouraged her from reporting the situation to the bar.

In addition to Ms. Cockrill's testimony regarding Respondent's deceit and nondisclosure regarding the settlement check, the written record from August 2012 to April 4, 2017 is clear that Respondent told or misleadingly suggested to all interested persons (the client, a judge, and disciplinary investigators) that the disputed funds remained in the trust account, as follows:

(a) On May 1, 2013, Respondent filed a civil action in Clay County, Missouri Circuit Court. Paragraph 9 of the Petition states that "Defendant [Heather Cockrill] has refused to release or agree to disburse said funds hence the filing of this interpleader action." Paragraph 22 of the Petition states Plaintiffs [Respondent and his law firm] are and have been ready, willing and able to disburse the funds from the personal injury case, but Defendant [Cockrill] has refused to approve the release of said funds." Paragraph 23

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[28] The deposition testimony of Heather Cockrill is admissible in evidence based upon an exception to the hearsay rule for prior sworn testimony taken in a related matter. ***See*** **Mo Evidence Guide** § 804(b)(1) (MoBar 2003); ***Basta v. Kansas City Power & Light***, 456 S.W.3d 447 (Mo. App. 2015) (prior deposition taken in another matter admissible where witness is unavailable and the parties had a sufficient opportunity to examine the witness on same issues during the deposition).

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of the Petition states "Plaintiffs have an interest in the $25,000, and assert they are entitled to payoff of their fees and costs from both cases, and consequently calls on this court to determine when, how and to whom to $25,000 should be paid." Obviously, there was no affirmative disclosure anywhere in the Petition that the $25,000 had already been entirely disbursed into Respondent's operating account on July 23, 2012;

(b) The Petition was accompanied by a purported Affidavit, also dated May 1, 2013 "under penalty of perjury" that Respondent was "more than willing to disburse the funds from the personal injury case.";

(c) From August 2012 to May 2013, Respondent submitted bills to the client regarding the balance owed on her modification case. None of the bills show any credits applying the trust proceeds to the bill;

(d) In an e-mail to the client dated April 25, 2013, Respondent told the client that "currently the amount owed for your modification total $12,298.87";

(e) On May 1, 2013, Respondent sent the client a bill showing an outstanding balance due of $15,705.07;[29]

(f) On May 1, 2013, Respondent prepared (and filed on May 6, 2013) a Notice of Attorney Lien in the modification case claiming that $15,705.97 was owed for that representation;

(g) On May 1, 2013, Respondent voluntarily submitted a report to OCDC

[29] Inexplicably, the bill increased by $3,400 in a matter of days while there was only $150 in time and expense between April 25 and May 1.

claiming that he had been paid $0 on the personal injury claim and only $1,250 on the domestic case. Right above Respondent's signature, the following is stated: "I HEREBY CERTIFY WITH MY SIGNATURE THAT THE ABOVE INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE" ;

(h) On April 9, 2015, Respondent sent an e-mail to the Kansas disciplinary representative claiming: "I deposited the check. I signed my name on the check, not hers, and my bank allowed the deposit to be processed without her signature. **The funds were held in my IOLTA Account until the distribution of funds as per the final accounting from the Interpleader ruling just recently**;

(i) On April 23, 2015, Respondent advised the OCDC Special Representative that "I still have, being held in escrow $8,276.46 which belongs to [Ms. Cockrill's minor child]." The concluding remarks of the e-mail still took the position that he had been "unpaid for the underlying family law case";

(j) On May 21, 2015, Respondent, for the first time, admits to the OCDC Special Representative that he withdrew attorney fees and expenses from the settlement proceeds but "left a balance in the account to cover the medical liens"; and

(k) On or about July 8, 2015, Respondent prepared a handwritten statement for delivery to the OCDC Special Representative which states that on 07/23/12 he disbursed "all but $4,490.56" of the $25,000 of the settlement proceeds.

All of the statements made by Respondent indicating that the money remained as protected trust funds at all times until a court-sanctioned distribution are lies. All of the statements claiming he had not received compensation are also misleading and deceitful.

