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.	)	

RESPONDENT'S BRIEF

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JURISDICTIONAL STATEMENT

Respondent accepts the jurisdictional statement provided by the Office of the Chief Disciplinary Counsel.

STATEMENT OF FACTS

A. Background and Law Practice

Respondent began practicing law in 1992 working as an Intern in the New York State Attorney General's Office. **(TR. 0020)**. He has served as a municipal court prosecutor, as well as a Jackson County Family Court appointed Guardian ad Litem (Pro Bono) and is on the Johnson County, Kansas Juvenile Appointment list. **(TR. 0020)**. Respondent works in the trenches of the Family Court system helping hundreds of people each year, and serves over 200 hours per year of pro bono legal services. **(TR. 0020-0021)**. He also maintains a private practice where he primarily handles family law matters, including divorces, modifications of child custody, Guardian ad Litem cases and adoptions. **(TR. 0020-0021)**. Respondent has been licensed as an attorney in Missouri since 2005. **App. 94 (TR. 0020-0021)**. Prior to that, Respondent practiced law in New York (1992 – worked for the NY State Attorney General's Office and then Private Practice) and Connecticut (1996-worked as a District Attorney and in Private Practice). He was also admitted to practice before five Federal Courts (New York SD, ED, Missouri ED, Kansas, Connecticut) and two tribal Courts (Mashantucket Pequot and Mohegan). **App. 3, 84, 94 (TR. 0020-0021)**. In fact, during the hearing one of the panel members, Joe Whisler interrupted the hearing to disclose Arnold had just been appointed to a

Jackson County Family Court Section 211 Case as a Guardian ad Litem for two juveniles subjected to abuse. See: **(TR. 0343)** as excerpted below:

> 11 MR. WHISLER: I need to interrupt for a
> 12 moment. I just received an e-mail indicating Mr.
> 13 Arnold has been appointed a GAL, guardian ad litem,
> 14 in a juvenile case which one of my lawyers has been
> 15 assigned to. I don't know if that's a conflict.
> 16 Nothing's happened on the case, but I feel I have to
> 17 tell you that that has occurred and I don't know
> 18 what else to do.
> 19 PRESIDING OFFICER MASSEY: Well, I
> 20 thank you for letting us know. When was the
> 21 appointment made?
> 22 MR. WHISLER: In Juvenile Court,
> 23 probably the last couple of days.

Mr. Arnold also handles personal injury lawsuits, business organization and employment issues. **(TR. 0020-0021)**.

Respondent is married and has two children and is the primary source of financial support for his wife and two teenage sons. **(TR. 0019-0021)**.

B. No Prior Discipline

In the course of over twenty-five (25) years of practicing law, Respondent has never been the subject of a disciplinary complaint. **(TR. 0499).**

C. Remorse, Lack of Intent, Cooperation, Remedial Measures and Acceptance of Responsibility

There was substantial credible evidence presented to the Hearing Panel that Arnold was remorseful, had no intention of violating any Rules of Professional Conduct and his motives were not dishonest or selfish, but only to benefit the client in all his actions undertaken. The following excerpts of Respondent's testimony at the hearing support that conclusion:

> BY MR. ODROWSKI:
>
> Q. Do you wish to make any expression of remorse with respect to the way you handled the lien claims?
>
> A. Yes.
>
> Q. Okay. Go ahead.
>
> A. I absolutely admit readily that I made a mistake. And I think in an amended answer today that I did misappropriate the money that should have been held in my escrow account and I should have left it there and filed the interpleader. The reason -- and I think I went over that exhaustively of why I did it was to benefit Heather in a really difficult situation and to ensure that money was there.

It was never my intent to take money from Heather. I think she was very clear, despite her flip at the end, that she was in agreement and understood that. So it was -- the money belonged to third parties, that I absolutely am remorseful about. I certainly will never do that again. I -- you know, upon knowing that there's a disagreement with the client, which was only a few weeks after I got that e-mail, I stayed up and until all hours of the night for two days in a row figuring out how to file an interpleader and I did that.

So when I knew there was an issue, I sought Court approval. I've not -- I've made the admission that I transferred the money inappropriately. It's certainly not something that in 25 years of practice that I've ever done. And I'm sorry.

Q. Do you admit that you failed to promptly deliver that portion of the $25,000 to which Heather Cockrill was entitled to receive?

A. Well, I -- I have to stop, because she was never going to get that money. And she agreed

to it and that was her choice. I failed to get it in writing, I failed to get it in writing July 1st in 2011. You know, I was going on vacation, I had my wife and my two kids in the car, literally sitting in the driveway at my house waiting for me to get back from the office. So on that first day, instead of --

Q. I'm just asking if there's an admission is all. And I guess the answer is no, so --

A. Well --

PRESIDING OFFICER MASSEY: I think he's trying to explain.

MR. ODROWSKI: Well, but he'll have a chance to do that. I just --

THE WITNESS: But why do I get cut off in the middle of my answer?

MR. LARSON: I think she's going to let you answer.

A. So, you know, it wasn't my norm to not sit down thoroughly and go through the agreements. But I carved out that time in the morning, I met with Heather. I originally didn't want to help her,

but she was in my office, she was crying hysterically and upset. And I got involved in family law because of the children. And so when I saw this kid's picture with his face bitten off by a pit bull that the dad had, living in a trailer park with my other client's wife, who I knew that they were using drugs because that was the allegations that got a guardian appointed in the case in Kansas, and so we knew what was going on over there. I felt that I could uniquely be -- I was in a unique situation to help her, because I already had fastball background information from another case that would be beneficial to her. So we didn't have to duplicate that. So I thought I could save her money.

So in rushing to try to go on vacation, I didn't spend the time I should have spent in getting that other agreement put together and drafted. And then even -- I had other opportunities throughout representing her that I met with Heather, but it was always roses. I mean, the e-mail is the highlight, but that's how our relationship was until

all of a sudden she switched.

And it was, you know, after the judgment was perfected and after I did my work. And I think she was just timing it. I don't -- I don't know.

So -- but I don't think it really was in reference to funds -- client funds. And I'm not trying to be dismissive of my actions. I understand what I did was wrong, but I -- that's my thought process. And I readily admit that third-party funds and even if there was eventuality of the stipulation, I wanted some money to go to Brazen. The bad part about it is that money went to James Cockrill in care of Brazen. And there was nobody representing her at that point to file a motion to have it put into a minor settlement account until the child was 18. So, you know, that's the sad part of this whole matter.

(TR. 0236-0240)

Arnold regrets having taken the remaining $16,552.93 out of his trust account and regrets not filing the interpleader much earlier. **(TR. 0236-0240, 0289-0305, 0428, 0429,**

0504). While the situation was ultimately corrected, Arnold freely acknowledges his error and apologizes for it. **(TR. 0236-0240, 0289-0305, 0428, 0429, 0504).**

Q. Do you have any -- when did you provide a full accounting of the settlement proceeds to Ms. Cockrill?

A. Again, I answered this. My office e-mail that, at some point, I think Tracy Anderson and I personally went over it with her, saying that this is what is going on and that you're not getting any money as you understood and agreed to it already. And that at some point I would negotiate and pay the doctors' liens.

Q. If I understood your testimony, Exhibit 34 and 33 you said was just a preliminary work in progress. When did you provide the final full accounting of the settlement proceeds to Ms. Cockrill?

A. I believe that filing the interpleader superseded and satisfied the in-writing full accounting regarding the property. I could not have been more explanatory and laid out everything that I thought a judge would need and outlined the full

accounting.

Q. Do you wish to express any statements of remorse with respect to the accounting information you provided to the client in your communications with the client regarding the accounting of her settlement proceeds?

A. In hindsight, it was not sufficient, because I didn't finish the draft and I didn't have her execute the release before I distributed the funds. I know that that is an error.

In terms of, you know, the agreement with her about using those funds to pay continued, so I didn't -- mistakenly, I didn't realize that there was an issue. So I still don't think that she was damaged. I really believe that what I did -- I mean, hindsight, I should have just left all of it there and filed the interpleader, but -- so I am sorry that I didn't do that. And I should have done that, I guess, before I distributed any money.

But then I think of, well, if I had the signed agreement, then it would have been a different story. So I should not have transferred

all the money. And I understand that.

Q. Okay. I appreciate that answer and I want to make sure that I give you an opportunity on this record to state any remorse with respect to the accounting and your communications with the client regarding the accounting. I think we've already covered the distributions.

A. Okay.

Q. But I'm talking about an accounting, the information you provided to the client. Do you -- do you have any remorse with respect to the status of those communications with the client?

A. It should have been cleaner. I wish I had documented the file better and preserved the communication. And Exhibit 3 is not sufficiently detailed enough. And I should have finalized that. And that I am apologetic for.

MR. LARSON: 33.

A. I -- 33, yeah. I just -- a lot of moving parts and I didn't handle it properly. You know, it wasn't -- it's just that I never was going to get paid, so -- anything other than what I

transferred. And I knew the expenses were going to exceed it and I just get frustrated, I guess, and didn't spend the time. And I should have. And for that I am sorry, in not communicating it more clearly to her and I should have met with her.

And I know that, you know, maybe a little too late, but April 27th, when I sent that e-mail to try to meet with her and have her dad come in, somebody else -- because he was a pretty reasonable guy and knew Heather's illness and could help calm her down or talk to her, control her when things were getting particularly -- James, her ex, who she had a lot of bitterness towards. And that should have occurred.

But I could come up with a million excuses but it's, you know, it's my responsibility. And I was not able to -- I didn't do it properly and for that I am sorry.

(TR. 0289-0305)

Q. Do you wish to make any statements of remorse with respect to the way that you handled the filing -- or the preparation and filing of the

interpleader petition in light of the rules of confidentiality owed by a lawyer to a client?

A. Just in a vacuum without looking at the case in its entirety, I'm sorry for everything in this case. I'm sorry that we're all sitting here. I'm sorry that any of it was necessary from the way that I first handled it.

Q. Well, my question is specific to the 33

(TR. 0428)

pages in Exhibit 55. Are you sorry or have any statements of remorse with respect to the disclosure of information related to the representation of your client, Heather Cockrill?

A. Well, just in a vacuum in looking at the disclosure of information, at the time I filed it, that was what I determined was required and reasonably necessary to protect those claims. And had I done more than one, that was my first time doing it, I wanted to make sure that I -- from my own perspective -- dotted every I and crossed every T and was inclusive enough of the information.

I think now having gone through the

process, I don't think I would have needed -- you know, might not have needed all of that information in that interpleader, but that's only from experience. It's not that I intended to violate attorney-client privilege or give confidential information. So I don't know if that's responsive, but that's my thoughts.

(TR. 0429)

Q. And I think that your position is clear on the various allegations of misconduct that have been made, but just so it's clear, did you ever intentionally violate any of the disciplinary rules?

A. No, I didn't. In fact, looking at my record-keeping, I thought I had a better system than I actually did, so I didn't think it was an issue.

(TR. 0504)

The Hearing Panel considered Respondent's remorse, lack of intent, initiation of Interpleader, and cooperation with the investigation. **(TR. 0011-0014).** Respondent has learned the important lessons from this incident and has implemented new procedures and safeguards to prevent any recurrence and testified he would not do it the same way again. **(TR. 0128, 0166-0167).** These changes include drafting of a written agreement outlining the terms and conditions of an attorney client relationship and fee structure, the

proper handling of the proceeds from a personal injury lawsuit during the pendency of an Interpleader and keeping accurate records involving his trust account for ease of administrative review and accounting. **(TR. 0096, 0236, 0366, 0499-0505, 0519-0520)**.

