

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:)	
)	
RICHARD JOSEPH MAGEE)	
200 S. Hanley Rd., Suite 500)	Supreme Court No. SC97592
Clayton, MO 63105)	
)	
Missouri Bar No. 29943)	
)	
Respondent)	

RESPONDENT'S BRIEF

THE MAGEE LAW FIRM, LLC
Richard J. Magee, #29943
200 S. Hanley Rd., Suite 500
Clayton, MO 63105
314-960-3224
314-480-7000 (fax)
rmageclawyer@gmail.com

Attorney for Respondent

TABLE OF CONTENTS

COVER PAGE.....	1
TABLE OF CONTENTS.....	2 and 3
TABLE OF AUTHORITIES.....	3 and 4
STATEMENT OF JURISDICTION.....	4
STATEMENT OF FACTS.....	4
POINTS RELIED ON	4 and 5
Point I.....	5
Respondent Accepts and Regrets That His Actions violated The Rules of Professional Conduct but wishes to clarify Informant’s presentation of aggravating and mitigating factors	
Point II.....	4 and 5
Respondent Agrees that the recommended discipline of Indefinite suspension with no leave to reapply until the Expiration of six months, but to stay such suspension and place Respondent on probation for one year is appropriate because of the following: 1) the stringent requirements proposed by parties and adopted by the disciplinary hearing panel 2) the steps taken by Respondent to prevent a reoccurrence of the violations referred to herein and eligibility under the three factors for granting probation.	
ARGUMENT	
I.....	5
II.....	9
CONCLUSION.....	13

CERTIFICATE OF SERVICE.....14

CERTIFICATION: RULE 84.06 (C).....15

TABLE OF AUTHORITIES

ABA Standards 9.22 (a)6

ABA Standards 9.22 (c)6

ABA Standards 9.22 (d)6

ABA Standards 9.22 (i).....6

ABA Standards 9.32 (b).....6

ABA Standards 9.32 (d).....7 and 8

ABA Standards 9.32 (e).....6

ABA Standards 9.32 (f).....6

ABA Standards 9.32 (g).....6

ABA Standards 9.32 (l).....7

Title VII 42 U.S.C. Section 2000e-3(a).....8

42 U.S.C. Section 1983.....8

Henley v. Brown, 686 F.3d 634,642 (8th Cir. 2012)..... 8

Busby v City of Orlando, 931 F.2d, 764,772 (11th Cir.1991).8

Starrett v Wadley, 876 F. 2d 808, 814 (10th Cir. 1989)..... 8

Rule 5.225, Rules for Disciplinary Hearings..... 9

<u>In re Wiles</u> , 107 S.W.3d 228 (Mo banc 2003).....	9
<u>In re Gardner</u> , 565 S.W.3d 670 (Mo. banc 2019).....	10
ABA Standards 2.7 Commentary.....	12

STATEMENT OF JURISDICTION

Respondent agrees with and adopts Informant’s Statement of Jurisdiction.

STATEMENT OF FACTS

Respondent agrees with and adopts Informant’s Statement of Facts.

POINTS RELIED ON

POINT I

Respondent Accepts and Regrets That His Actions violated The Rules of Professional Conduct but wishes to clarify Informant’s presentation of aggravating and mitigating factors

ABA Standards 9.22 (a), (c) (d) and (i).

ABA Standards 9.32 (b), (d), (e), and (g)

Title VII 42 U.S.C. Section 2000e-3(a)

42 U.S.C. Section 1983

Henley v. Brown, 686 F.3d 634,642 (8th Cir. 2012),

Busby v City of Orlando, 931 F.2d, 764,772 (11th Cir.1991)

Starrett v Wadley, 876 F. 2d 808, 814 (10th Cir. 1989)

POINT II

Respondent Agrees that the recommended discipline of Indefinite suspension with no leave to reapply until the Expiration of six months, but to stay such suspension and place Respondent on probation for one year is appropriate because of the following: 1) the stringent requirements proposed by parties and adopted by the disciplinary hearing panel and 2) the steps taken by Respondent to prevent a reoccurrence of the violations referred to herein and 3) the factors for probation have been met

Rule 5.225, Rules for Disciplinary Hearings

In re Wiles, 107 S.W.3d 228 (Mo banc 2003)

In re Gardner, 565 S.W.3d 670 (Mo. banc 2019)

ABA Standards 2.7 Commentary

ARGUMENT

POINT I

Respondent Accepts and Regrets That His Actions violated The Rules of Professional Conduct but wishes to clarify Informant's presentation of aggravating and mitigating factors

Respondent accepts and has agreed that the recommended discipline of indefinite suspension with no leave to reapply until the expiration of six months, but to stay such suspension and place Respondent on probation for one year is appropriate. However, there are few points in Informant's Brief that Respondent

wishes to point out for purposes of clarification.

On page 26 of Informant's Brief, listed as possible aggravating factors are ABA Standards 9.22 (a), (c) (d) and (i). ABA Standard 9.22 (c) which is defined as a "a pattern of misconduct" should not be listed under possible aggravating factors as there has never been any contention that Respondent engaged in a pattern of misconduct. Also, Informant does not make any argument on this factor.