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In ***In re Griffey***, 873 S.W.2d 600, 603 (Mo. banc 1994), the Missouri Supreme Court held that a lawyer's "subsequent attempt to cover up the improper conduct [misappropriation] compounds the seriousness of the deeds."

The entire interpleader was based upon a fabrication that there was some dispute about the release of fees in a trust account. There was no dispute about a release of funds in the trust account. By the time the interpleader was filed, the trust funds were long gone. Respondent can point to no statement in the entire record prior to his deposition where he affirmatively disclosed to anyone that the entire $25,000 settlement proceeds were disbursed on July 23, 2012 by Respondent's unilateral action of transferring $275,947.17 from the trust account to the operating account.

Rule 4-8.4(c) was violated over and over again. It is bad enough to lie to a client. To mislead a circuit court in ways which included a sworn affidavit signed "under penalty of perjury" is as serious. Although the disciplinary system in Missouri is effective in rooting out fraudulent and dishonest conduct by lawyers, the falsehoods provided by Respondent to the disciplinary investigators in this proceeding is tantamount to perpetrating a fraud upon this very Court.

Of course, in addition to the misappropriation and dishonesty misconduct addressed above, a preponderance of the evidence also established at least five other violations of the Rules of Professional Conduct, as follows:

(a) Rule 4-1.6 and 4-8.4(d) in taking a vindictive and reprehensible approach to initiating a lawsuit against Respondent's own client, which included the unnecessary disclosure of a large volume of personal, confidential and embarrassing information about

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the client;

(b) Rule 4-1.5(a) in charging and attempting to collect an unreasonable fee by continuing to demand payment for invoices submitted after Respondent took the entire $25,000, by asserting an improper attorney lien in the modification case which was not permitted under the attorney lien statute, and by using Arnold Law Firm LLC to collect fees and compensation owed to the separate law firm of Arnold Pfanstiel LLC without a statutory merger or other assignment of the account and contract rights;

(c) Rule 4-1.5(c) by failing to provide a written statement to the client upon the conclusion of the personal injury settlement in July 2012 which explained the method as to how the client's remittance was determined, and Rule 4-1.15(i) (2012 version) by failing to promptly render a full accounting regarding the $25,000 settlement payment upon requests by the client in October 2012 and again in April 2013;

(d) Rule 4-8.4(d) by failing to allow the client a right to have the attorney fees judicially reviewed **before** distribution because such right was acknowledged and inserted into the contingency fee contract;

(e) Rule 4-8.1(c) by failing to produce documents and information to Informant after several lawful requests for such information were made; and

(f) Rule 4-1.15(d) by failing to maintain and preserve complete records of the client trust funds at issue.

Inasmuch as Respondent has accepted the panel's written decision finding guilt on these

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issues,[30] they should be deemed admitted herein and not further contested by Respondent.

There is a bright line standard for a lawyer's limited permission to reveal information related to the representation of a client. The Petition For Interpleader filed by Respondent on May 2, 2013 crosses that line by a mile. Under Mo.Sup.Ct.R. 4-1.6, a lawyer may reveal information "relating to the representation of a client"[31] only if one of the following eight criteria is met:

(1) The client gives informed consent;

(2) The disclosure is impliedly authorized in order to carry out the representation;

(3) The disclosure is necessary to prevent death or substantial bodily injury that

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[30] The sole exception involves Rule 4-1.5(a). The disciplinary hearing panel found that Respondent did not ever actually collect an unreasonable fee, "but it was not for want of trying." However, Rule 4-1.5(a) prohibits charging an unreasonable fee, even if such charges are not actually paid by the client. Further, Rule 4-8.4(a) makes it a violation to attempt to collect an unreasonable fee.