Informant argues that Respondent deliberately misled the Kansas disciplinary investigation when he represented that the $25,000 had remained in his trust account. Mr. Arnold testified that after reviewing documents with Mr. Larson to prepare for his deposition, he identified the error and directed his counsel to contact Mr. Nehrbass and then sent an email informing Mr. Nehrbass of the error. **(TR. 0031-0032)**

D. Kansas Investigation

Informant makes reference to a parallel investigation being conducted by the Kansas disciplinary authorities and also cites to the testimony of one of their disciplinary administrators Kimberly Knoll. To be clear, Kansas has made no determination of any wrongdoing or violations of Kansas disciplinary rules. Knoll had read and agreed with the factual findings of Scott Nehrbass, an Overland Park attorney who was assigned to investigate the allegations of misconduct that were asserted by Cockrill's attorney. Of considerable significance to this case are the following findings in Mr. Nehrbass's report:

> It is also worth noting that Cockrill admitted to past fraud on the court and lying under oath in her child custody matter; forging her boyfriend's grandmother's signature on a check; and a medical record report quoting Cockrill as saying that she had forged a check of her grandmother-in-law because she was in such desperate financial stress. Although I feel deep sympathy for this poor,

troubled and now deceased woman, these factors all suggest to me that she lacked credibility.

As is typical, Arnold received two critical documents at settlement: the release and the check, made payable to both Cockrill and Arnold's firm. The release can easily be emailed for signature; the check, however, is a different matter. It is undisputed that Cockrill lived on the other side of the metropolitan area from Mr. Arnold's office is in Olathe. It appears this logistical challenge might have contributed to some of the issues and misunderstandings that eventually arose.

This matter is in many ways a "he said/she said" dispute in which the verdicts would cause one to conclude that the jury believed Cockrill and did not believe Arnold. But Cockrill is no longer alive and able to speak to me. So I deemed it very important to get the actual transcript and read the testimony, especially Cockrill's, and I am grateful to the disciplinary administrator's office for funding the cost of the transcript. Only Cockrill and Arnold testified at the jury trial. In reviewing the transcript, I do not find Cockrill's testimony to be credible.

Much of what really matters here is undisputed:

- It is undisputed that when Cockrill signed the representation agreements with Arnold on July 1, 2011, she was not in a

financial position to pay Arnold by the hour to represent her in the child custody matter.

- It is undisputed that Arnold secured written fee agreements, but did not get confirmation in writing from Cockrill regarding the alleged arrangement under which Arnold would agree to represent Cockrill in the domestic matter provided that the settlement proceeds from the personal injury matter could be used to pay for Arnold's legal services in the domestic matter. While this was a mistake on Arnold's part, I do believe there was an oral agreement to that effect, and I do not think it is an ethical violation for Arnold to fail to have that understanding in writing.
- It is undisputed that Arnold did not actually sign Cockrill's name to the $25,000 settlement check, but signed on behalf of his law firm and deposited the check into his law firm's client trust account.

According to Arnold, he only agreed to represent Cockrill in the child custody matter because:

1. Arnold felt sorry for Cockrill (who had been referred by another client who still owed Arnold money) as she cried in his office and pleaded with him to help her;
2. Cockrill said she was more concerned about her child than she was concerned about money; and

3. Cockrill agreed that, if necessary, she would devote proceeds from the personal injury matter to paying Arnold's legal bills in the child custody matter.

Cockrill denied item 3, and Arnold does not have anything in writing to prove item 3. But I find Arnold's assertion to be logical and sensible I think Arnold had an oral agreement or understanding with Cockrill that justified his maintaining the personal injury settlement proceeds in his client trust account until the child custody matter had reached its conclusion. I do not believe Cockrill's testimony that there was no such understanding or arrangement. I concede that Arnold should have had that understanding in writing, but I do not believe that his failure to have that understanding in writing is an ethical violation under KRPC 1.5. Although KRPC 1.5(d) does say that a "written statement" of the settlement payout breakdown should be provided "upon conclusion of a contingent fee matter," it appears to me that Arnold did in due time and along the way provide such a "written statement." Further, as stated above, I think any delays in this regard were justified by the understanding between Arnold and Cockrill that the personal injury settlement proceeds would be used, if and as necessary, to pay the child custody legal bills. Admittedly, there are Clay County jury verdicts that appear to contradict the findings I am here making. But because the

> jury verdicts against Arnold in Cockrill's litigation against him were the subject of a subsequent JNOV and for the other reasons stated herein, I do not believe those verdicts should be treated as dispositive or presumed valid under Kansas Supreme Court Rule 202.

(Exhibit J to the deposition of Kimberly Knoll.) (This exhibit was not included in the record filed with this Court by Informant's counsel, therefore it is included in the Appendix filed herewith, **App. A3**.)

E. Testimony Regarding Community Involvement and Good Character

Testimony of Respondent's good character was presented by Michael Rader, Dr. David Cook, Daniel Tarwater, Dr. Charles Cobb, and Timothy E. Keck. This testimony went unrefuted by any witness offered by Informant. As demonstrated below, each of these character witnesses are reputable and enjoy a position of high standing in the community.

1. Community Involvement

Dr. David Cook (Vice Chancellor of KU-Edwards), App. 142 **(TR. 0209)** has known Respondent socially for six years through their sons' involvement in youth hockey. App. 142 **(TR. 0210)**. Dr. Cook testified that Respondent has demonstrated genuine caring towards children as a volunteer Coach for the team. App. 142 **(TR. 0211-0213)**. Dr. Cook testified as to Mr. Arnold's volunteering coaching as follows:

> 4 Q. Please tell us how it is you've come to
> 5 know Bob.

A. Yeah. So I think Bob and I probably got to know each other, we probably first met six or seven years ago, through -- our kids play hockey together. And I probably really got to know him maybe six years ago. I've done a lot of coaching, I played a lot growing up and Bob has helped with the team in a lot of different ways, helping with coaching on the bench, out on the ice.

The kind of hockey our kids have played, we do a lot of traveling, so it's not just local, but you'll go to St. Louis pretty routinely. And so you get to know them on the trips and over the weekend, in hotel rooms and over lunches and dinners and all the rest. So I feel like I've gotten to know him pretty well in that.

Q. Sounds like you've spent a fair amount of time with him --

A. Uh-huh.

Q. -- in those situations.

From your observation, is he a person that -- of course, he cares about his own child, but does he care about the welfare and wellbeing of all

the kids that he's interacted with when you're watching him?

A. Right, yeah. Absolutely, I mean, that's -- when you're on these kind of trips, he was the guy who was in the locker room talking to the kids, caring about them. Kids don't have lunch money or dinner money or they need tape or whatever they might need to be successful, he did a -- really, countless times and examples of things I could think about. Or he's driving around to go get lunch or a stick because something broke and, you know, so he was the guy -- probably more than anybody I knew who did that kind of thing.

Q. Have you had any professional interaction with Mr. Arnold?

A. Probably just a little bit. I mean, I just know that he's helped some of the families on the team, and so I know the work that he's done, you know, for the families and I've heard them talk about it. I know that he's helped them quite a bit.

One family in particular I know went through a divorce, so everybody knew everyone and I

know it ultimately went well. I know the mom and the dad, you see them at -- you know, it's a small community, you see everybody at the rink, you see the mom, you see everybody talking together, you see the kids kind of being first in all that. It seems like it all worked out. I was kind of arms length from that, but I've seen that.

Q. In your interaction with him, were you able to formulate an opinion or impression of him as to his character as an individual?

A. Yeah, absolutely. I mean, that's kind of what I've been trying to talk a little bit about. I think he's just the kind of person who goes out of his way to help people when nobody's watching, if that makes sense. I've watched him help kids in lots of different ways. I think he genuinely cares.

Part of his role is sort of on the management side. You know, the coaches are the ones who are out front doing a lot of the work and he did that, but it's all the hard work behind the scenes that nobody gives you credit for. And you're doing it from the kids.

And I remember we drove back from St. Louis once together and he was on the phone the whole time scheduling games. Nobody appreciates the hard work, you know, that goes into a lot of that stuff behind the scenes. And he's the kind of guy who was always willing to volunteer and step up and do that kind of thing.

Q. It sounds like he was freely giving of his own free time, uncompensated time.

A. Yeah, right. Probably, you know, I mean, it probably cost him money in terms of helping out the kids and all the rest.

I should mention, too, so our kids also have played on the same lacrosse team. So I've seen it in hockey on multiple teams and different settings, but also a little bit in lacrosse, but definitely more in hockey.

Q. Would you say in the situations that you've just outlined, where parents and others are around, was -- were you able to ascertain the -- whether or not Bob was respected and looked up to by the other peers in your group?

A. Well, yeah. I mean, starting with the kids, for sure. I mean, he was the one who was there more often than, you know, most everybody, you know, maybe -- the coach, I mean, he was a coach in and out of the locker room, there helping them drive them around and all the rest. And then for sure the parents. I mean, the parents appreciate people who step up and do this kind of work and so I'd say he's definitely appreciated by them as well.

(TR. 0210-0214)

Daniel Tarwater (Jackson County 4th District Legislator, Chairman of Jackson County Legislature in 2005, 2007, 2012 and 2015) App. 139 – 140 **(TR. 0200-0201)** testified as to Mr. Arnold's community service and knowledge of his service as a Jackson County Missouri Family Court appointed Guardian ad Litem as follows:

Q. And tell us, if you would, how you know him and how you've come to know him.

A. I first met him at a children's event in probably somewhere around 2006, 2007 at another friend's house. And I used to work on the east coast and struck up a friendship right away because he's one of my favorite east coast guys.

Q. And have you had an opportunity over, I

guess since that time frame, to see, interact with him on occasion?

A. Absolutely. You know, I have a son Mitch who also plays baseball with his boy. And we've -- and some of the kids on Mitch's team played with Bob, he coaches different leagues and things. So I would see him around there. You know, and then just different social events.

…. You know, and then I've also seen him with guardian ad litem cases for Jackson County, he's done some work down at the courthouse for that stuff, too. But, once again, I'm not an attorney, so I don't --

Q. And from your observations, again, as a lay person, but as -- insofar as his service through the county as a guardian ad litem, from your observation, did he discharge those obligations in a professional manner?

A. Yes. And the way I would know that is we didn't get anything back, you know, come back to us with any issues on anything, so –

Q. Okay. Is there -- are you aware of any

kind of a vetting process to determine who -- what lawyers even qualify to serve as guardian ad litems?

A. I don't know what the specifics are, but it's usually, you know, someone that's caring and giving and actually will do cases on their own, you know, without the compensation that people are used to.

(TR. 0201-0206)

Michael Rader (Partner at Bartimus Frickleton, former Jackson County Assistant District Attorney and current Chairman of the Jackson County Police Commission) testified as to Mr. Arnold's further community involvement as follows:

Q. Tell us the circumstances of your acquaintance, please.

A. I think Bob came to move to Kansas City from the east coast in '03 or '04. He's got two sons, Robbie and Max, that are not the exact age but the same grades as my two sons, Riley and Briggs. And so they went to the same mothers day out every day for a number of years. And so I got to know Bob through that. And then we coached a number of sports teams together, for one of these two little kids. They're not little anymore, they're all in

23 high school.

24 And I've had a chance to work with Bob

25 off and on professionally. And so with the kids and

1 the mothers day out, socially through that stuff, as

2 assistant coach or a head coach, whoever showed up

3 to practice earlier, we wear that hat, in that

4 capacity, and then also in the professional

5 capacity.

(TR. 0257-0258)

2. <u>Testimony Regarding Good Character</u>

1) Michael Rader is an attorney in Kansas City and refers domestic cases to Respondent. App. 153-154 **(TR. 0258)**. Mr. Rader also testified to his continuing confidence and high regard of Mr. Arnold as follows:

6 Q. And can you elaborate a bit on the

7 professional side of things?