On page 26 of Informant's brief, listed are possible mitigating factors.

Informant agrees that there is an absence of dishonest or selfish motive. The correct citation for this mitigating factor is ABA Standards Rule 9.32 (b). Informant agrees that Respondent was cooperative throughout the proceedings. ABA Standards 9.32 (e). Also, there was full and free disclosure to the disciplinary board. ABA Standards 9.32 (e). Informant acknowledges that Respondent presented substantial evidence of his good character. ABA Standards 9.32(g). Respondent would also add that substantial evidence of good reputation was presented by way of the affidavits. ABA Standards 9.32 (g).

ABA Standards 9.32 (f) refers to inexperience in the practice of law. Informant is correct that Respondent has many years of experience in the practice of law, but unfortunately had, at the time of mistakes in question, had little experience in law office administration and management when he started his solo practice in November 2015. up to the time that he started his solo practice,

Respondent's entire practice up to the time that he started his solo practice had been in a firm. In those firms, Respondent had no administrative responsibilities. As a result of being ill equipped to manage his practice in the early stages of his solo practice, the serious mistakes that are the subject of this disciplinary action occurred. The foregoing is to give context to the numerous improvements that have been made and continue to be made to Respondent's law practice. See the affidavit of Rich Abrams App. at A147.

Also, Respondent expressed his remorse to the disciplinary board and to the complainant who was present during the hearing. See Page 70 of the transcript of the hearing before the Board and set forth on App. A69. ABA Standards 9.32 (l) provides that remorse is a mitigating factor.

Also, ABA Standards 9.32 (d) provides that a timely good faith effort to make restitution or to rectify the consequences of misconduct is a mitigating factor. As Respondent testified at the hearing before the Board, the lack of an adverse employment action constituted an obstacle to Mr. Richardson's Missouri Human Rights Act Claim. However, because the Defendant St. Louis County was a state actor, Mr. Richardson still had the possibility of filing suit under Section 1983 on the basis of racial harassment in violation of his constitutional right to equal protection under the fourteenth amendment to the constitution on the basis. Title VII does not preclude the Section 1983 action as long as the Section 1983 action is

based upon a constitutional violation. Racial harassment has been held to be a violation of the equal protection clause of the Fourteenth Amendment. Henley v. Brown (Kansas City Missouri Board of Police Commissioners and others were also Defendants), 686 F.3d 634,642 (8th Cir. 2012), Busby v City of Orlando, 931 F.2d, 764,772 (11th Cir. 1991) Starrett v Wadley, 876 F. 2d 808, 814 (10th Cir. 1989) (a case in which the Court stated that sexual harassment violates the fourteenth amendments right to equal protection of the laws). Title VII does not preclude a separate suit under Section 1983 for violations of constitutional rights.

Respondent tried to rectify the consequences of his misconduct by agreeing to bring a Section 1983 case on his behalf. Mr. Richardson agreed to come back the following Saturday to discuss a Section 1983 claim but he did not keep the appointment. See pages 68 and 69 of the transcript of the hearing before the Board and set forth on App. A68 and A69. The foregoing constitutes a good faith effort to rectify the consequences of the misconduct.

POINT II

Respondent Agrees that the recommended discipline of Indefinite suspension with no leave to reapply until the Expiration of six months, but to stay such suspension and place Respondent on probation for one year is appropriate because of the following: 1) the stringent requirements proposed by parties and adopted by the disciplinary hearing panel and 2) the steps taken by Respondent to prevent a reoccurrence of the violations referred to herein and the three factors for probation have been met.

Respondent will limit his argument to whether the factors used to determine whether an attorney is eligible for probation have been met.

As stated by Informant, Rule 5.225 and In re Wiles, 107 S.W.3d 228 (Mo. 2003) set forth the three factors to determine whether an attorney is eligible for probation. The first prong requires that the lawyer be unlikely to harm the public during the period of probation and can be adequately supervised. Wiles at 229. The second requirement for probation eligibility is that the lawyer be “able to perform legal services, be able to practice law without causing the courts or the profession to fall into disrepute.” Wiles at 229. The final requirement is that the offending attorney “has not committed acts warranting disbarment.” Wiles at 229.

As stated by Informant, the agreed to terms and conditions provide appropriate supervision and oversight. It is not disputed that Respondent has fully cooperated during this entire matter, and therefore, said demonstration of cooperation indicates the following: 1) that Respondent appreciates the seriousness of this matter; and 2) his cooperation and adherence to the terms and conditions

of probation is, from Respondent's point of view, a certainty. Moreover, as noted by Informant, Respondent has made significant improvements to his practice such as moving into larger offices, hiring an experienced legal secretary; obtaining guidance from Richard Abrams, an attorney and law practice management expert. App. at A146. Respondent has completed the transition to a computerized Calendar with Google Calendar, Office 365 and MyCase. In addition, Respondent's legal secretary still maintains a paper calendar and prepares a weekly docket for precautionary purposes.