[31] As the commentary to Rule 4-1.6 suggests, the phrase "relating to representation" has broad application. ***See also In re Lim***, 210 S.W.3d 199, 203 (Mo banc 2007) (Stith, J., dissenting). Information protected under Rule 4-1.6(a) does not necessarily have to be attorney-client privileged information. Information protected under Rule 4-1.6(a) can even be information previously disclosed in the public domain. In short, all information "relating to the representation of a client" is protected under Rule 4-1.6(a).

is reasonably certain to occur;

(4) The disclosure is reasonably necessary to secure legal advice about the lawyer's compliance with the Rules of Professional Conduct;

(5) The disclosure is necessary to comply with other law or a court order;

(6) The disclosure is reasonably necessary to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and a client;

(7) The disclosure is reasonably necessary to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved; or

(8) The disclosure is reasonably necessary to respond to allegations in any proceeding (such as this disciplinary proceeding) concerning the lawyer's representation of a client.

In a lawsuit between an attorney and client over fees and/or distribution of settlement proceeds, the only applicable exception to the general rule of client confidentiality is subparagraph (6) set forth above. ***See 4-1.6(b)(3)***. It should be noted that this is an objective standard based upon a "reasonable" belief. Also, the 4-1.6(b)(3) exception has nothing to do with whether the information is already a matter of public record. It is a myth that a lawyer can breach the obligation of client confidentiality if the information is buried in some public record somewhere. **See ABA Center For Professional Responsibility "Ethics Tip," March 2017**.

Rule 52.07 of the Missouri Rules of Civil Procedure sets forth the pleading and procedural requirements for an interpleader action. More generally, Mo.R.Civ.P. 55.05

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sets forth the customary requirements for pleading, which requires that the petition contain (1) a short and plain statement of the facts showing the pleader is entitled to relief; and (2) a demand for judgment for the relief to which the pleader claims to be entitled. Nothing in Rule 52.07 or Rule 55.05 authorizes, requires or encourages the allegations and attachments deliberately chosen by Respondent to accompany the Petition for Interpleader. Moreover, even if it was necessary to provide a 33-page pleading to properly state a claim in a dispute over distribution of a mere $25,000 settlement, a party can request to submit a pleading "under seal" to prevent the public disclosure of a client's dirty laundry. Respondent demonstrated absolutely no regard for his client's privacy in filing the Petition.

It is obvious that a contentious disagreement between Ms. Cockrill and Respondent came to a boiling point in late April 2013. The e-mails got personal. Ms. Cockrill made comments suggesting that Respondent's law license could be taken for the way he handled the settlement proceeds. Respondent became defensive and denied he had done anything wrong or unethical. Respondent suggested that he was the victim of an attempt to extort money from him. Respondent then complained about nonpayment of fees, stated he was going to withdraw from the representation, and claimed that Ms. Cockrill was being unreasonable.

Respondent wasted very little time in taking deliberate, vindictive and retaliatory action against his client. As a professional and a fiduciary, Respondent could have and should have taken the high road. Although the decision to withdraw was communicated on April 25, 2013, legal representation was rendered up through April 30, 2013. The withdrawal did not become effective until May 7, 2013. That means that on the date the

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Petition was filed (May 2, 2013) there was an existing attorney-client relationship between Ms. Cockrill and Respondent. One example of this retaliatory conduct is the intentional and unauthorized disclosure of information related to the representation of a client in violation of Rule 4-1.6. Once filed, the Petition was available for unrestricted public viewing. A large portion of the information set forth in the Petition, including the attachments to the Petition, contained "information relating to the representation of a client" as such phrase is used in Rule 4-1.6(a).

The Petition contained numerous allegations and several exhibits detailing private, personal and confidential information about Ms. Cockrill, largely including information obtained by Respondent during the course of the attorney-client relationship. The contents of the Petition revealed information relating to the representation of a client without the client's consent. It is significant to note that when the Petition was filed, the modification judgment was not final and was subject to revision by the judge. All chance of that went out the window when Respondent filed a pleading against his own client essentially calling the client a fraud, an extortionist and a deadbeat.