8 A. Sure. I don't do any domestic work at

9 all and don't do any criminal defense work. And so

10 any time my firm, or me specifically, will get a

11 call about domestic stuff, you know, I need a

12 divorce lawyer, I need someone, there's only a

13 handful of people that really do a good job here in

14 town, Bob is one of them, so I always will pass

Bob's name along to them, just as a referral. And I don't take -- it's not a referral fee-type thing, it's just my wife's friends from work might have a problem or somebody's neighbor has a problem and I'm -- don't tell me more, don't care, here's Bob's number.

Q. Now, in those situations, at least some of them, have you gotten feedback from the people that you've sent Bob's way to --

A. Oh, absolutely.

Q. -- find out how well he's doing?

A. A lot of the folks, my wife used to work for Q104, the radio station and she had a lot of friends down there. And a lot of the people I would send Bob's way were people that she knew or even friends that I've had, old neighbors and stuff. And I've never gotten bad feedback about Bob, it's always been positive. Things have been taken care of on time. And they've always -- you know, you can't have a successful divorce, but they always are satisfied with their representation.

When I say successful, I mean, no one's

happy with the outcome, you're going to be disappointed somehow, but they've always been happy with how Bob treated them.

Q. They felt like he was in their corner?

A. Certainly. And that's why I -- if I ever got the sense that that wasn't the case, you know, I'm not going to give his name out anymore. I mean, I wouldn't do that anymore. And I still will send business, you know, give people his number all the time, because I've never gotten bad feedback.

Q. Now, I know there's probably thousands of lawyers in the Kansas City community now, but still a fairly small bar --

A. Right.

Q. -- in many respects. Would you agree with that?

A. Oh, absolutely.

Q. And I think it's fair to say that -- and see if you agree with this, that lawyers develop reputations, some good, some bad, often by word of mouth?

A. Right, absolutely.

Q. And in your -- the circles that you run in, have you ever heard anything negative about the reputation or character of Mr. Bob Arnold?

A. Not at all. And one thing I'll tell you, being a lawyer here 19 years, it's like a bunch of gossipy old ladies, I mean, it really is. The way the legal community is, you can't have something happen in a courtroom in Wyandotte County that I don't hear about in my office, you know, or my house that night. It's just lawyers inherently are gossipy people. I don't know why that is, but it's true. And I've never heard a bad word in the community, the legal community or otherwise, about Bob.

Q. Do you have a sufficient knowledge base to form an assessment as to the character and integrity of Bob Arnold, both inside and outside of the law?

A. Absolutely.

Q. And what is that assessment?

A. You know, he's A plus. You know, I thought about this when I was driving down here, I

knew that, you know, the ultimate crux of my purpose here is a character witness.

My dad drove a truck for UPS for a long time. He's not with us anymore. But he had a phrase he used to call people, you know, growing up, Mike, you know, that guy over there, he's good people. You know, or whatever it was. It might be a co-worker, it might be whatever. And so I've always adopted that phrase. You know, I'll tell my kids, you know, our neighbor next door is good people. Bob's good people. And professionally and personally, he's good people.

Q. Since I have you under oath, I should ask you the same question about me.

A. I can't lie.

Q. Would you have any hesitation at all about, if the need arose, to retain Bob yourself or for any of your family members?

A. None at all. I wouldn't hesitate one second.

Q. Would you feel comfortable that he would pursue the interests of you or your family

3 member with the same level of integrity that he has
4 for the other people you've sent his way?
5 A. Absolutely.

(TR. 0257-0262)

2) Dr. David Cook testified as follows:

13 MR. ROSTENBERG: If you were going to
14 be getting divorced, would you hire Mr. Arnold?
15 THE WITNESS: That's a tough
16 hypothetical, because that's not happening. But --
17 I hope not. I would certainly think that would be
18 highly likely, yeah.
19 PRESIDING OFFICER MASSEY: Anything
20 else?
21 THE WITNESS: I would also add
22 especially because I think the way we would do it is
23 you represent both my wife and I, and I think it
24 would work out just fine. But thank you.

(TR. 0218)

3) Daniel Tarwater stated:

24 And then on the professional level
25 would be my brother, Shawn, was -- went through a
1 divorce, which, at that point, I learned that no one

should ever go through a divorce. It was the most of contentious things I'd ever seen. I got drawn into it. Bob handled the case for my brother and walked him through every step of the way. And if it wasn't for Bob, my brother, Shawn, probably would have blown up. But Bob calmed him down and calmed everyone down. So he did a great job on that case.

Q. Were you in a position to assess whether or not he, meaning Mr. Arnold, zealously undertook to represent the interests of your brother in that matter?

…

VOIR DIRE

BY MR. ODROWSKI:

Q. You're not a lawyer, you have no legal training?

A. I am not a lawyer other than I saw what he -- how much he helped my brother, so that's --

Q. Do you -- do you know what is expected of a lawyer's zealous representation of a client? Do you know what that even means?

A. From a legal term, no. But from a

social standpoint, sure.

EXAMINATION CONTINUED OF MR. TARWATER

BY MR. LARSON:

Q. I think my question was, were you, based upon that experience that you described with your brother, were you in a position to observe the effort put forth on behalf of Mr. Arnold for your brother's case?

A. Yes. To the extent that the other counsel was asking for my personal tax returns and things from my bank accounts and other things which Mr. Arnold got that to go away. As I pointed out, it was a very contentious divorce and had been served and everything else on behalf of Ms. Berkowitz (sp).

Q. And so you had an opportunity to work directly with Mr. Arnold to try and fend off that discovery?

A. In that case, yes.

Q. From your observations and from your experiences with Bob, were you able to -- and it's Mr. Arnold for the record, were you able to

formulate an opinion as to his character insofar as your experiences with him were concerned?

A. With my experiences with him, nurturing, very good, he's easy to talk to and helpful. …

(TR. 0202-0206)

4) Dr. Charles Cobb testified as to his referral of patients in need of legal help and has known Mr. Arnold for six years. **App. 144-145 (Tr. 219-221).** Dr. Cobb gave further testimony of his high regard of Mr. Arnold as follows:

Q. Tell us, please, how it is you've come to know Bob.

A. Well, I know Bob through my son, Christopher. He's an adolescent psychologist and has worked with Bob as a consultant and as an expert witness on cases involving children and teenagers. And Bob was recommended, through my son, recommended to me through my son for referral of several malpractice cases. So I've known Bob maybe five or six years.

Q. So has your interaction with Mr. Arnold been more of -- professional in nature?

A. Yes.

Q. And if I understand correctly, he -- he, on occasion, would ask you to consult with him on an either potential or existing lawsuit?

A. He has once or twice. It's mostly me approaching him with existing -- or what I perceived to be potential litigations.

Q. Oh, I see. Okay.

Situations in which you at least had suspicion as to whether the quality of care was what it should have been?

A. Right. I've referred clients to him.

Q. Now, in any of those situations, have -- has the referral been accepted where he undertook the representation?

A. Yes, several.

Q. And in that situation, were you either -- well, I should ask you.

Did you become aware or did you discover the -- how the case proceeded and what the outcome of those cases was?

A. Well, as far as I know, none of them went to trial. We are working with one presently

that may go to trial. It has been longstanding. The rest of them were settled out of court.

Q. And were the -- were the folks that you referred to Mr. Arnold satisfied with his representation?

A. They were.

Q. And in your interaction with him, as you've described it, have you been able to formulate an impression or opinion about his level of integrity and character in the way that he carries himself as a professional?

A. Well, Yes, I have.

Do you want me to explain?

Q. Yes, sir.

A. Elaborate?

I've already told you what my background is. It's rather varied. But it has afforded me the opportunity to work with many people, large groups of people. My last duty in the Army was that of commanding officer of the 325th combat support hospital, which consists of about 300 people. I've worked with people of all ages, all

ethnic backgrounds, races, under stress. I think I'm probably by now, at my age of 77 years, which makes me probably the oldest person in this room, I think I have the ability by now to judge whether somebody has good ethical and moral standards. And I'm not one to put up with a lot of foolishness or fools. And I'm not one to allow my reputation, which has been long and hard to establish, to be compromised by somebody through association that doesn't have good ethics and morals.

And I have perceived in Bob nothing, no thought process, no statements, no handling of patients or clients, that would indicate to me that he doesn't have a good philosophical basis for professional ethics.

Q. From your observation in the context that you've described, Doctor, did Mr. Arnold dedicate himself to the success of the litigations that he undertook for the folks that you referred to him?

A. Yes, he has. And the one I mentioned that has been long going, that's -- I was the

interim director of the residency program at UMKC after I retired, in 2014, that case has been going on now for almost three years. And I've had ample opportunities to sit down with him and go over the documentation of that case. I have been in deposition with opposing counsel, I've been in mediation with opposing counsel, I've been in a lot of environments with opposing counsels, and they've all treated him with respect and courtesy. I've seen nothing that would indicate that he is not held in high esteem by his peers. And I certainly hold him in high esteem, as do the clients that I've referred him.

Q. Has he been prepared? And you know what I mean by prepared in the context of being a professional. Has he been prepared?

A. Yes, he has been.

Q. Would you refer clients to Mr. Arnold, would you continue to refer clients to Mr. Arnold if you were aware that other clients have actually gone so far as to sue Mr. Arnold for legal malpractice?

A. Anybody can sue anybody for anything.

That doesn't mean it's of sound judgment or has any basis at all and legal fact. To answer your question, yes, I would continue to refer clients to Mr. Arnold.

(TR. 0221-0228)

5) Timothy E. Keck (Former law partner of Arnold; current Kansas Department for Aging and Disability Services (KDADS) (Secretary Tim Keck previously served as Deputy Chief Counsel at the Kansas Department for Health and the Environment (KDHE) for four-and-half years) At the 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. 0276)**. [After consolidation, both (two (2)) cases were dismissed with prejudice as to all Defendants on March 14, 2018 (See: *IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS CIVIL COURT, Case Nos. 2017-CV-00720 and 00721*)]. Mr. Keck testified to his knowledge of Mr. Arnold's work ethics, reputation and character as follows:

Q. In your professional associations, both while you were working in the same firm and in other, you know, positions, would you interact with Bob on occasion if you had bar events or other legal functions?

A. Not -- not really, no. I mean, we were in a partnership for about three years together, so

we interacted on a daily basis there. We had weekly staff meetings. And we really talked at least once a day and saw each other at least once a day during the business day.

Q. Were you in a position -- I didn't mean to cut you off.

A. That's okay.

Q. -- to have firsthand observation of how Bob interacted with his clients?

A. I did.

Q. And how would you characterize from your observations how Bob does interact with his clients and --

A. Bob's got -- Bob's got a good relationship with everybody that I've seen. Bob fights hard for -- very hard for his clients. Every client that I've seen him deal with, he fights really hard for them, trying to accomplish the goal that they have and they want to achieve, whether it's a domestic, and that's most of what I saw him handle with folks is domestic, but we did a lot of other types of cases as well.

I did a lot more criminal and domestic than Bob did and some personal injury. Bob did a lot more domestic and personal injury. It was kind of the experience we had. But he would fight really hard for the clients and put a lot of effort in to try and accomplish the goals that they had for their case.

I thought he did a pretty good job of -- a really good job of identifying what their goal was and -- in the case and helping set expectations, realistic expectations for those -- for those goals. And did a pretty good job of managing that with the client.

Q. Do you trust him?

A. I do.

Q. Do you have any qualms or reservations about his reputation or his character?

A. I don't. Bob's been, at times, more than a friend to me and more than a partner. He's helped me through some tough personal times. Towards the middle of our practice, I had some personal problems and Bob was a huge help in helping

me manage through those and did a lot for me, just made a lot of sacrifices so that I could help get through those tough times with some personal family members. So he's been a good partner and a good friend to me. And I wouldn't ever say anything negative about Bob.

