IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
RICHARD L. WINKIE	)	**Supreme Court # SC97313**
	)	
Respondent.	)	

INFORMANT'S REPLY BRIEF

Respectfully submitted,

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CHIEF DISCIPLINARY COUNSEL

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ATTORNEYS FOR INFORMANT

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I.

RESPONDENT SHOULD BE DISBARRED BECAUSE HIS REFUSAL TO RECOGNIZE THE SEVERITY OR WRONGFULNESS OF MISAPPROPRIATING CLIENT FUNDS MAKES HIM A DANGER TO THE PUBLIC AND THREATENS THE INTEGRITY OF THE LEGAL PROFESSION.

The purpose of a disciplinary proceeding is not to punish the attorney, but to protect the public and maintain the integrity of the legal profession. *In re Staab*, 719 S.W.2d 780, 784 (Mo. banc 1986). "Those twin purposes may be achieved both directly, by removing a person from the practice of law, and indirectly, by imposing a sanction which serves to deter other members of the Bar from engaging in similar conduct." *In re Kazanas*, 96 S.W.3d 803, 807-08 (Mo. banc 2003). Respondent has agreed that discipline is warranted in this matter, but has advocated for the imposition of probation, in lieu of an actual suspension or disbarment. Respondent's refusal to recognize the severity of misconduct involving the misappropriation of client funds, and his inability to differentiate between the intentional conversion of client funds and the negligent handling of a client trust account, make him a danger to the public and threatens the integrity of the legal profession.

Informant has alleged that Respondent knowingly converted the sales proceeds of the Huskeys and Crosses, as well as the garnishment money from Randy Otto. Throughout the disciplinary hearing and replete in Respondent's brief to this Court, Respondent attempts to defend charges that he knowingly converted client funds by stating that he was

ignorant of the trust accounting rules. Respondent's argument is misguided, if not disingenuous. While Respondent may not have been aware of the procedural nuances and record keeping requirements for client trust accounts, he was certainly aware that he was not permitted to steal money from clients. Respondent has admitted on the record that when he took the Huskys' and Crosses' sale proceeds to China, Respondent knew that he was not entitled to the money. Respondent has also referred to his disciplinary proceeding as having gotten "his hand caught in the cookie jar," indicating that he was aware that he was not permitted to take client money. Still, Respondent continuously refuses to acknowledge that the purposeful taking of a clients' money for his own use amounts to theft of their funds. This is evidenced in his brief to this Court, when Respondent states that he "temporarily used" his clients' money. "Misappropriation includes not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom." *In re Wilson*, 409 A.2d 1153 (1979). In the present action, Respondent's failure to acknowledge or recognize the difference between the knowing theft of his clients' money and the "gross negligence," as Respondent characterizes it, with which Respondent handled his trust account, creates no confidence that Respondent will not steal client money in the future.

Respondent further demonstrates his refusal to accurately assess his misconduct in his analysis of mitigating and aggravating factors in this case. Respondent contends that he lacked a selfish motive in taking his clients' money to China. Presumably, Respondent maintains that because he took the money for an adoption, something positive for his family, it was not selfish. Or, perhaps because Respondent believes that it was not his

intention to defraud his clients and that he, therefore, did not act selfishly. However, "[a]n attorney's intent to defraud or lack thereof is irrelevant when drawing checks on clients' trust account to pay personal expenses." State ex rel. *Nebraska State Bar Ass'n v. Veith*, 470 N.W.2d 549, 554 (Ne. 1991). And from the perspective of his clients, the purpose of the theft is immaterial. The fact remains that Respondent lacked the necessary funds for his trip, so he took someone else's money.

Finally, Respondent demonstrates his inability or refusal to recognize the nature of his misconduct when he likens his situation to that of *In re Belz*. In the *Belz* matter, the Respondent attorney provided evidence that his mental condition caused or contributed to his theft of client funds. *In re Belz*, 258 S.W.3d 38, 44 (Mo. banc 2008). The *Belz* case recognizes that if a person's medical condition can be directly linked to the reason that the person engaged in misconduct, it should be considered in a disciplinary matter. *Id*. In the present action, Respondent has presented no evidence that he has any condition that caused him to steal his clients' money. Instead, Respondent seems to argue that because he injured his leg in China, it contributed to his inability to repay the clients from whom he had already stolen money. The *Belz* matter is completely inapplicable to the case at hand and Respondent's use of the *Belz* matter to support argument is erroneous.

II.

RESPONDENT SHOULD BE DISBARRED BECAUSE HIS FAILURE OR INABILITY TO RECOGNIZE THE HARM TO HIS CLIENTS MAKES HIM A DANGER TO THE PUBLIC AND THREATENS THE INTEGRITY OF THE LEGAL PROFESSION.

Respondent repeatedly avers that his clients suffered no injury or lasting damage as a result of Respondent's theft. Respondent's failure to recognize the damage to his clients makes him a danger to the public. It took the Huskeys and Crosses almost two years to recover their money from Respondent. In that time, they made an untold number of telephone calls to Respondent; they sent emails and drove to Respondent's office; they filed a complaint with the Office of Chief Disciplinary Counsel; and they finally resorted to filing a Fee Dispute complaint. Brandon Huskey testified that they had planned to use the money to expand their farming operation and bring in additional income for the family. The amount of income that might have been generated during that two years is unknown, as they did not have the opportunity to utilize their funds.

Randy Otto was forced to file a civil case against Respondent in order to recoup money for which Mr. Otto was legally entitled. In Respondent's brief, Respondent states that he made Mr. Otto whole by not charging Mr. Otto for additional legal fees that Respondent claims were owed by Mr. Otto. However, when Informant asked Respondent during his sworn statement to produce billing records that would indicate additional money was owed by Randy Otto, Respondent admitted that none existed. Though Respondent appears to believe that he was being benevolent by not charging his clients' additional legal

fees, there was no support for the fees, and the fees, themselves, were unlikely to have compensated his clients for the time and frustration spent trying to collect their money.

Even if Respondent was correct that his clients were not harmed, the misappropriation of client money threatens the integrity of the Bar and warrants the most severe sanction. The Florida Supreme Court has previously warned that "'misuse of clients' funds is one of the most serious offenses a lawyer can commit' and…in the future, we would not be reluctant to disbar attorneys guilty of misappropriation even if no harm to the client results." *The Florida Bar v. Mims*, 532 So.2d 671, 672 (Fla. 1988) (quoting *Florida Bar v. Breed*, 378 So.2d 783 (Fla. 1979)). In the present action, Respondent's failure to recognize the actual harm suffered by his misconduct, as well as the perception of the public with respect to the integrity of the Bar, warrants Respondent's disbarment.

CONCLUSION

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

(a) find that Respondent violated Rules 4-1.3, 4-1.15(a), (c), (d) and (f) and 4-8.4(c);

(b) disbar Respondent; and

(c) tax all costs in this matter to Respondent, including the $2,000.00 fee for disbarment, pursuant to Rule 5.19(h).

Respectfully submitted,

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By: _____

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ATTORNEYS FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of October, 2018, a true and correct copy of the foregoing was served on Respondent via the Missouri Supreme Court efiling system:

Richard L. Winkie
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P.O. Box 502
Macon, MO 63552

Respondent

Shannon L. Briesacher

CERTIFICATION OF COMPLIANCE: 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. Was served on Respondent via the Missouri electronic filing system pursuant to Rule 103:08;

3. Complies with the limitations contained in Rule 84.06(b);

4. Contains 1,592 words, according to Microsoft Word, which is the word processing system used to prepare this brief.

Shannon L. Briesacher