The excessive nature of the Petition served no purpose other than to annoy, embarrass, harass, disturb and/or intimidate Ms. Cockrill. No lawyer could reasonably have believed that the thirty-three pages of the Petition were necessary to establish a claim for fees against the client. The Petition violated Rule 4-1.6(a), and the exception in Rule 4-1.6(b)(3) was not satisfied. The content of the Petition was conduct prejudicial to the administration of justice in violation of Rule 4-8.4(d). When a lawyer is engaged in litigation with a former client, he must be careful to ensure that the litigation tactics comply

with the Rules of Professional Conduct. ***In re Hess***, 406 S.W.3d 37 (Mo banc 2013). Improper litigation tactics against a former client constitute conduct prejudicial to the administration of justice. ***Id***.

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II.

IN ORDER TO PROTECT THE PUBLIC AND MAINTAIN THE INTEGRITY OF THE LEGAL PROFESSION, THE COURT SHOULD REMOVE RESPONDENT FROM THE PRACTICE OF LAW BY DISBARMENT.

The purpose of attorney disciplinary proceedings is to protect the public and maintain the integrity of the legal profession. ***In re Ehler***, 319 S.W.3d 442 (Mo. banc 2010). The Office of Chief Disciplinary Counsel has rejected the decision from the disciplinary hearing panel on the grounds that the recommended sanction of a stayed suspension and probation is too light to serve the dual goals of the disciplinary system to protect the public and maintain the integrity of the profession.

If this case were just about any combination of inadequate documentation under Rule 4-1.15(d), a breach of the duty of confidentiality under Rule 4-1.6, misconduct prejudicial to the administration of justice under Rule 4-8.4(d), fee violations under Rule 4-1.5, and lack of cooperation under Rule 4-8.1(c), then perhaps a stayed suspension and probation would have been an appropriate sanction. With monitoring, supervision and education, this type of misconduct can often be curbed and corrected. However, it is simply not possible to curb stealing and dishonesty through probation. Misappropriation, especially when coupled with dishonesty to cover it up, should result in a very severe sanction.

Disbarment constitutes the baseline sanction for misappropriation. ***In re McMillin***,

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521 S.W.3d 604, 610 (Mo banc 2017). Disbarment is the presumptively appropriate discipline for misappropriating client funds because "[t]here simply is no room in this profession for attorneys who take property held in trust for others and use it as their own." ***Id***. at 611. "When a lawyer misappropriates property belonging to a client or a third party, that lawyer breaches one of the fundamental duties of this profession. Doing so not only injures the property owner, but also the Bar as a whole." ***Id***. at 611.

In the present case, disbarment is warranted because (a) the overwhelming weight of precedent from the Missouri Supreme Court establishes a bright line rule that disbarment is the baseline sanction in cases of misappropriation; (b) the victims of the misappropriation included two completely blameless health care providers, and not just a client who owed him money; (c) there are aggravating circumstances; (d) there are no truly compelling mitigating factors such as the mental disorder raised in ***Belz***; (e) the misconduct is coupled by other acts of dishonesty and deception primarily designed to conceal and cover up the misappropriation; and (f) the result is supported by consideration of the ABA Standards.

Historically, the Missouri Supreme Court has been unwavering in its view that disbarment is warranted where an attorney misappropriates client money. ***In re McMillin***, 521 S.W.3d 604 (Mo. banc 2017); ***In re Farris***, 472 S.W.3d 549 (Mo. banc 2017); ***In re Ehler***, 319 S.W.3d 442 (Mo. banc 2010); ***In re Robison***, 519 S.W.2d 1 (Mo. 1975) (personal use of $1,200 of client's money was cause for disbarment); ***In re Simmons***, 576 S.W.2d 324 (Mo. banc 1978) (misappropriation of $3,400 warranted disbarment); ***In re Witte***, 615 S.W.2d 421 (Mo. banc 1981) (lawyer disbarred for forging client's name on settlement documents and then depositing $1,500 in settlement proceeds into business