Q. Have you been in a position to gauge how Bob is held in the eyes of other members of the legal community, particularly out in Olathe and Johnson County?

A. Yeah, sure. So I think Mike Rader came in and talked before I did. I think that's a pretty good indication. Mike's got a good reputation. And I think that's a good indication of the kind of reputation that he has in the community. And all the attorneys and other people that I've seen Bob interact with have been good. I've seen him interact with judges and judges' clerks and assistants and things, and he's always been respectful and easy to deal with in that regard, too.

Q. Okay. And even though in domestic

matters in particular things can get --

A. It does.

Q. -- choppy with --

A. It does.

Q. -- opposing counsel.

A. Right. Even though that -- you know, that does get -- domestic cases, in my opinion, and it's been a long time since I've handled one, but those are the most emotional cases that you can have and -- because people are at one of the worst points in their life, usually, at that -- in those cases. Bob did a really good job of managing that from a bedside manner standpoint and helping manage the clients, not just from a legal standpoint, but becoming comfortable with life after divorce, those kind of things. I think -- several clients that I can think of that he had not just helped them walk through the legal portion of it but helped them move forward in their life afterwards.

Q. From your experience and observations of Bob, would he ever do -- at least knowingly, do anything harmful to a client?

A. No.

…

Q. In cases that you worked on him with and observed him and when you're partners together, did you ever see him do anything that you considered to be harmful to a client or a client's cause?

A. No.

Q. Did he train his staff to be caring, too, about the clients and interactions with them?

A. Yes. We always had really good staff. I don't know if you've heard from some of them or not, but very caring staff that would look out for the clients. Again, not just from a legal standpoint, but from a -- kind of a global standpoint in their emotional state. And, again, domestic cases are tough and people call crying sometimes and frustrated with the way things are. And so staff always did a really good job of making sure that the client was taken care of from that standpoint as well.

(TR. 0270-0275).

Informant calls attention to the fact that each of the witnesses were unaware of the allegations against Respondent, and infers that their testimony should be discounted in some way as a result. Arnold made a conscious decision to not discuss any of the details of the allegations against him to avoid any claim that he was trying to improperly influence their testimony. **App. 159 (TR. 0278)**.

A common thread from all five of these witnesses was that they would continue to support Respondent, were aware of his pro bono service in divorce and family courts and his good standing in the community, that they have referred or would refer and recommend Respondent to others, and if they needed an attorney would utilize his services, and know of his good character and integrity. **(TR. 0205-0278)**. While engaged in the practice of law on a full time basis, Respondent has over 100 clients at any given time who have placed their faith and trust in him. **(TR. 0320).**

F. <u>Summary of the Nature and Scope of Respondent's Representation of Heather Cockrill</u>

Heather Cockrill sought legal assistance from Robert Arnold in July of 2011. She was embroiled in a custody dispute on the heels of a divorce in which she was unrepresented and was placed in default. **(TR. 0032-0038)**. She wanted desperately to modify the custody order for her son who had sustained a dog bite and whom she believed was in danger due to drug use in her ex-husband's house. **(TR. 0032-0038)**. She admittedly had no money to pay Arnold or any other attorney and was in arrears on her child support obligation. **(TR. 0013)**. She did, however, have the prospect for some funds by virtue of an injury she sustained when her dad's neighbor pinned her between his car

and hers. **(TR. 0032-0034)**. Arnold and Ms. Cockrill agreed that he would undertake to represent her in both matters with the understanding that Arnold's fees for the custody matter would be paid out of any settlement proceeds that Arnold could collect on the personal injury claim --after the payment of fees and expenses related to that case. **(TR. 0064-0068).** Arnold undertook the representation knowing full well that he was unlikely to be paid for his services beyond what might be recovered in the personal injury action. **(TR. 66, 313, 446, 526).** Separate fee contracts were signed by Ms. Cockrill. **(TR. 0040).** Unfortunately, the agreement that any proceeds from the personal injury case would be used to pay for attorney fees in the modification action was not documented and was subsequently disavowed by Cockrill. (**TR. 0059-0086**).

In reference to the understanding and meetings with Ms. Cockrill and facts supporting the knowledge of the receipt and disbursement of the funds by Ms. Cockrill, Mr. Arnold and two other witnesses as well as the cell phone records provided the following testimony:

Q. Okay. Did you meet with Heather Cockrill in your Olathe, Kansas office on July 1, 2011, to discuss your potential legal representation of her with regard to the bodily injury claim?

A. Yes.

Q. On that date, did you also discuss with her your potential representation of her on other legal matters?

(TR. 0036)

A. Not in that order, but yes.

Q. Well, on the same date?

A. Well, I had no idea that she had a car accident case. She was coming in to talk to me about her family law case.

Q. Okay. But on that date you talked to her in your office about both cases?

A. Yes.

Q. And that was July 1st, 2011?

A. Yes, sir.

…

Q. Okay. And so can you describe just the general nature of the legal matter that she -- that initially caused her to meet with you?

A. She had told me over the phone that she was involved in a divorce, that a default judgment was granted against her in Clay County. And that she had gotten supervised visits, but that she hadn't seen her son in several months or at least a month or so. And that she wanted somebody to represent her, to open up the case or look at the

case and try to change her custody, because, you know, she was crying on the phone and she was tearful when she got to my office. She just was beside herself not having been able to see her son.

…

Q. But by the end of the meeting, you had an understanding of what her legal need was?

A. I had a much better sense. But I don't know if I determined by the end of the meeting exactly what I was going to do, because I don't believe I had an entire file in front of me.

Q. Okay.

A. She brought nothing to the meeting.

Q. Okay. Had she discussed her legal matters with an attorney prior to meeting with you?

A. Yes. In fact, she was represented by another attorney for both the car accident case and the divorce, who withdrew from her -- representing her and gave her back some money.

…

Q. All right. And were Exhibits 15 and 16 signed at that meeting?

A. Yes.

Q. And is Exhibits 15 and 16 your -- your two retention or retainer agreements with Heather Cockrill?

A. Yes.

(TR. 0037-0040)

…

BY MR. ODROWSKI:

Q. Can you describe Ms. Cockrill's emotional health and emotional and mental health issues from the time that you began representing her in July of 2011 through the time that you stopped representing her some time towards the end of April 2013?

A. When Heather came to me July 1st, 2011, she made me aware that she was hospitalized and had attempted suicide during the time period of her divorce, which I didn't represent. And that was one of the reasons she got supervised visits with her son. She was on medication, multiple medications, she had been diagnosed with PTSD, depression,

bipolar, ADHD. Those were the diagnoses that I was aware of.

BY MR. ODROWSKI:

Q. Okay. And --

A. In terms of going passed July of 2011, during the course of my representation, she again attempted suicide and was hospitalized and was missing -- and we weren't able to reach her for a certain time period. And I don't recall, two, four, six weeks.

She got out of the hospital. She had started seeing a guy who was living with her, who I think helped her a lot, support-wise and emotional-wise, and she became refocused back with us to try to change the custody and lift the supervision and get to see her son. She would, at some points, I think it was the bipolar where she would have highs and lows. She would get really depressed and you could hear it in her voice and -- sometimes, and then she would be very excited and very happy and, you know, everything was great.

She had multiple jobs, which I think

gave her some stability. Towards the end, particularly near the trial, I think she was doing very well. And when we went and presented our trial in front of Judge Chamberlain, and actually I thought she was appropriate and doing well emotionally at almost all the hearings. So I think she rose to the occasion for the trial.

Q. Okay.

A. I do think she had some memory issues. I think she had some -- because sometimes I would tell her stuff and then she would call the next week and ask the same questions. I mean, that's my understanding of her mental health.

(TR. 0058-0066)

Q. Okay. Well, why would you do a demand letter for $20,000 if the limits were $25,000?

A. Well, I never sent a demand letter asking for 20,000.

Q. Okay.

A. So at the time of researching this, and this is a long answer, Mr. Odrowski, so you'll need to be patient with me, you asked me a very

open-ended question, which requires an answer.

At the time, I don't believe that we knew what the policy limits were. On June 1st, 2011, I didn't know whether there was going to be a policy limit. I think that -- and I didn't know what her treatment was. She still had ongoing treatment. So you don't know what the medicals are. So I could never have formed an opinion about what the value of her case was on July 1st, 2011.

And I think that's one of the big parts of this case is that Heather thought that the broken pelvis would translate into a huge amount, because of the policy -- we didn't know the policy limit was 25,000. So she thought there was going to be plenty of money to go around and plenty of money to pay for everything. And certainly with -- with a fractured pelvis and the injuries she had, had she treated consistently, might have merited more money.

Typically, what I tell my staff is get me the draft of -- or standard letter, whatever the medicals are, double it and then I'll take a look at the file and edit it. So I think at some point we

16 had a demand letter for the policy limits, but I
17 don't think I was aware of the policy limits until
18 maybe June. And I'm not sure when I sent the letter
19 out.

(TR. 0079-0083)

2 BY MR. ODROWSKI:

3

7 BY MR. LARSON:

8 Q. At the conclusion of the modification
9 action, did Ms. Cockrill communicate to you in any
10 way her state of mind following the result?
11 A. We received an e-mail from her stating
12 that she was very happy with our firm and that she
13 as getting more time with her son and that she
14 appreciated everything we did for her.

1

22 Q. Did anything prevent you, on June -- or
23 excuse me, on July 23rd, from having a documented
24 agreement with your client before you transferred
25 the money? Anything prevent you from going to the
1 client and saying, hey, this money's been in my
2 trust account for a month, can you sign a document

showing your informed consent before I transfer it? Did anything stop you from doing that?

A. Just that I had her permission and agreement and I had already transferred the money and I made a mistake. I didn't have it signed and in writing prior to it, so my mistake.

Q. When did you reach that agreement with her?

A. Numerous conversations, but starting on July 1st, 2011.

Q. Okay. Did you have an agreement with her on July -- or, excuse me, on June 18, 2012?

A. Yes. When I received the check, I called her and asked her to come in to sign the check, to sign the release and check.

Q. Okay.

A. And she said she had problems with transportation, she didn't have gas money to give somebody, she couldn't make it in, but to go ahead and just deposit the check and that's fine. And she understood that it was going to be used for attorneys' fees and to pay the liens -- or the claim

for the liens as I would negotiate over time.

(TR. 0145-0146)

…

BY MR. ODROWSKI:

Q. Well, at the time of the transfer in July of 2012, do you think there was anything unfair or unreasonable to the client when you -- when you took 100 percent of the proceeds of her personal injury case?

MR. LARSON: Objection. It's argumentative. Again, we've already been through all of this.

PRESIDING OFFICER MASSEY: That one I'm going to overrule because you pinpointed the time frame, so --

A. Correct.

PRESIDING OFFICER MASSEY: -- as of July 2012.

BY MR. ODROWSKI:

Q. Yeah.

A. So practicing in family law is extremely emotional and hard, not only for the

clients but for the attorneys. In terms of what Heather's goals were and the absolutely terrible situation and the set of facts that she gave me, knowing how much energy, effort and future legal services she would need, and that nobody else would have provided or even taken her as a client, and I wanted to help her as much as I could and I'm really good at what I do in family law, and that is what I think. I don't think anything I did was unfair.

I realize now that I made a mistake and I should have handled it differently. But at the time, that was my thought process. I have staff, I have expenses, I have the fees that she already owes, the fees that were going to come up. The guardian ad litem also wasn't just capped. It's not a flat fee for a guardian ad litem. There's increased costs for guardian ad litem. I mean, I do guardian ad litem work. I mean, for a contested court hearing in a child, they can go up to 4, 6, $8,000 or more. And then if we had to have psychological evaluations, which we did in this case, and to pay for those. I don't even think

those costs are even accounted for anywhere. But we had the psychological evaluation performed.

