IN THE MISSOURI SUPREME COURT

IN RE:	)	
	)	
NANCY J. FISHER,	)	**Supreme Court No. SC97694**
	)	
Missouri Bar No. 62474	)	
	)	
Respondent.	)	

RESPONDENT'S BRIEF

FLEISCHAKER & WILLIAMS

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JURISDICTIONAL STATEMENT

Respondent accepts Informant's Jurisdictional Statement.

STATEMENT OF FACTS

Respondent accepts Informant's Statement of Facts with the following additions. **References are to the pages of the transcript of the DHP hearing which is located at pages 307-414 of the Record filed in this Court.**

Prior to settling Ms. Putfark's case, Respondent did not maintain a trust account because all the funds that she received from clients were for services already performed and she deposited them into her regular account because the fees had already been earned. (T 72-73). It was Respondent's belief that when she sent out correspondence to Ms. Putfark's healthcare providers on March 15, 2015, that she sent out checks as payment in full to all of the providers (T 74). At that point in time, she believed that whatever was left in her trust account was her fee (T 77). She did not at that time realize that she was required to remove her fees promptly from the trust account (T 77). It was never Respondent's intention to retain possession of the money that belonged to Ms. Putfark (T 78). She believes that using the funds that should have been sent to Ferrell Duncan was an issue of poor bookkeeping rather that misappropriation of client funds (T 83).

Respondent acknowledged that after she sent out the checks to Putfark's providers, she did not reconcile her trust account checkbook with the bank records, (T 74-75) and as a result, she did not have an accurate record of the amount of her fee that remained in the trust account, (T 82) leading to withdrawing more funds from the trust account than the fee that she had earned (T 83).

After the complaint was filed, Respondent contacted Ferrell Duncan Clinic and was told by a representative there that the bill had been paid by an attorney check so she believed that the clinic's bill to Ms. Putfark had been taken are of (T 74). She even made notes about a conversation with someone named Mitzy at Ferrell Duncan on June 14, 2017 to verify their record of payment (T 76).

Respondent believes that she responded to Derik Scott's letter of March 29, 2016 but her response was oral and not written (T 85). She also felt that once she received correspondence from Mr. Scott in March of 2016, she could not ethically contact Ms. Putfark directly to resolve the issue because she was represented by counsel (T 89).

Respondent believes that she has learned from her mistake (T 89). Since the complaint was made, she has made numerous changes to her record keeping (T 80). Now, whenever she receives money from a client, it goes into a trust account unless she already has a bill prepared (T 78).

Counsel for the OCDC acknowledged that he found Respondent to be a credible witness and that at least some of her mistakes were due to sloppy record keeping, carelessness and negligence (T 101). Counsel for the OCDC also acknowledged that Respondent had shown remorse and had made changes to her practice to prohibit similar events from happening in the future (T 102). Counsel for the OCDC recognized that there are benefits to placing a respondent probation due to monitoring and oversight from the office of chief disciplinary counsel (T 102).

POINTS RELIED ON

I.

RESPONDENT DID NOT VIOLATE RULE 4-8.4(c) BY MISAPPROPRIATING CLIENT FUNDS BECAUSE THERE WAS NO DISHONESTY, FRAUD OR DECEIT ON HER PART BUT RATHER A VIOLATON OF RULE 4-1.15 DUE TO NEGLIGENT BOOK KEEPING ON HER PART; FURTHERMORE RESPONDENT DID NOT VIOLATE RULE 4-1.15(G) BECAUSE THAT RULE DOES NOT MANDATE THAT AN ATTORNEY MAINTAIN A TRUST ACCOUNT WHENEVER HE OR SHE ENGAGES IN THE PRACTICE OF LAW AND SHE DID NOT VIOLATE RULE 4-8.4(d) BY ENGAGING IN CONDUCT THAT IS PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE BECAUSE HER CONDUCT DID NOT INTERFERE WITH THE TRIAL OF CASES IN THE COURT, OR THEIR JUDICIAL DETERMINATION OR DISPOSITION BY ORDERLY PROCEDURE, UNDER RULES OF LAW, OR INTERFERE WITH PUTTING OF A JUDGMENT INTO EFFECT.