account); ***In re Mentrup***, 665 S.W.2d 324 (Mo banc 1984) (lawyer disbarred for misappropriating $24,000 from probate estate entrusted to his care and then filing numerous false and fraudulent reports in connection with the estate); ***In re Mendell***, 693 S.W.2d 76 (Mo. banc 1985) (intentional misappropriation of $336 of client's settlement money warranted disbarment); ***In re Lechner***, 715 S.W.2d 257 (Mo. banc 1986) (lawyer disbarred for converting $1,300 of settlement proceeds needed to satisfy claim of client's health care provider); ***In re Murphy***, 732 S.W.2d 895 (Mo. banc 1987) (lawyer disbarred for failing to return $198 to client which had been earmarked for filing fees and then deceiving client about status of lawsuits); ***In re Adams***, 737 S.W.2d 714 (Mo. banc 1987) (lawyer disbarred for misappropriating client funds totaling about $2,100); ***In re Fenlon***, 775 S.W.2d 134 (Mo banc 1987) (lawyer disbarred for signing client's name to settlement release, depositing settlement check into operating account without client's endorsements and then lying to client about status of settlement); ***In re Staab***, 785 S.W.2d 551 (Mo. banc 1990) (lawyer misappropriated client's settlement money earmarked to satisfy claim of third party); ***In re Schaeffer***, 824 S.W.2d 1 (Mo. banc 1992) (deposit of $3,400 settlement money into operating account and failing to deliver such funds to client warranted disbarment); ***In re Griffey***, 873 S.W.2d 600 (Mo. banc 1994) (lawyer disbarred because he deceived and defrauded client by failing to safeguard their funds and deprived them of their money).

Misappropriation does not automatically result in disbarment. ***In re Belz***, 258 S.W.3d 38 (Mo. banc 2008); ***In re Charron***, 918 S.W.2d 257 (Mo. 1996). However, ***In re Charron*** does not compel a lesser sanction in the present case. The facts in ***Charron***

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are summarized as follows:

> Craig Layton owned and operated Barrett's Florist, Inc. For a number of years, Respondent had performed legal services for Barrett's Florist. In exchange for this representation, Respondent accepted a $20,000 promissory note guaranteed by Craig Layton. In May of 1990, Craig Layton died of AIDS. Thereafter, in accordance with Layton's will, Respondent became the personal representative of Layton's estate. Prior to that time, Respondent had never been a personal representative of an estate and had little experience in probate matters. Soon after the estate was opened, Respondent paid himself from the estate the $20,000 owed on the promissory note. In making this payment, however, Respondent failed to file a claim against the estate, nor did he apply for appointment of an administrator ad litem as required under § 473.423, RSMo 1986, when the personal representative is also a creditor of the estate. Furthermore, while acting as personal representative, Respondent made payments to himself totaling $9,500 for legal services rendered to the estate. These payments were also made without approval of the court.

Id. at 259-260.

The Missouri Supreme Court decided the sanction as follows:

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In this case, the most serious charge against Respondent is the misappropriation of $20,000 from the probate estate. Misappropriation of funds generally warrants disbarment. See e.g., In re Griffey, 873 S.W.2d 600, 603 (Mo. banc 1994); In re Schaeffer, 824 S.W.2d 1, 5 (Mo. banc 1992); Matter of Mendell, 693 S.W.2d 76, 78 (Mo. banc 1985). Moreover, even unintentional misappropriation of funds can warrant disbarment. Matter of Williams, 711 S.W.2d 518, 521-22 (Mo. banc 1986). Here, however, we are presented with a factor not found in previous misappropriation cases--that Respondent was truly owed the money. While this does not excuse the misappropriation, it does act in mitigation. Further, no evidence was presented that the estate was unable to pay the other creditors, and had Respondent followed proper probate procedures in filing his claim he would have received the money owed to him anyway. All in all, we do not believe that disbarment is warranted in this case, even when the misappropriation is coupled with the other violations both in this case and the 1988 case. On the other hand, a public reprimand is certainly insufficient. Therefore, we order that Respondent be suspended from the practice of law with leave to apply for reinstatement in one year.