Subpoenas. You know, so all of that, if you look at the totality of the circumstances, I don't think what I did was unfair or so unreasonable. And she agreed to it all and she wanted it all. And that's the product I was trying to deliver to her.

BY MR. ODROWSKI:

Q. Do you think that agreement that you reached with your client is an unreasonable agreement?

A. Absolutely not. Because she had a goal of -- I mean, Brazen, her little baby, was the most important thing in her life and she was not seeing the child. She got displaced because of the default judgment, got the supervised visitation, her father worked on weekends. Then she had the car accident and the father, James Cockrill, didn't let her see the baby. And she was beside herself.

So she wanted to do -- it was her money

and her decision to spend and to hire a lawyer to do what she wanted to have done. And that's what I did.

Q. Did you make an intentional decision to take money out of your trust account and put it into your personal operating account?

A. I did, after consultation with my client.

(TR. 0187- 0191)

Q. How did you comply with 4-1.8(a)?

A. Well, first, I don't consider as a pecuniary interest adverse to my client because it was to benefit her, so I don't even think that this rule of proven transaction applies to my situation.

Q. Well, that's my question.

A. Number two -- I'm answering your question.

MR. LARSON: Let him finish his answer, please.

BY MR. ODROWSKI:

Q. Well, I'm not asking if it applies.

I'm asking if you attempted to comply with it. If you answer that question, then you can say whatever you want. I don't -- I'm not representing to you that it applies. I want to know if you attempted to comply with it.

THE WITNESS: Can I finish my previous answer?

MR. LARSON: I think you're in the process of answering that question, so...

A. So, number two, I had two instruments that I executed on July 3rd with Heather Cockrill in my office that was completely understood by both of us and I attempted to comply with my understanding of putting it in writing, and I've already acknowledged that I have not -- whether it's -- I don't believe it's a proven transaction, but I could have been clear, I should have been clear, but, again, I explained the circumstances of that July 3rd of putting off my family vacation and my family waiting in the car for me to leave and just kind of hurried through the paperwork, which was an error. I should have written it down and made it

more clearly, and I apologize for that, and nobody would be sitting here had I done that. So, you know, that's -- that's on me and it's my error. I certainly don't plan on ever doing that again.

(TR. 0364-0366)

Q. Well, explain that. What is the accounting purpose of Exhibits 54 through 56?

A. They're just monthly statements generated after we put time slips into a computer and push a button to print. Then it gets sent out to the client so they know what we're doing and working on on a monthly basis.

I never expected money from her. I have numerous clients like Heather that don't pay, and, you know, we've -- at some point we either withdraw or the person makes other arrangements. We made other arrangements. My error is not putting those arrangements in writing clear enough for everyone else to understand. But there was no misunderstanding between Heather and I about her billing and she was under no pressure to make payments on a monthly basis. In fact, in my

retainer, if you don't pay at least $400 a month, then it says that, you know, we have -- we may withdraw, but that's the contractual agreement. She never, ever abided by the financial terms and conditions of the contractual retainer that we had with her, and that was because she knew and had already pledged and understood the money was going to be used from the proceeds from her PI case.

Q. So is it your testimony that you expected Heather Cockrill to ignore the two columns going across the right-hand side of Exhibit 56?

A. Not only did she ignore them, she never made a payment, so absolutely I would agree with that.

Q. So why are those two columns on the right-hand side of Exhibit 56, why are they even there?

A. Again, you may not like my answer, but they're there for just accounting purposes and are generated from hundreds of clients that I have on a monthly basis, and it informs the clients what's going on with their case so that they don't have to

call in for status updates, I don't have to write status letters to them, they can clearly see what we've done.

Q. What do the two right-hand columns have to do with giving the client a status and letting them know what's going on?

A. It's just generated from the software I have, the time slip system.

Q. So they really don't provide any information about the status of the case, do you agree with that?

A. Well, no, I don't. I think the status of a case is partly how much money is being accrued in attorneys fees, about what it's costing somebody, that's part of the status. That's part of the reason for going forward in the case. Either you have the money or you don't have the money to pay for certain things in a case, and you make decisions and strategy based upon where you are in the status of the case about how much money to spend going forward.

(TR. 0369-0371)

BY MR. LARSON:

Q. Did you have any expectation of the $25,000 that you placed before the Court that any or all of those funds could not or may not come back to you, they could be ordered elsewhere?

A. I know the Court had jurisdiction of the $25,000 to do whatever they thought was fair, just and reasonable.

(TR. 0457)

BY MR. LARSON:

Q. Did she ever question your fees at any time prior to the e-mail following the modification result up in Clay County?

A. No. In fact, it was almost the opposite, that she was completely happy and money wasn't an object. It was all about Braison, her son, and trying to push forward for a trial to undo the original custody orders.

(TR. 0479)

Testimony was given by Susan Hannah, Mr. Arnold's paralegal at the time of the receipt of the $25,000 settlement check as follows:

Q. Now, do you recall having a

conversation with Mr. Arnold that day about what was -- how -- what was going to happen with the negotiation of the check from the insurance company?

A. Yes.

Q. What do you recall about that?

A. I asked Mr. Arnold if I needed to contact Heather regarding coming in to sign the check and he stated that he had already talked to her and I didn't need to worry about it.

Q. So that -- that issue was off of your desk, so to speak, at that point?

A. Correct.

(TR. 0337-0338)

Regardless, Respondent acknowledges his error in failing to document this agreement as has expressed his remorse for that oversight. **(TR. 0236-0240).** He had no intent of violating any ethical rules but apologizes for this omission. **(TR. 0236-0240).**

It is noteworthy that the arrangement was highly beneficial to Ms. Cockrill. **(TR. 0117, 236-237)**. She received the benefit of legal services that she could not afford as the fees far exceeded the $25,000 recovered for her personal injury claim. **(TR. 0395-0395)**. Through Respondent's hard work and dedication, Cockrill's custody arrangement of her son was modified. **(TR. 0517-0518)**. Cockrill herself acknowledged the significant role that Respondent played and expressed effusive gratitude and praise for Arnold's efforts in

an email she wrote following the court's modification order. (Hearing Exhibit 44 and **TR. 0369-0371**)

The personal injury claim settled with Cockrill's knowledge and consent for the policy limits of $25,000. **(TR. 0088)**. When Respondent received the settlement check and release, Ms. Cockrill was notified and she executed the release, which Respondent returned to the insurance carrier. **(TR. 0088-0090).** Cockrill gave Arnold permission to endorse the check and deposit it into Arnold's bank account. **(TR. 0148-0149)**. Although Cockrill authorized Arnold to sign her name on the back of the check, Respondent only signed his own name for Arnold Law Firm LLC, who was a co-payee on the check. (Ex. 21-the back of the check). **App. 346-347. (TR. 0494-0496)** He then deposited the check into his Missouri IOLTA account. **(TR. 0090-0091)**. Significantly, Cockrill later alleged in her lawsuit against Arnold that he had forged Cockrill's signature or the check in order to conceal from her the receipt of the money. **(TR. 0495)**. This claim is demonstrably false. **(TR. 0496).** Although fully aware that the settlement money had been received and deposited into Respondent's bank account, Cockrill made no request for any money from the settlement proceeds, evidencing the understanding reached on how this money was to be used. **(TR. 0376).**

However, testimony provided by an independent witness at the hearing clearly established Cockrill's understanding and agreement with this arrangement. (See below excerpts of the testimony of attorney Stephen Taylor, **App. 594 (P. 11)** (As indicated earlier, this was also the conclusion of Scott Nehrbass who investigated the matter on behalf of the Kansas disciplinary office.) While Respondent is reluctant to make

comments about the candor of his now-deceased former client, inasmuch as her credibility is and was an issue in this case, we feel it needs to be addressed. To that point, Clay County Circuit Judge Chamberlain made a finding in Cockrill's divorce decree that she had admitted to committing a fraud on the court and to lying under oath. **App. 750**.

Cockrill's lack of candor in both the Family Law Modification case as evidenced in the findings by Judge Chamberlain and in the Interpleader counter-claim are significant and cannot be ignored. **(TR. 0414, 0418-0419).** Her claim that she knew nothing about the settlement cannot be reconciled with her signature on the release. **(TR. 0088-0090)**. Her subsequent claim that there was no agreement that proceeds from the personal injury case would be used to pay for attorney's fees in the modification action were clearly and unequivocally refuted by the testimony of Stephen Taylor. (See: below transcript excerpt from Taylor's deposition.) Taylor is a Liberty attorney who represented Cockrill's ex-husband in the modification case. **App. 593 (p. 6).** Mr. Taylor's deposition testimony was presented at the hearing, and included the following:

> 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). There was a heated exchange that occurred in the hallway of the Clay County Court house between Mr. Taylor and Mr. Arnold where Ms. Cockrill shouted that she had given Arnold the money for the Family Law Case, as evidenced from the following deposition excerpt:

4 **Q.[Larson] Did there come a time when you had an exchange, a conversation with Bob Arnold and/or Heather Cockrill about the issue of how she was**

7 **funding the lawsuit?**

8 A.[Taylor] Yes, actually specifically. …

16 A. [Taylor] Okay. What I specifically remember is after being in court four or five times -- that may be a bit of an exaggeration but at least maybe three times, they -- and trying to pin them down on their case, they finally made these allegations of abuse or neglect which necessitates under Missouri law the appointment of a guardian ad litem. And I was speaking with Bob, and I -- I asked him why he was doing this; these people don't have the money to waste; my client doesn't have any money; he's wasting everybody's time. And she was right behind him and basically told m[e] [sic] to go fuck myself -- and I can remember her saying that -- because she had gotten a settlement and he has all of the money he needs to kick my ass. And that was the time when --that was the appearance where the court appointed guardian ad litem.

App. 594 (p. 11).

The docket sheet from Case.Net from the modification action reflects that the hearing when the Guardian ad Litem was appointed took place on August 30, 2012. (See Docket Sheet Exhibit for Clay County Modification case). Thus, Cockrill clearly knew

that the case had been settled, that the funds were received, and that they were to be used to fund the modification action. **(TR. 0036-0040, 0058-0066)**

As of the time Arnold deposited the $25,000 into his trust account, his office had received a notice of claimed liens from St. Luke's Hospital and a chiropractor. (**TR. 0129-0136).** These liens collectively exceeded $10,000. **(TR. 0292, 0129-0136)**. As of that time, Arnold's unpaid charges for the modification matter were in excess of $10,000, and he had also advanced $1,800 for Guardian ad Litem and mediation fees in the custody case. **(TR. 0444, 0439, 0129-0136).** He was also entitled to 33% of the settlement as his fee for that matter, along with advanced expenses of $197.07 (a total of $8,447.07). **(TR. 0444, 439, 0129-0136).**

Knowing that the entirety of the $25,000 would be insufficient to cover the then-existing attorney's fees, expenses and medical liens, and knowing that Cockrill was not going to receive any of the proceeds, Arnold transferred the entire $25,000 from his trust account to his operating account. **(TR. 0129-0136)**. He did so with the expectation and a good faith belief that he would compromise any valid liens and pay them out of his operating account. **(TR. 0129-0136).** There was no dishonest motive in doing this. **(TR. 236-240, 289-305, 428, 429, 504).** Being on notice of the medical liens, it wasn't as if Arnold was going to be able to ignore the liens and that they would magically disappear, and Mr. Arnold provided explanations for his intentions and actions and admitted his mistakes (in reference to the bills from St. Luke's Hospital and Back to Health Chiropractic and the handling of those bills the following relevant portions and facts excerpted from the Transcript) as follows:

ODROWSKI: Q. Okay. Is it also common for plaintiffs' or claimants' attorneys to, in conjunction with the settlement or after the settlement, contact the medical lienholders and attempt to negotiate a reduction of those liens?