In re Gardner, 565 S.W.3d 670, 675 (Mo. banc. 2019)

Attorney Grievance Comm'n of Maryland v. Trye, 444 Md. 201, 223, 118 A.3d 980, 992 (2015)

Howell v. State, 559 S.W.2d 432, 435–36 (Tex. Civ. App. 1977), writ refused NRE (May 17, 1978)

II.

UPON APPLICATION OF THE ABA SANCTION STANDARDS, INCLUDING AGGRAVATING AND MITIGATING FACTORS, AND PRIOR DECISIONS OF THIS COURT, THE APPROPRIATE DISCIPLINE IN THIS CASE IS TO REPREMAND RESPONDENT OR ALTERNATIVELY TO SUSPEND RESPONDENT'S LICENSE FOR A PERIOD OF NOT LESS THAN SIX MONTHS BUT DEFER SUSPENSION AND PLACE RESPONDENT ON PROBATION FOR A PERIOD OF TWO YEARS.

In re Gardner, 565 S.W.3d 670, 675 (Mo. banc. 2019)

Annotated Standards for Imposing Lawyer Sanctions, Gronkiewicz and Middleton, Center for Professional Responsibility, American Bar Association

Section 9.32, ABA Standards for Imposing Lawyer Sanctions

ARGUMENT

I.

RESPONDENT DID NOT VIOLATE RULE 4-8.4(c) BY MISAPPROPRIATING CLIENT FUNDS BECAUSE THERE WAS NO DISHONESTY, FRAUD OR DECEIT ON HER PART BUT RATHER A VIOLATON OF RULE 4-1.15 DUE TO NEGLIGENT BOOK KEEPING ON HER PART; FURTHERMORE RESPONDENT DID NOT VIOLATE RULE 4-1.15(G) BECAUSE THAT RULE DOES NOT MANDATE THAT AN ATTORNEY MAINTAIN A TRUST ACCOUNT WHENEVER HE OR SHE ENGAGES IN THE PRACTICE OF LAW AND SHE DID NOT VIOLATE RULE 4-8.4(d) BY ENGAGING IN CONDUCT THAT IS PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE BECAUSE HER CONDUCT DID NOT INTERFERE WITH THE TRIAL OF CASES IN THE COURT, OR THEIR JUDICIAL DETERMINATION OR DISPOSITION BY ORDERLY PROCEDURE, UNDER RULES OF LAW, OR INTERFERE WITH PUTTING OF A JUDGMENT INTO EFFECT.

Introduction

The bottom line here is that Respondent made a mistake. Her conduct was not malicious. Her mistake was in not regularly reconciling her bank records against a check register for her trust account. Had she done so, she would have realized that the check she thought she wrote to Ferrell Duncan Clinic had not cleared the bank and she would need to leave sufficient funds in her trust account to cover that check and to determine why the check had not cleared the bank.

Standard of Review

"This Court has inherent authority to regulate the practice of law and administer attorney discipline. *See Rule 5*; *In re Zink, 278 S.W.3d 166, 169 (Mo. banc 2009)*. The DHP's findings of fact, conclusions of law, and recommendations are advisory. *In re Oberhellmann, 873 S.W.2d 851, 852 (Mo. banc 1994)*. 'This Court [in a disciplinary proceeding] reviews the evidence de novo, independently determining all issues pertaining to credibility of witnesses and the weight of the evidence, and draws its own conclusions of law.' *In re Snyder, 35 S.W.3d 380, 382 (Mo. banc 2000) (Citations omitted)." In re Gardner,* 565 S.W.3d 670, 675 (Mo. banc. 2019)

Discussion

Respondent did not violate Rule 4-8.4(c) by misappropriating client funds because there was no dishonesty, fraud or deceit on her part but rather a violation of rule 4-1.15 due to negligent book keeping on her part;