The second requirement is that Respondent be able to perform legal services, and be able to practice law without causing the courts or the profession to fall into disrepute. As Informant notes, Respondent has practiced law continuously for almost 39 years with receiving one admonition. One admonition is far less than the Respondent in the Wiles case had and yet Mr. Wiles was placed on probation.

Another case that supports probation in the instant case is In re Gardner 565 S.W.3d 670_(Mo banc)_the attorney had paid himself unauthorized personal representative fees, and did not account for the payment on a ledger. The discipline was an indefinite suspension with no leave to reapply for six months with execution stayed, with placement on a one- year probation. It appears that the disciplinary panel did not recommend probation, but this Court allowed probation. In the instant case the panel has recommended a stay of the suspension

and one- year probation. Respondent received no money in this matter and while guilty of serious violations was willing to attempt to provide representation on a contingent basis on a cause of action that may have been more viable than the one originally filed. This statement is not intended to minimize the seriousness of the misconduct it is simply to demonstrate that like the Respondent in Gardner, this Respondent does not have a significant disciplinary history and and can be reasonably viewed as an isolated incident—particularly in light of the improvements made to the administration of Respondent’s practice.

Also, the character witness affidavits are instructive on this factor. For example, Pastor Oliver Hairston stated that “he (Respondent took his time in explaining court proceedings and property laws to my wife and I.” Pastor Hairston stated further that “whenever we were concerned about certain things within our case, he made sure to take his time to properly bring us up to speed.” App. at A153. A similar affidavit was submitted by his wife Co- Pastor Judy Hairston. App. at A154.

In another character witness affidavit, Mr. Vincent J. Mannino II with R.G. Ross Construction Co., Inc. states as follows “...I have trusted Rich Magee with the corporate documents and legal matters of my company, R.G. Ross Construction Company, Inc. for almost 30 years, and have had no trust issues or Concerns.” App at A150.

The foregoing provide assurance that Respondent be able to perform legal services. The following provide assurance that Respondent will be able to practice law without causing the courts or profession to fall into disrepute: In the affidavit of Al W. Johnson, an attorney, he states that “his (Respondent’s) reputation in the St. Louis legal community is very good.” In the affidavit of Craig A. Smith, an attorney, he states that “based upon my knowledge of Rich for a number of years, I believe him to be honest, trustworthy, to be ethical, professional and of good moral character.” App at A152.

In the affidavit of Douglas Sidel, a St. Louis County Prosecuting Attorney, he states that “Based upon my knowledge of Richard Magee, my opinion of Richard Magee’s character, integrity, honesty and trustworthiness is excellent. In my Opinion, Richard Magee is an ethical attorney. In my opinion, Richard Magee acts professionally.

In addition, the affidavit of Chief Jeff Beaton is evidence that Respondent enjoys a good reputation in the community. App. A155.

As for the third factor, Respondent subscribes to Informant’s statement that “respondent’s Rule 4-1.1, 4.13 and 4-1.4 violations, although serious in nature and damaging to Mr. Richardson, do not rise to the level of disbarment.” Informant’s brief at page 33.

As stated by Informant, the ABA standards 2.7 Commentary provides in

part, “(p)robation is a sanction that should be imposed when a lawyer’s right to practice law needs to be monitored or limited rather than suspended or revoked...” “Probation is appropriate for conduct which may be corrected, e.g.....lack of timely communication with clients....” Such is the case here with the problems that are the cause of the discipline were in large part caused by Respondent’s inexperience as a law office administrator and a lack of systems in place to support a solo law practice. As noted by Rich Abrams in his affidavit, “Mr. Magee shows every indication of being fully committed to improving his practice management and to avoiding past problems.” App. at A147.

CONCLUSION

Based on the foregoing, Respondent requests that this Honorable Court accept the recommendation of the disciplinary panel, as accepted by the Office of Chief Disciplinary counsel and enter an imposing upon Respondent discipline of indefinite suspension with no leave to reapply until the expiration of six months, but to stay such suspension and place Respondent on probation for one -year subject to the terms and conditions set forth in Informant’s Brief, with the costs taxed to Respondent.

THE MAGEE LAW FIRM, LLC




Richard J. Magee, #29943
200 S. Hanley Rd., Suite 500
Clayton, MO 63105
314-960-3224
314-480-7000 (fax)
rmageelawyer@gmail.com

Attorney for Respondent

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been sent through the Missouri Supreme Court's electronic filing system pursuant to Rule 103.08 this 20th day of March, 2019 to the following;

Shevon Harris
Special Representative Region X
1515 Warson Rd. Ste. 249
St. Louis, MO 63132
Attorney for Informant


Richard J. Magee

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. The brief was served on Informant's counsel through the Missouri electronic filing system pursuant to Rule 103.08;
3. Complies with the limitations contained in Rule 84.06 (b)
4. Contains 2616 words, according to Microsoft Word, which is the word processing system used to prepare this brief.


Richard J. Magee