A. I would think it's almost legal malpractice not to do that.

Q. And is it a true statement that, from the time of settlement in June of 2012 until the time of your withdrawal some time in late April/early May 2013, that you did not make it a priority to negotiate those liens on behalf of Heather Cockrill?

A. Well, I think in answering that question, it wasn't a priority for -- because none of that money Heather was ever going to see. It wasn't, in my mind, Heather's money. That was money that was earmarked and either spent or going to be spent because the fees and expenses, and even if I negotiated those liens down, far exceeded the $25,000. At the point I did the spreadsheet, they were over 30 -- you know, it was almost 30,000.

Q. While you were representing her, you didn't bend over backwards to negotiate any of those liens, did you?

A. I attempted to negotiate the liens throughout the course of representation with Heather Cockrill, so I do not agree with your statement.

(TR. 0115-0116)

PRESIDING OFFICER MASSEY: Okay. For the sake of getting this on the record, Mr. Arnold, could you answer that limited question as to your position on the attorneys' lien and the chiropractor lien?

THE WITNESS: Certainly.

A. At the point in time, I always knew that I was going to pay something for the liens, including the ambulance for 200 bucks. And I knew that she was never going to pay any more money, I knew that she didn't have any money, and I knew my legal work would have -- was far exceeding the available money for distribution. I readily admit that I should not have transferred the lien money for the amounts before filing the interpleader and I

made a mistake. If I had to do it over again, I wouldn't do it over again.

The only reason I did that is at the end of the year, I get 1099s and I give my accounting statements, my wife does it and she gives them to the accountant, and we issue 1099s for all the people that we write checks to, including doctors. For right or wrong. And now I understand that is not the proper way to do it.

Nothing was done with the intent to not pay the liens that were claimed. And that's why the -- as soon as I knew there was a dispute, albeit after I already transferred the money, I filed the interpleader. Had I to do it again, I would not have transferred the money and I would have filed the interpleader and just left it there and be done with it.

The amount of money, it's just -- and all the time and effort from everybody here, I'm embarrassed about it, I'm sorry, but, you know, that's -- that was my mindset. It wasn't done to not pay the lienholders. And certainly I knew that

Heather wasn't going to ever see any of the money because, you know, she had an agreement with me to use those funds to pay for her attorneys' fees. And, you know, I expended money for the guardian ad litem, I spent money for the mediation out of operating -- you know, now, I know I transferred the money, so some of the money was there, or it was all there. And that was improper. But it wasn't done with the intent to defraud or steal or hide anything. I didn't hide anything. I gave an accounting and I -- you know.

It's just me really practicing. So I do all the work. I put together the spreadsheets. I tell people what to do. So I have other cases that take away. So it took me, you know, a month or two to get the settlement. But the bottom line is that Heather was completely in agreement with it. And she knew and she never asked us, except for maybe in October, after I had already kind of done this, and I went over this with her. She was fully aware of all this. Not as the testimony said.

So here we have a good client-attorney

relationship all the way up until April 30th, 2013, when I do all the work for the family law case. And then I get a pretty good result for her for the effort that we put in. And, you know, that's -- I file the interpleader to get direction, because I've never been in this situation before in 25 years of practice, thousands and thousands of cases. I had a great relationship with her all the way up until after I did the family law case. And then, you know, she accused me of stealing the money. And I'm like, you knew all about it. It wasn't even a question. And she multiple times had had conversations. We had gone over Exhibit 33.

BY MR. ODROWSKI:

…

I'm asking you if you've ever made a claim to the settlement proceeds pursuant to that statute?

A. I don't know the legal interpretation if the -- of what you're understanding is, but in all suits in -- actions or proposed actions at law, that I filed an interpleader seeking direction from

the Court about the validity of my contractual agreement, which I believe was covered under this.

Q. So the answer to the question is --

A. And this is --

Q. -- you do claim to have a lien under --

A. Well --

Q. -- 484.130, or you do not claim to have a lien under that statute?

A. Well, first off, 484.130 is not the statute that's Exhibit 71. It's 484.140.1 and it's dated August --

Q. Wait, wait, wait. You're telling me -- oh, you're correct. I'm -- I -- I will stand corrected. Exhibit 70.

A. Okay. So if I can finish --

PRESIDING OFFICER MASSEY: 7?

MR. ODROWSKI: 7-0. I looked at the wrong thing at the top.

BY MR. ODROWSKI:

Q. 484.130, Exhibit 70. And I apologize for that, I was looking at the wrong page.

A. I would almost reiterate my exact

question. I think the interpleader, with the expressed and implied oral agreement, and my claim in the interpleader would fall under the statute.

But I will say this is August 28th, 2016, which I don't know if those were the statutes in effect in –

…

Q. Did you obtain a valid lien on any portion of the $25,000 in settlement proceeds in excess of the 33 percent?

A. Yes.

Q. And how did that lien arise?

A. Cost of an interpleader and a stipulated judgment.

Q. Okay.

A. And I still had a lien and I could have pursued collection of the amounts that were owed to me from the remaining balance in the proceeds, which were assigned through the -- to the estate, in essence, to her son, but it's part of my agreement to get finality to the situation, that was the stipulation we entered into. So I think -- and I

also had a claim under 484.140 for attorneys' fees for bringing the interpleader action and the time and energy and cost in so doing. And I didn't pursue those either.

BY MR. ODROWSKI:

Q. Do you have any case law that you relied upon for the proposition that an attorney may take a consensual or contractual lien on personal injury proceeds outside of the two statutes?

A. I don't recall -- I know I did a lot of research because I had never filed an interpleader before. So I may. I've got a stack of cases. As I sit here today without going back through it, I don't know.

Q. When did you reach an agreement on the amount of those two liens?

A. The hospital I had been talking about reducing that prior to the interpleader. And then through the course of the interpleader, my attorney, Dave Larson, finalized those stipulations.

Q. And you say during the course of the interpleader, which ran from roughly May 2nd, 2013,

to May of 2016, so what -- what point in time did the amount of the liens become successfully negotiated and agreed upon?

A. Between May 3rd, 2013, and 2016.

(TR. 0129-0136)

BY MR. ODROWSKI:

Q. On whose behalf were those lien negotiations finalized; on your behalf or on behalf of Heather Cockrill?

A. Well, I think that all parties to the action were part of that. Certainly my decision not to pursue the attorneys' fees for bringing the interpleader and not to pursue my 16,000-plus that was owed to me from the family law case in order to stipulate and get the case resolved, given her suicide and death, there would have been no benefit to Heather. She was dead.

Q. Do you admit that there were $6,350 in valid healthcare liens on $25,000 settlement proceeds?

A. I admit that the stipulation filed March 16th, 2015, included a payment to St. Luke's

for 4,200 and a payment to Back to Health, PC for 2,150.01.

Q. Okay. And do you stipulate and agree that those $6,300 in funds represented valid healthcare liens on the settlement proceeds?

A. No. I think the standard of law in March 16th, 2015, was that chiropractors didn't have valid liens. So it was part of a stipulation to resolve the case so that they wouldn't have a claim like I had a claim against her estate.

Q. Are you having trouble characterizing those amounts and those payments as liens?

A. You're characterizing the St. Luke's healthcare system as equivalent to that of a chiropractor. And I would disagree with that.

Q. Okay. Are you making a distinction that St. Luke's had a lien but the chiropractor did not?

A. Well, they had claims.

.

(TR. 00138-0140)

…

BY MR. ODROWSKI:

Q. Do you admit that you misappropriated $6,350 in valid healthcare liens from the $25,000 settlement by transferring those funds out of your trust account and into your operating account on July 23, 2012, instead of promptly distributing the funds to the lien creditors or paying the money into court, pursuant to an interpleader action?

A. In part, I would have held more than that --

Q. Question is, did you -- do you admit to misappropriating those funds?

A. Well, I think the funds should have been higher. I would have not just held $6,000, because I had not negotiated them at that point. I would have held the full amount of those liens. That's what I should have done and filed the interpleader.

Q. Did you misappropriate any funds belonging to lien creditors?

A. Yes.

BY MR. ODROWSKI:

Q. Mr. Arnold, did you ever pay any money into court?

A. I attempted to, but it was not accepted by the clerk.

Q. Do you have any documents to show that you attempted to pay a sum of money into the Clay County Circuit Court at any time during the interpleader action?

A. I handed my attorney, Dave Larson, a check for 15,000-something. And we both went to the clerk's window. So I don't -- didn't save that check.

Q. Okay. Was that --

MR. LARSON: I will state for the record that that is absolutely correct and we --

MR. ODROWSKI: He can't testify.

MR. LARSON: I was representing him at the time, Mr. Odrowski.

MR. ODROWSKI: I'll put you under oath and you can testify.

MR. LARSON: And I am an officer of the court, I'm making a representation of fact that that

attempt was made.

PRESIDING OFFICER MASSEY: Thank you.

PRESIDING OFFICER MASSEY: Let him finish.

Mr. Arnold, please finish your statement.

A. I wrote a check for 15,834, or whatever it was, 15,000, and out of the escrow account. I don't -- it was never converted, it was never cashed, nothing was done with it, because the clerk wouldn't accept it. So that check was subsequently destroyed.

Q. Do you feel that you were acting like a reasonably prudent fiduciary in taking all $25,000, or do you feel like you were being a bit unreasonable, a bit greedy, a bit selfish, in taking the entire pot of money?

A. Well, there's a lot of questions rolled into one. I don't agree with the word "greedy" or --

Q. Okay.

A. -- "fraudulent." You know, I kind of

explained what my thought process was. I explained why I did what I did and I admit it was a mistake. There was no intention to defraud or --

Q. Do you think -- do you think you were being reasonably prudent in taking control of all $25,000 of the settlement proceeds?

A. At the time? Right now, absolutely not.

Q. Okay.

A. It's a mistake. I never had gone through this before, I would never do it the same way again. I know how to file an interpleader now. And so --

Q. In hindsight, as you're testifying today, do you think that that makes you look a little greedy and selfish?

A. No.

MR. LARSON: Objection.

PRESIDING OFFICER MASSEY: Sustained.

A. I don't. Sorry.

(TR. 0175-0186)

Even so, Arnold has acknowledged that he should have kept the funds in his trust account and either resolve the liens or file an interpleader in September of 2012– with the caveat that he was entitled to take out his 33% fee and advanced expenses for the personal injury case.[1] **(TR. 0187).**

Further testimony concerning the acknowledgement of the responsibility of paying the liens out of the transferred funds was given by Mr. Arnold as follows:

> MR. ARNOLD: I had already transferred the $25,000 from the IOLTA into operating and knew that I had an obligation to pay the liens and any fees that were due, and then we were going to just do an accounting at the end. And when it got to the end, the $25,000 didn't cover all of the liens and expenses. It didn't -- there just wasn't enough money. So that's when I got the notice from her that she wanted to -- all the money to be given to her and no money to be paid to us, so it was never going to balance and I just didn't know what to do. That's why I filed the interpleader, to get some

[1] Judge Janet Sutton, the Clay County Circuit Judge who presided over the interpleader action, made a finding that Arnold was entitled to take his fees and expenses for the personal injury recovery out of the trust account.

direction.

Okay. Basically, look, all right, forget everything, start over, here's the $25,000, you want, just tell me what to do.

PRESIDING OFFICER MASSEY: Okay, I get that.

MR. ARNOLD: Yeah.

PRESIDING OFFICER MASSEY: But as for your regular practice of billing clients, so you're sending them a bill that -- or was it just her --

MR. ARNOLD: Just her.

PRESIDING OFFICER MASSEY: -- and the agreement that the money here was supposed to go over to her?

MR. ARNOLD: Right, and not just her. I mean, I have a lot of clients who owe a lot of money.