Rule 4-8.4(c) provides: "It is professional misconduct for a lawyer to: … (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. …" Nowhere in the record in this case is there evidence that Respondent intended to steal funds from her client. There is no evidence from which this Court can conclude that she acted dishonestly, fraudulently or deceitfully. At the time of the hearing before the DHP Respondent announced her intention to pay the sum of $4,425.00 to Ms. Putfark. (T 13). The record also discloses that counsel for Respondent believed that the counsel for the

OCDC was going to recommend that Respondent receive a suspension from practice that would be stayed and Respondent would be placed on probation. (T-14) It can be reasonably inferred that Respondent believed that payment of the sum of $4,425.00 to Ms. Putfark would be a condition of that probation. In as much as the panel decision did not recommend probation the sum of $4,425.00 has been paid unconditionally to Ms. Putfark and a copy of the negotiated check from the trust account of Respondent's Counsel is included in her appendix.

Respondent suggests that the Court compare the facts of this case to *In re Gardner, Id.* where the respondent paid himself a fee after the probate court had specifically denied his request to do so. This Court found a violation of Rule 4-8.4(c) based on an intentional act of paying himself a fee out of estate funds. Respondent here never intended to pay herself funds which she was not entitled to receive. She never realized that the check to Ferrell Duncan had not been paid and believed that the funds remaining in her trust account were part of her fee. Respondent acknowledges that there is no record of a check being written to Ferrell Duncan Clinic to cover their outstanding bill. Whether the check was written and received by Ferrell Duncan Clinic and somehow lost in the processing or whether Respondent overlooked writing the check and enclosing it in the correspondence is unknown. It is difficult to believe that Respondent would have gone to the effort of writing correspondence to all of the providers and mailing out checks to them and then drafting a fake letter to Ferrell Duncan Clinic. Furthermore, Respondent stated during her sworn statement (See Record on Appeal Vol 1 at pages 56-

57) that she had spoken with a representative of Ferrell Duncan Clinic and had been advised that their records showed that the bill had been paid by a check from the attorney. If Counsel for the Informant believed that she was lying about this point he could have subpoenaed a representative from Ferrell Duncan to the DHP hearing to contradict Respondent's statement. Respondent has acknowledged violations of Rule 4-1.15 due to her lack of accounting and record keeping of her trust account but does not believe that her conduct in overpaying herself rises to the level of dishonesty, fraud or deceit required for a violation of Rule 4-8.4(c).

Respondent did not violate Rule 4-1.15(g) by failing to maintain a trust account prior to settling Ms. Putfark's case because that rule does not mandate that an attorney maintain a trust account whenever he or she engages in the practice of law.

Rule 4-1.15(g) provides: "(g) Unless exempt as provided in Rule 4-1.145(a)(6) or all of the lawyer's trust accounts are non-IOLTA trust accounts, a lawyer or law firm shall establish and maintain one or more IOLTA accounts into which shall be deposited all funds of clients or third persons in compliance with the provisions in Rules 4-1.145 to 4-1.155." but that Rule can not be read in isolation from the entirety of Rule 4-1.15 which begins,

"4-1.15 TRUST ACCOUNTS AND PROPERTY OF OTHERS

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Client or third party funds shall be kept in a separate account designated as a "Client Trust Account" or words of similar import maintained in the state where the lawyer's office is situated or elsewhere if the client or third person consents."

Obviously, Section (g) when read in the entirety of Rule 4-1.15 states that if an attorney maintains a trust account under circumstances required by section (a) of the Rule, it has to be an IOLTA account unless the attorney falls within one of the exceptions to the IOLTA requirement, including opting out. Respondent testified that prior to representing Ms. Putfark, the nature of her practice was such that she did not hold third party funds. Nothing in the record shows otherwise. While one may question the wisdom of practicing in such a way as to never hold third party funds, there is nothing in this record to establish that Respondent ever held third party funds prior to settling Ms. Putfark's claim.