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Id. at 262.

The reason the lesser sanction of actual suspension rather than disbarment is not appropriate here is because Respondent did not just steal[32] from a client who owed him money in an unrelated matter, he stole money ($6,350.01) belonging to health care providers; those providers were in no way indebted to Respondent. Moreover, Judge Robertson's dissent in ***Charron*** is worthy of reflection: "Unlike the majority, I do not find the fact that the decedent owed Mr. Charron the money a matter of mitigation. Indeed, the fact that he was willing to put himself ahead of all other creditors and his willingness to shield that act from the eyes of the probate division seems every bit as worthy of disbarment as stealing a client's funds. In both instances, it is the fiduciary's position as a lawyer that permits him to put his interests ahead of all others and to attempt to hide his unethical act through subterfuge and delay." ***In re Charron***, 918 S.W.2d 257 (Mo. 1996) (Robertson,

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[32] Some may feel that use of the word "stealing" is a bit too harsh and judgmental in a professional setting such as this. Others may feel that "misappropriation" is too much of a sugar-coated, white-collared euphemism for stealing. Informant offers the words of former Missouri Supreme Court Judge Wolff for consideration: "Nevertheless, stealing is stealing. If there are certain immutable rules, then surely this is one: Lawyers may not steal from their clients. Not even borrowing without permission with the intention of repaying — it is still stealing. A license to practice law is not a license to steal . . . Stealing from clients should result in disbarment. This is a well-settled principle that we should not bend." ***In re Belz***, 258 S.W.3d 38 (Mo. 2008) (Wolff, J., dissenting).

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J, dissenting).

Likewise***, In re Belz***, 258 S.W.3d 38 (Mo. banc 2008), does not point to a sanction less severe than disbarment in this case. None of the circumstances found to constitute a compelling mitigating circumstance in ***Belz*** are present here. Respondent presented no evidence of a mental illness, such as the bipolar condition raised in ***Belz***. None of the circumstances found to constitute other substantial mitigating factors in ***Belz*** are present here. Respondent did not self-report the misconduct. In fact, Respondent did the opposite and attempted to conceal the actual distribution of the settlement proceeds. Furthermore, unlike ***Belz***, there was no timely good faith effort to make restitution. Although Respondent did return $8,276 to the estate and another $6,300 to the lienholders, such payments did not occur until two or three years after the theft of the proceeds and only then pursuant to a court order.

Where the mitigating factors present in ***Belz*** are not at issue, ***In re McMillin***, 521 S.W.3d 604 (Mo. banc 2017); ***In re Farris***, 472 S.W.3d 549 (Mo. banc 2015); and ***In re Ehler***, 319 S.W.3d 442 (Mo. banc 2010), demonstrate that the Court still adheres to the traditional approach to discipline in cases involving misappropriation of money. Thus, a sanction of disbarment in this case is consistent with the most recent opinions on misappropriation of client funds from the Missouri Supreme Court.

While the principles underlying this disciplinary axiom may be well known, they bear repetition. "Honesty . . . is an all-important quality for an attorney. Situations in which a dishonest attorney could deceive a trusting client arise far too often." ***In re Mendell***, 693 S.W.2d 76, 78 (Mo. banc 1985). Protection of the public is the primary

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purpose of the disciplinary system. ***In re Harris***, 890 S.W.2d 299, 302 (Mo. banc 1994). "Certainly where an attorney misappropriates a client's funds, protection of the public is uppermost in our minds." ***In re Williams***, 711 S.W.2d 518, 522 (Mo. banc 1986). "The privilege to practice law is only accorded those who demonstrate the requisite mental attainment and moral character and, absent mitigating circumstances, an attorney who betrays the trust reposed in him for personal financial gain demonstrates he no longer possesses the requisite moral character." ***In re Maier***, 664 S.W.2d 1, 2 (Mo. banc 1984).