PRESIDING OFFICER MASSEY: Okay.

MR. ARNOLD: And they're family law cases and they're going to eventually pay the bill, and they promise, oh, yeah, when I get money out of the IRA account when I get divorced, I'm going to

have half a million dollars. Or when we sell the marital home, we're going to have money so I'll pay it. But I'll send them a statement and they'll get a balance due and they don't pay anything.

PRESIDING OFFICER MASSEY: Okay.

MR. ARNOLD: And so most -- I mean, I do have clients that do pay their bills --

PRESIDING OFFICER MASSEY: That's good.

MR. ARNOLD: -- in full. So, you know, everybody gets the bill and then there's personalized -- you know, it's not like I'm a big corporation. I do one-on-one with clients. Everybody knows what the deal is. In Heather's case I just didn't put it in writing. And, you know, I probably -- even for the clients owing me money, with the expectation they're going to pay it out of the proceeds, you know, I have put that in writing since Heather. Prior to that, I have not. I just relied on good faith.

PRESIDING OFFICER MASSEY: Well, that's my next question. What has changed in your practice since this case?

MR. ARNOLD: Well, strict compliance with any checks that come in. The client, I don't care how long it takes, they come in and sign it. I was asked about my process with have I done any other escrow accounts. I've never transferred the escrow money out without having that settlement statement, and sometimes my clients would agree to that and not sign it, and now I make sure that they meet, we sign the settlement agreement, that spreadsheet that I sent them had a signature page. Heather just agreed and she never could come into the office to sign and I just never followed up on signing it. So now we have all of those signed before anything's disbursed.

My hourly fee agreements, my retention agreements and my agreements for financial payments has changed. I spend the time to document that. My record-keeping has changed significantly. I've now got a duplicate Excel spreadsheets that we keep on each client for deposits in and out of --

(TR. 0527-0530)

Do you consider your verbal agreement

with Heather Cockrill to fall within the purview of rule 4-1.8(a)?

A. Again, 1. -- 4-1.8(a) addresses ownership, possessory, security or other pecuniary interests adverse to a client. And I rely on my same answer before the break that nothing was adverse to the client. She wanted to use those funds to pay for other legal services, and that was our agreement. So I don't believe that the conflict of interest prohibited transactions applies to the situation that I was faced with.

Q. Did you have a pecuniary interest in the $25,000?

A. It was not adverse to the client.

Q. Okay. But do you agree that you had a pecuniary interest in the $25,000?

A. Yes.

Q. Okay. And you don't believe that your interest in the $25,000 was adverse to her interests in the $25,000?

A. Well, it's convenient and it works when you ask other questions, but Arnold Law Firm and me,

as an attorney providing services that she agreed to pay for and continually agreed to pay for multiple times, was in her best interest, because her goal was to get unsupervised visits with her son, which we did. And up until April 13th or 14th, 2013, she was ec static with everything. And then -- that's my answer.

(TR. 0282-0284)

Q. Do you admit that the only records you have of the $25,000 trust funds are the exhibits previously admitted into evidence?

A. I admit that I have poor record-keeping and those are the records that I was able to obtain. It's not like that now and that's pretty much all I can say.

Q. Have you ever located the deposit slip for depositing the settlement check?

A. No. And as I've explained, I've had multiple moves, we had a flood, and just in general being really busy as an attorney in family law, maybe not paying attention as well as I should have to my record-keeping.

(TR. 0429-0430)

Q. Well, explain that. What is the accounting purpose of Exhibits 54 through 56?

A. They're just monthly statements generated after we put time slips into a computer and push a button to print. Then it gets sent out to the client so they know what we're doing and working on, on a monthly basis.

I never expected money from her. I have numerous clients like Heather that don't pay, and, you know, we've -- at some point we either withdraw or the person makes other arrangements. We made other arrangements. My error is not putting those arrangements in writing clear enough for everyone else to understand. But there was no misunderstanding between Heather and I about her billing and she was under no pressure to make payments on a monthly basis. In fact, in my retainer, if you don't pay at least $400 a month, then it says that, you know, we have -- we may withdraw, but that's the contractual agreement.

She never, ever abided by the financial terms and conditions of the contractual retainer that we had with her, and that was because she knew and had already pledged and understood the money was going to be used from the proceeds from her PI case.

Q. So is it your testimony that you expected Heather Cockrill to ignore the two columns going across the right-hand side of Exhibit 56?

A. Not only did she ignore them, she never made a payment, so absolutely I would agree with that.

Q. So why are those two columns on the right-hand side of Exhibit 56, why are they even there?

A. Again, you may not like my answer, but they're there for just accounting purposes and are generated from hundreds of clients that I have on a monthly basis, and it informs the clients what's going on with their case so that they don't have to call in for status updates, I don't have to write status letters to them, they can clearly see what we've done.

Q. What do the two right-hand columns have to do with giving the client a status and letting them know what's going on?

A. It's just generated from the software I have, the time slip system.

Q. So they really don't provide any information about the status of the case, do you agree with that?

A. Well, no, I don't. I think the status of a case is partly how much money is being accrued in attorneys fees, about what it's costing somebody, that's part of the status. That's part of the reason for going forward in the case. Either you have the money or you don't have the money to pay for certain things in a case, and you make decisions and strategy based upon where you are in the status of the case about how much money to spend going forward.

(TR. 0369-0371)

Q. How did you comply with 4-1.8(a)?

A. Well, first, I don't consider as a pecuniary interest adverse to my client because it

was to benefit her, so I don't even think that this rule of proven transaction applies to my situation.

A. So, number two, I had two instruments that I executed on July 3rd with Heather Cockrill in my office that was completely understood by both of us and I attempted to comply with my understanding of putting it in writing, and I've already acknowledged that I have not -- whether it's -- I don't believe it's a proven transaction, but I could have been clear, I should have been clear, but, again, I explained the circumstances of that July 3rd of putting off my family vacation and my family waiting in the car for me to leave and just kind of hurried through the paperwork, which was an error. I should have written it down and made it more clearly, and I apologize for that, and nobody would be sitting here had I done that. So, you know, that's -- that's on me and it's my error. I certainly don't plan on ever doing that again.

(TR. 0364-0366)

BY MR. LARSON:

Q. Did you have any expectation of the

15 $25,000 that you placed before the Court that any or
16 all of those funds could not or may not come back to
17 you, they could be ordered elsewhere?
18 A. I know the Court had jurisdiction of
19 the $25,000 to do whatever they thought was fair,
20 just and reasonable.

(TR. 0457)

Following Cockrill's contention that Arnold was not entitled to receive any fees at all, including his contingent fee from the personal injury settlement, his services had been terminated and he promptly filed the Interpleader action in Clay County. **(TR. 0232-0233)**. While Respondent has accepted the Hearing Panel's determination that the disclosure of private client information as part of the Interpleader Petition constituted a violation of Rule 4-8.4(d), there was no intent to violate the rule. Respondent held a good faith belief that he was not revealing private information about his client because everything contained in his Affidavit was a matter of public record. **(TR. 0410-0429)**.

The jury verdicts returned against Respondent on Cockrill's counterclaims to the Interpleader action were set aside and never resulted in a final judgment. **(TR. 0242-0245).** Even so, the Informant is asking this Court to draw negative conclusions about Respondent from the verdicts. **(TR. 0242-0245).** The most relevant take away from the Clay County litigation is that the lienholders claims were resolved and that funds were provided to Cockrill's minor son. **(TR. 0251-0252).** While Arnold in no way claims he is a victim, the fact remains that he worked zealously pursuing his client's goals and

successfully modified the custody arrangement for her son-and received a fraction of the fees that he would have otherwise been entitled to receive for his efforts. **(TR. 0173-0174).**

Respondent prepared a Timeline of significant events, which was introduced as Ex. A **(App. 724-725).** It is set forth below for the court's convenience:

ARNOLD TIMELINE

April 11,2011	Dissolution of Marriage Judgment entered
May 20, 2011	Heather Cockrill's auto accident
July 1, 2011	Heather meets with Bob Arnold at his office and two fee agreements executed
June 11, 2012	Heather's auto accident claim settled for $25,000.
June 18, 2012	Arnold has 7 minute conversation with Heather and thereafter endorses his name on the settlement check and deposits it into his Missouri IOLTA account. Arnold does not sign Heather's name. Heather is e-mailed Hartford's settlement letter and release. Heather signs the release on the same day. The release acknowledges the payment of $25,000 and the Hartford letter explains that the case is settled for that amount and the check is included.

June 28, 2012	Heather re-signs the release and her signature is notarized by Susan Hannah.
August 30, 2012	Hearing held in modification case on motion for guardian ad litem. Prior to the hearing, Bob Arnold and Steve Taylor (the attorney for her ex-husband) had a conversation about how Heather was financially capable of pursing the modification action and seeing a guardian ad litem. Heather Cockrill was present for that conversation and tells Taylor: "I've gotten a settlement for a car wreck. We have all the money he needs to kick your ass."
September 24, 2012	Settlement Distribution Sheet prepared.
April 10, 2013	Trial held on modification case.
April 12, 2013	Court meets with counsel and announces ruling. Steve Taylor ordered to prepare the judgment.
April 12, 2013	Cockrill thanks Arnold and his secretary for everything they've done to help her. "You guys are amazing and I thank you so much for all that you do!"

April 29, 2013	Cockrill accuses Arnold for forging her name on settlement check. Insists that Arnold receive nothing for his work.
April 30, 2013	Judgment entered. Judgment of Modification states, *inter alia*: "The Respondent (Heather Cockrill) admitted to committing a fraud on the court and further admitted to previously lying under oath."
May 2, 2013	Interpleader filed.
May 29, 2013	Counterclaim filed by Cockrill in which she alleges, among other things, that Arnold signed her name on the back of the settlement check and, from June 18, 2012 through April 19, 2013 Arnold concealed the receipt of the settlement check.

POINTS RELIED ON

I. RESPONDENT ACCEPTS AND AGREES WITH THE FINDINGS AND CONCLUSIONS OF THE DISCIPLINARY HEARING PANEL THAT THERE WAS NO CLEAR EVIDENCE OF A DISHONEST OR SELFISH MOTIVE IN ANY OF RESPONDENT'S ACTIONS, THAT HE SUBSTANTIALLY COOPERATED WITH DISCIPLINARY AUTHORITIES, THAT HE HAS ADMITTED WRONGDOING AND HAS SHOWN REMORSE FOR HIS WRONGFUL ACTIONS AND THAT RESPONDENT HAS SIGNIFICANT INVOLVEMENT AND STANDING IN THE LEGAL COMMUNITY, ALL OF WHICH MILITATE TOWARDS A ONE YEAR STAYED SUSPENSION WITH PROBATION AND AGAINST DISBARMENT.

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

In re McMillin, 551 S.W.3d 504 (Mo. 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)

In re Simmons, 576 S.W.2d 324 (Mo. banc 1978)

In re Witte, 615 S.W.2d 421 (Mo. banc 1981)

In re Mentrup, 665 S.W.2d 324 (Mo banc 1984)

In re Mendell, 693 S.W.2d 76 (Mo. banc 1985)

In re Lechner, 715 S.W.2d 257 (Mo. banc 1986)

In re Murphy, 732 S.W.2d 895 (Mo. banc 1987)

In re Adams, 737 S.W.2d 714 (Mo. banc 1987)

In re Fenlon, 775 S.W.2d 134 (Mo banc 1987)

In re Staab, 785 S.W.2d 551 (Mo. banc 1990)

In re Schaeffer, 824 S.W.2d 1 (Mo. banc 1992)

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

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

In re Charron, 918 S.W.2d 257 (Mo. 1996)

ARGUMENT POINT I

RESPONDENT ACCEPTS AND AGREES WITH THE FINDINGS AND CONCLUSIONS OF THE DISCIPLINARY HEARING PANEL THAT THERE WAS NO CLEAR EVIDENCE OF A DISHONEST OR SELFISH MOTIVE IN ANY OF RESPONDENT'S ACTIONS, THAT HE SUBSTANTIALLY COOPERATED WITH DISCIPLINARY AUTHORITIES, THAT HE HAS ADMITTED WRONGDOING AND HAS SHOWN REMORSE FOR HIS WRONGFUL ACTIONS AND THAT RESPONDENT HAS SIGNIFICANT INVOLVEMENT AND STANDING IN THE LEGAL COMMUNITY, ALL OF WHICH MILITATE TOWARDS A ONE YEAR STAYED SUSPENSION WITH PROBATION AND AGAINST DISBARMENT.