Respondent did not violate Rule 4-8.4(d) by engaging in conduct that is prejudicial to the administration of justice because her conduct did not interfere with the trial of cases in the court, or their judicial determination or disposition by orderly procedure, under rules of law, or interfere with putting of a judgment into effect.

The DHP found that Respondent violated Rule 4-8.4(d) because her conduct was prejudicial to the administration of justice by failing to resolve the issue pertaining to the

balance owed to Cox Health and then cutting of communication with her regarding that issue and that she further violated the Rule when she drew the money that should have been paid to Ferrell Duncan out of her trust account. Rule 4-8.4(d) provides:

"RULE 4-8.4: MISCONDUCT

It is professional misconduct for a lawyer to:

(d) engage in conduct that is prejudicial to the administration of justice;"

At first reading, Rule 4-8.4(d) appears to be a catch-all provision that encompasses just about any violation of the Rules of Professional Conduct. Researching the definition of "conduct prejudicial to the administration of justice reminds one of the difficulty in defining "hard core pornography" as characterized by Justice Potter Stewart's famous quote from *Jacobellis v. Ohio*, 378 US 184 (1964), where he stated: "I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it, and the motion picture involved in this case is not that." Thus the courts tend not to define "conduct prejudicial to the administration of justice," but the seem to know it when they see it. Whatever the definition may be, Respondent suggests that it encompasses conduct far mote egregious that hat outlined here.

In *Attorney Grievance Comm'n of Maryland v. Trye*, 444 Md. 201, 223, 118 A.3d 980, 992 (2015) the court stated, "'Conduct prejudicial to the administration of justice is

that which reflects negatively on the legal profession and sets a bad example for the public at large.' Attorney Grievance Comm'n v. Thomas, 440 Md. 523, 555–56, 103 A.3d 629 (2014) (citation and internal quotation marks omitted). An attorney engages in conduct that is prejudicial to the administration of justice when an attorney makes repeated misrepresentations to a court or others. Mixter, 441 Md. at 526, 109 A.3d 1; Agbaje, 438 Md. at 717, 93 A.3d 262 (attorney abused his position as attorney by concealing from client the true risk of a financial scheme and acted to prevent client from learning the truth, in violation of MLRPC 8.4(d)). There is no need to reiterate the details of Ms. Trye's misrepresentations; they constituted a violation of MLRPC 8.4(d)." [1]

[1] Attorney's conduct, purposefully failing to comply with discovery obligations while representing herself in divorce proceeding, including failing to attend court-ordered deposition, making knowing misrepresentations to trial judge, fraudulently altering draft settlement agreement and consent order regarding terms of custody of child, making knowing misrepresentations on application for modification of home loan, and failing to file tax returns for several years, violated rules requiring attorney to make reasonable efforts to expedite litigation, prohibiting attorney from knowingly making a false statement of fact or law to a tribunal, prohibiting attorney from knowingly disobeying an obligation under the rules of a tribunal, prohibiting attorney from discussing a legal matter with a person attorney knows to be represented, prohibiting conduct involving

In *Matter of Hinds*, 90 N.J. 604, 632, 449 A.2d 483, 498 (1982) the court stated, "The New Jersey cases disclose a pattern of applying DR 1-102(A)(5) in conjunction with other more specific disciplinary rules to sanction attorney misconduct. See, e.g., In re Clark, 83 N.J. 458, 416 A.2d 851 (1980) (also violating DR 6-101, 9-102); Wilson, 81 N.J. 451, 409 A.2d 1153 (also violating DR 9-102). And on those few occasions when the rule has served as the sole basis for discipline, it has been applied only in situations involving conduct flagrantly violative of accepted professional norms. See, e.g., In re Schleimer, 78 N.J. 317, 394 A.2d 359 (1978) (false swearing).

Thus, the rule's broad language proscribing acts 'prejudicial to the administration of justice' takes on sufficient definition to pass constitutional muster, given these prior judicial determinations narrowing its scope to particularly egregious conduct.8 See Committee on Professional Ethics v. Durham, 279 N.W.2d 280 (Iowa 1979).[2]

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dishonesty, fraud, deceit or misrepresentation, and prohibiting conduct that is prejudicial to the administration of justice.