While the presence of mitigating factors can sometimes justify leniency, leniency is never warranted when the misappropriation is attended by other acts of dishonesty and deception, such as Respondent's attempt here to cover up the misconduct. ***See e.g. In re Mentrup***, 665 S.W.2d 324 (Mo. banc 1984); ***In re Fenlon***, 775 S.W.2d 134 (Mo. banc 1987); ***In re Griffey***, 873 S.W.2d 600 (Mo. banc 1994) (lawyer's attempt to cover up the improper conduct compounds the seriousness of the deeds and belies his argument of mistake); ***In re Witte***, 615 S.W.2d 421 (Mo. banc 1981). ***See also In re Donaho***, 98 S.W.3d 871 (Mo. banc 2003) (lawyer created falsified documents to send to disciplinary committee). Misconduct involving subterfuge, failing to keep promises, and untrustworthiness undermines public confidence in not only the individual but in the bar. ***In re Ehler***, 319 S.W.3d 442, 451 (Mo. banc 2010). In those circumstances, substantial discipline must be imposed. ***Id***.

The Missouri Supreme Court looks to the ABA's Standards for Imposing Lawyer Sanctions (1991 ed.) for guidance when imposing discipline. ***In re Ehler***, 319 S.W.3d 442, 451 (Mo. banc 2010). Accordingly, it is appropriate to examine the ABA Standards, as set

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forth below. Consistent with the analytical framework set forth in the ABA Standards, this Court considers the ethical duty violated, the attorney's mental state, the extent of actual or potential injury caused by the attorney's misconduct and any aggravating or mitigating factors. ***Id***. Where there are multiple instances of misconduct, the ultimate disciplinary sanction imposed should be consistent with the sanction for the most serious instance of misconduct. ***Id***.

The most important ethical duties are those obligations which a lawyer owes to clients. ***In re Ehler***, 319 S.W.3d at 451. Safekeeping client property is the most important ethical duty owed to the client. This case presents a violation of the most important obligation of an attorney. As a result, the most severe sanction is warranted. Not surprisingly, the line of cases set forth above is in sync with the ABA Standards. ABA Standard 4.11 provides that "Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client." ABA Standards for Imposing Lawyer Sanctions (1991 ed.) 4.11.

The evidence in the present case suggests that Respondent knew it was wrong to take all of his client's settlement money, but did it anyway. Knowledge can be inferred from the circumstances. ***Mo.Sup.Ct.R. 4-1.0(f)***. Respondent's actions were not "rookie" mistakes, nor mathematical errors, nor a matter of oversight, nor even a momentary lapse of poor judgment. Respondent testified that he understood Rule 4-1.15. In fact, every Missouri lawyer certifies to this on an annual basis when renewing his or her license. Respondent purposefully attempted to throw everyone off the scent by creating the false impression that all, or a significant portion, of the settlement proceeds remained in the trust

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account for the entire duration. Respondent's acts demonstrate a deliberate and knowing mental state with a purpose to deceive.

The harm resulting from this misconduct is obvious. The persons entitled to receive the proceeds were delayed and denied money for years. It is little consolation that the client's minor child received a check for $8,200 in April 2016, twenty month's after his client's suicide and nearly four years after she should have received the distribution in June 2012. The fact that Respondent repaid $8,276.46 to satisfy a judgment (nearly four years after the act of misappropriation) is neither a defense nor a mitigating factor to the misconduct. ***See ABA Standards for Imposing Lawyer Sanctions 9.4*** ("forced or compelled restitution" is not a mitigating factor); ***In re Mentrup***, 665 S.W.2d 324, 325 (Mo. banc 1984).

It is tragic beyond words that a client and her family had to endure a jury trial and three years of litigation just to receive a relatively small amount of money owed by her own attorney. Respondent testified he could have easily paid her the $13,000 she demanded in April 2013, but he refused. It is even more devastating that Respondent forced the client spent a significant portion of her last fifteen months defending against a claim of extortion asserted by someone she once trusted. Respondent could not even wait an extra few days until the attorney-client relationship had formally terminated before he retaliated against the client. Respondent elected not to pay interest to the family, despite making them wait until April 2016 for a payment that should have been made in July 2012.