The record in this case when contrasted with decisions in other disciplinary cases strongly favors adoption of the Hearing Panel's recommendation of a stayed suspension with supervised probation and rejection of the Informant's request for disbarment.

The case of *In re Coleman*, 295 S.W.3d 857 (Mo. 2009), is relevant here because this Court did not order disbarment despite improper handling of a trust account and prior discipline. Mr. Coleman was charged with multiple violations including a violation for improper handling of his IOLTA account. In particular, Coleman admitted that he wrote personal checks out of his IOLTA account at a time when client funds were in the account. The disciplinary hearing panel "found insufficient evidence that Mr. Coleman violated Rule 4-1.5, and Rule 4-1.7; and Rule 4-1.16(d). The panel found there was no

evidence Mr. Coleman commingled client funds with his own funds in violation of Rule 4-1.15. However, the panel did determine that Mr. Coleman violated Rule 4-1.2(a), by accepting a settlement offer against his client's expressed wishes. The panel also found that Coleman had violated Rule 4-8.4(d), regarding conduct prejudicial to the administration of justice. The panel's recommended punishment was a public reprimand. *Id*. at 862.

The OCDC rejected the panel's recommendation and sought disbarment. The Supreme Court found that Coleman violated Rule 4-1.5(c) by regularly depositing settlement proceeds into his IOLTA account, from which he paid the client's portion of the settlement. After that, he regularly paid personal obligations out of the IOLTA account. This Court also found other violations.

In deciding the appropriate punishment for Coleman, this Court considered the applicable ABA standards for aggravating and mitigating circumstances. That Coleman was admonished in 1990 and 1999, and publicly reprimanded him 2008 were aggravating factors. The ABA standards suggest that probation is the appropriate punishment when the conduct can be corrected and the attorney's right to practice law needs to be monitored or limited rather than revoked.

This Court determined that Coleman's actions arose out of ignorance of the rules of professional conduct instead of an intention to violate the rules, and that his misconduct could likely be remedied by education and supervision. This Court chose to suspend Coleman's license to practice law to be stayed while he was on probation for one year. Inasmuch as Respondent had no intent to violate the Rules of Professional Conduct

and had no selfish or dishonest motions, and because his misconduct could likely be remedied by education and supervision, Respondent should receive the same treatment as Coleman.[2]

Each case cited by Informant in support of disbarment is distinguishable from the circumstances here. Each either involved an attorney who had prior misconduct or involved conduct more severe and widespread than the conduct in the case at bar, or both.

For example, in *In re McMillin*, 551 S.W.3d 504 (Mo. 2017), the attorney had misappropriated funds from several clients, had violated a prior diversion agreement and obstructed the OCDC investigation, among other things. The Court, while recognizing that disbarment is presumptively appropriate where client funds have been misappropriated, the Court also recognized that it must also consider both mitigating and aggravating circumstances. Id at. p. 609. The Court also stated: "Disbarment is typically reserved for clear cases of gross misconduct, those in which the attorney is demonstrably unfit to continue the practice of law." In addition, "mitigating factors may justify a downward departure from presumptively proper discipline". *Id.*

The Court determined that disbarment was the appropriate discipline for McMillin because the mitigating factors had been offset, if not overwhelmed by the aggravating circumstances. Those aggravating circumstances included a dishonest or selfish motive, multiple patterns of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceedings and substantial experience in the practice of law. Contrasted to

[2] An important distinction in Respondent's favor is the absence of any prior discipline.

the present case, Respondent has no prior discipline, no bad intent or dishonest motions and substantial mitigating factors.

The other cases cited by the Informant are distinguished in summary fashion below:

In re Farris, 472 S.W.3d 549 (Mo. banc 2017) (mitigating circumstances either not relevant or insufficient: blaming wife for mishandling of trust account, ill health which well preceded the violations and alleged client satisfaction).

In re Ehler, 319 S.W.3d 442 (Mo. banc 2010) (multiple prior violations and suspension, indifference to making restitution, dishonest and selfish motive; personal problems not an excuse).

In re Robison, 519 S.W.2d 1 (Mo. 1975) (ABA Standards neither mentioned nor applied).

In re Simmons, 576 S.W.2d 324 (Mo. banc 1978) (ABA Standards neither mentioned nor applied; medical lien not paid).

In re Witte, 615 S.W.2d 421 (Mo. banc 1981) (ABA Standards not mentioned; no mitigating factors).

In re Mentrup, 665 S.W.2d 324 (Mo banc 1984) (fraud and deception).

In re Mendell, 693 S.W.2d 76 (Mo. banc 1985) (ABA Standards neither mentioned nor applied; attorney stole from client by lying about amount of settlement).

In re Lechner, 715 S.W.2d 257 (Mo. banc 1986) (ABA Standards not mentioned; claimed mitigation of stress insufficient).

In re Murphy, 732 S.W.2d 895 (Mo. banc 1987) (attorney continue to practice despite suspension; violations involved dishonest, fraudulent or deceitful conduct).

In re Adams, 737 S.W.2d 714 (Mo. banc 1987) (ABA Standards not mentioned; cocaine use as only mitigating factor deemed insufficient).

In re Fenlon, 775 S.W.2d 134 (Mo banc 1987) (disbarment should be reserved for a clear case; attorney was subject of prior discipline and conduct was deemed to be willful and deliberate; ABA Standards not mentioned but mitigating factors discussed and deemed insufficient).

In re Staab, 785 S.W.2d 551 (Mo. banc 1990) (prior discipline)

In re Schaeffer, 824 S.W.2d 1 (Mo. banc 1992) (willful and deliberate conduct; ABA Standards not mentioned but mitigating factors discussed and deemed insufficient).

In re Griffey, 873 S.W.2d 600 (Mo. banc 1994) (Misappropriation does not automatically result in disbarment.)

In re Belz, 258 S.W.3d 38 (Mo. banc 2008) (Missouri has rejected a hard and fast rule that the punishment for misappropriation of client funds is always disbarment).

The case of *In re Charron*, 918 S.W.2d 257 (Mo. 1996) is instructive. In that case, Charron was serving as a personal representative of an estate. The decedent operated a florist company for whom Charron performed legal services. In exchange for his services, Charron accepted a $20,000 promissory note that was guaranteed by the decedent. After the estate was opened following the client's death, Charron paid himself $20,000 from the estate, and did not file a claim against the estate or apply for the appointment of an administrator ad litem. Charron made other payments to himself for

legal services performed for the estate which were made without the knowledge or approval of the probate court. The special master appointed to investigate the charges filed against Charron recommended that he be disbarred.

This Court determined that Charron had indeed violated Rule 4-1.5 and had also committed several other violations. However, the Supreme Court rejected the OCDC's request for disbarment. The Court instead opted for a one year suspension. A compelling factor in this decision was the Court's determination that Charron was truly owed the money that he took, albeit improperly, from the estate.

The mitigating factors applicable here and as observed by the Hearing Panel are: "(a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; . . . (d) timely good faith effort to make restitution or to rectify consequences of misconduct; (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; . . . (g) character or reputation . . . (l) remorse."

Respondent acknowledges that the findings and recommendations of the Hearing Panel are advisory only. That said, the hearing in this case took two entire days. The Hearing Panel was singularly situated to observe the witnesses and listen to their testimony. They were uniquely situated to assess the truthfulness and sincerity of the witnesses. The Haring Panel had the best vantage point to judge Respondent's state of mine and his motives, which compelled the Hearing Panel to make the recommendation that it did. In making its recommendation, the Hearing Panel recognized the time that has gone by and no other complaints have occurred, as well as the testimony of the five character witnesses of high standing and regard in Missouri and Kansas legal, political

and educational communities. Respondent has taken appropriate and adequate steps to prevent any further violations of the Rules of Professional Conduct dealing with trust accounts. In enabling him to be supervised and under probation in order to help further educate him and allow him to continue to serve the needs of the family court as an unpaid Guardian ad Litem and continue helping others similarly disadvantaged. Respondent should be allowed to continue with his significant pro bono services and private practice.

As is fully set out in the Statement of Facts above, Respondent has a long and distinguished legal career. As the Hearing Panel found, Respondent has been a "highly regarded and respected" practicing attorney for many years. Respondent has no prior disciplinary history. He suffered deep remorse upon being notified of the various violations contained in the Information filed herein and even further as a result of the Hearing Panel's decision. Respondent responded appropriately, answered all allegations against him, and had already taken steps to correct the improper handling of the law firm IOLTA account. He paid all amounts in as timely a manner as possible after the judgment issued by Judge Sutton. Respondent cooperated with the Office of the Chief Disciplinary Counsel and everyone involved in this matter from beginning to end despite the inability to produce records that don't exist, and or the quality of the records.

All relevant circumstances considered, there is nothing to suggest that the public is at risk for allowing responding to continue to practice under Court supervision. Under the totality of the relevant circumstances, including the considerable evidence of mitigation, this Court should adopt the Hearing Panel's recommendation and impose a one year stayed suspension with supervised probation.

Further, the Hearing Panel by their recommendation found that Respondent did not pose a threat of harm to any member of the public or the legal system. In light of the corrective action taken by Mr. Arnold and the Hearing Panel's determination that he poses no future harm to the public or the profession based on their advisory opinion, this Court need not impose additional conditions on the suspension and stay with conditions as recommended.

SUMMARY OF MITIGATING FACTORS

- Respondent has acknowledged violations and has accepted the findings of the Hearing Panel.
- Respondent is remorseful.
- There was no intent to violate any of the rules.
- There was no dishonest or selfish motive.
- Arnold has never been subjected to discipline in twenty-five (25) years of practice.
- He is well-respected in the community and in the Bar. He provides hundreds of pro bono hours to benefit children and families.
- Respondent has acknowledged a violation of the rules.
- Respondent always intended to and ultimately did resolve the medical liens, but planned to pay them out of his operating account. This was a mistake he has acknowledged and apologized for.
- No threat to the community.
- Arnold's client benefitted from his representation in the child custody dispute.

CONCLUSION

Taking into consideration all of the circumstances, including the absence of intent, the absence of a dishonest motion, a spotless disciplinary record and the presence of multiple mitigating factors, this Court is respectfully requested to adopt the recommendation of the Hearing Panel. Respondent does not represent a danger to society or to the administration of justice. Respondent is not demonstrably unfit to continue to practice law. To the contrary, allowing him to continue to practice under supervision will greatly benefit his existing clients and the public whom he serves through his pro bono efforts.

Further, while each case must be judged on its own merits, prior decisions from this Court, strongly indicate that a stayed suspension with supervised probation is the appropriate punishment.

Disbarment will cause irreparable harm not only to Respondent and his family, but to Respondent's clients and those in the community who stand to benefit from Respondent's public service.

Respectfully submitted,

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CERTIFICATE

I hereby certify that the above and foregoing was filed electronically on this 27th day of April 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.

/s/ David E. Larson
David E. Larson

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 21,933 words, according to Microsoft Word, which is the word processing system used to prepare this brief.

/s/David E. Larson
David E. Larson