[2] The Court found that the Rule was not unconstitutionally vague but that the attorney's statements that "the defense team wanted the case moved to another court because …what we are seeing is legalized lynching, and the defense team … members were 'gagged' by [the trial judge] whom he accused of asking prospective jurors self-serving questions which he said were leading to 'the creation of a hangman's court' and referred to the …..trial as 'a travesty' … saying that the trial judge 'does not have the judicial

But perhaps the best definition that Counsel has been able to locate comes from *Howell v. State*, 559 S.W.2d 432, 435–36 (Tex. Civ. App. 1977), writ refused NRE (May 17, 1978) where the court stated, " It is undisputed in the record that appellant, in the capacity of a witness, refused to answer a question after instructed to do so by the trial court and after being advised that his failure to do would result in appellant being in contempt of court. Was such conduct on the part of appellant 'prejudicial to the administration of justice'? In our opinion it was. 'Prejudicial' has been defined as tending to injure or impair; detrimental; harmful; hurtful; injurious. 33 Words and Phrases, page 471; Webster's Seventh New Collegiate Dictionary, G & C Merriam Co. 1969. 'Administration of justice' has been described thusly: 'The administration of justice consists in the trial of cases in the court, and their judicial determination and disposition by orderly procedure, under rules of law, and putting of the judgment into effect.' Massey v. City of Macon, 97 Ga.App. 790, 794, 104 S.E.2d 518, 521-522 (1958)."

Respondent's conduct here did not involve a case being litigated in court, no judicial proceedings were affected, no settlement had to be approved by a court and no judgment was being put into effect. Certainly Respondent's neglect of her own accounts

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temperament or the racial sensitivity to sit as an impartial judge' and that '[i]t was only after the trial began that we began to have fears that what we are seeing is a legalized lynching' and 'We feel that it is a kangaroo-it will be a kangaroo court unless the judge recluses [sic] himself and that will be the very minimum.'" Did not violate the Rule.

and the client's needs constitute a violate of the Rules of Professional Conduct, but they did not violate Rule 4-8.4(d).

II.

UPON APPLICATION OF THE ABA SANCTION STANDARDS, INCLUDING AGGRAVATING AND MITIGATING FACTORS, AND PRIOR DECISIONS OF THIS COURT, THE APPROPRIATE DISCIPLINE IN THIS CASE IS TO REPREMAND RESPONDENT OR ALTERNATIVELY TO SUSPEND RESPONDENT'S LICENSE FOR A PERIOD OF NOT LESS THAN SIX MONTHS BUT DEFER SUSPENSION AND PLACE RESPONDENT ON PROBATION FOR A PERIOD OF TWO YEARS.

Respondent acknowledges violations of Rule 4-1.3 as found in paragraph 4 of the decision of the DHP, Rule 4-1.4 as found in paragraph 5 of the decision of the DHP and various sub paragraphs of Rule 4-1.15 as found in paragraphs 8, 9, 10 and 11 of the decision of the DHP.

Violation of Rule 4-1.3 is covered by Section 4.4 and subsection 4.53 of the ABA Standards which state:

"4.4 LACK OF DILIGENCE

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:"

and standard 4.53 provides that

"Reprimand is generally appropriate when a lawyer:

(a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or

(b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client.

Respondent's failure to document what she thought was an agreement with Cox Health system to accept a lesser amount indicates a lack of knowledge of the necessity of obtaining a written acknowledgement of that agreement. Had she done so, perhaps Cox's representatives would have denied the existence of such an agreement and Ms. Putfark would have known that an additional amount was necessary to be paid to Cox to resolve the payment of her medical bills. Has the client been damaged? If, as Cox apparently is now contending, there was no agreement, Ms. Putfark still remains liable for the balance. She has the power to resolve the collection issue by paying the balance out of the proceeds she received. Had Respondent exercised due diligence, and had Cox denied the existence of an agreement to reduce their balance, then Respondent would have paid the balance directly and the client's net proceeds of the settlement would have been similarly reduced. Certainly one understands her frustration caused by thinking she was going to net one amount out of the settlement and now finding out that she will receive less, but the bottom line is that she is not being deprived of something she was entitled to receive.