There is also harm resulting from the misappropriation of settlement proceeds payable to third party health care providers. The delay and expense experienced by two

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completely innocent lienholders created another unfortunate situation. It is likely that a substantial portion of the $6,350 paid to the lienholders went towards payment of attorney fees incurred during the litigation. The fact that Respondent repaid the sums in March 2015 (nearly three years after the personal injury settlement) following entry of a judgment is neither a defense nor a mitigating factor to the misconduct. ***See ABA Standards for Imposing Lawyer Sanctions 9.4*** ("forced or compelled restitution" is not a mitigating factor). Respondent elected not to pay interest to the lienholders, despite making them wait until March 2015 for a payment that should have been made in July 2012.

There are several aggravating factors as catalogued in ABA Standard 9.22. Respondent has substantial experience in family law and personal injury law. There are multiple acts of professional misconduct. Respondent's persistent dishonesty in covering up the misappropriation demonstrates a disturbing pattern of misconduct. The victim suffered from many vulnerabilities, including PTSD, depression, bi-polar disorder, ADHD and hospitalization following a suicide attempt. At times during the representation, Ms. Cockrill was under financial distress, especially in 2013. The panel found that Ms. Cockrill was a vulnerable victim. The attempts to deceive disciplinary investigators and the lack of cooperation in failing to provide requested information during the investigation are not only separate violations, but they are also considered to be circumstances used to justify an increase in the degree of discipline to be imposed. ***See ABA Standard 9.21, 9.22.***

Informant takes exception to certain observations made by the disciplinary hearing panel. The panel found "no clear evidence of dishonest or selfish motive." **App. 655**. However, the panel simultaneously found that the misappropriation of trust funds and

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various other misconduct involved dishonesty, fraud, deceit or misrepresentation. Further, the panel stated that "Respondent demonstrated that his personal needs took precedence over those of his client or third parties." Those findings seem to be strong and specific indicators of dishonest and selfish motives.

Finally, the panel found that Respondent demonstrated remorse, "albeit late in the process." Informant remains unmoved by the supposed expressions of remorse. They are largely qualified as "**If** I did anything wrong, I am sorry." Rather than accepting responsibility for his own acts of misappropriation, Respondent still apparently feels that he was being extorted by the client. A jury found otherwise but Respondent is quick to dismiss the deeper meaning of the jury verdict. He refuses to express remorse for stealing from his client. Respondent has never apologized for the type of conduct that caused a jury to award $25,000 in punitive damages against him. After five years of litigation and scrutiny, Respondent's failure to admit the misappropriation of client funds undermines his admission as to misappropriation of funds belonging to the client's health care providers. Any expression of remorse rings hollow when Respondent is willing to admit the full extent of the misappropriation and the acts of dishonesty that followed.

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CONCLUSION

For the reasons set forth above, the Chief Disciplinary Counsel respectfully requests this Court:

(a) to find that Respondent is guilty of professional misconduct with respect to the matters charged in the Information and found by the panel to have been proven by a preponderance of the evidence and to find that Respondent has violated Missouri Supreme Court Rules 4-1.5(a); 4-1.5(c); 4-1.6; 4-1.15(d); 4-1.15(i); 4-8.1(c); 4-8.4(c); and 4-8.4(d);

(b) to remove Respondent from the practice of law by disbarment; and

(e) to tax all costs in this matter to Respondent.

Respectfully submitted,

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CERTIFICATE

I hereby certify that the above and foregoing was filed electronically on this 20th day of March, 2018 under Missouri Supreme Court Rule 103 and that the undersigned signed the original and the original will be maintained in accordance with Rule 55.03.

Kevin J. Odrowski

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 26,838 words, according to Microsoft Word, which is the word processing system used to prepare this brief.

Kevin J. Odrowski