Violation of Rule 4-1.4 is covered by Section 4.63 of the ABA Standards which provides:

4.63 Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client.

Respondent should have followed up when Ms. Putfark first complained to her that she was getting collection calls. She should have maintained communication with the client and if the ultimate conclusion was that Cox was not willing to compromise the bill, she should have so informed Ms. Putfark and advised her to pay the balance. On the other hand, her conduct does not fall within the provisions of section 4.62 which calls for suspension when the attorney when a lawyer knowingly deceives a client because there was no deception involved in Respondent's lack of communication.

The violations of Rule 4-1.15 are covered by Section 4.13 of the ABA Standards which provides:

4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.

As mentioned above, Respondent's failure to properly keep track of here trust account led to a situation where she ultimately withdrew funds that should have gone to pay Ms. Putfark's account at Ferrell Duncan Clinic. It is unclear whether or not this failure has caused actual or only potential injury to the client. The client's deposition exhibit at pages 563 and 564 of the record on appeal disclose no collection efforts or bad credit reports from Ferrell Duncan Clinic. All of the evidence indicates that the Clinic believes it has been paid. That does not justify Respondent in keeping the money that should hae come out of hewr account and been paid to Ferrell Duncan but those funds

have now been delivered to he client and she can decide whether to send the money to Ferrell Duncan or keep it for herself. Respondent does not believe that her negligence comes within the purview of Section 4.12 which calls for a suspension only if the Respondent knowingly misappropriates the client's property. 563 and 564.

Even if the Court determines that suspension is appropriate, an application of Mitigating Factors should cause the Court to defer the suspension and place the Respondent on a period of probation. Section 9.32 of the ABA Standards include the following mitigating factors to be considered by the Court:

"Mitigating factors include:

(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;

(f) inexperience in the practice of law;

(l) remorse;"

All of the above factors are supported by the record in this case and none of the aggravating factors in Section 9. Are supported. Respondent has been open and up front with the OCDC investigation and the DHP. There are claims of failure to provide appropriate records but Respondent can't provide what she didn't maintain. She should have had a separate ledger but she didn't maintain one so she couldn't provide it.

Likewise, she couldn't provide a document showing that Ferrell Duncan was paid out of her trust account because no payment was ever processed through her account. Although Respondent had been licensed since 2010, she had never engaged in the type of practice where it was necessary for her to personally maintain a trust account. Yes, she should have taken steps to educate herself on the record keeping requirements for trust accounts and she should have reconciled her bank statements. Had she done so, we would in all likelihood not briefing the issue to this Court. Nevertheless, her relative inexperience in the practice of law is a factor to consider.

"Probation 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 when a lawyer can perform legal services but has problems that require supervision, such as improper maintenance of books and records, lack of timely communication with clients, mental or physical disabilities, or alcohol and chemical dependency. By imposing probation, courts allow a lawyer to continue to practice, but require the lawyer to meet certain conditions that will protect the public and assist the lawyer to meet ethical obligations." *Annotated Standards for Imposing Lawyer Sanctions,* Gronkiewicz and Middleton, Center for Professional Responsibility, American Bar Association at page 79. The record indicates that Respondent has now educated herself in the requirements for properly utilizing and maintaining a trust account.

"The purpose of discipline is not to punish the attorney, but to protect the public and maintain the integrity of the legal profession. 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).” *In re Gardner, supra at 677.* In it’s brief, Informant cited at length from *In re Farris*, 472 S.W.3d 549 (Mo. banc. 2015). Respondent contends that the facts of that case are far more grievous than those at hand. Farris clearly diverted funds from client’s settlements to cover his own personal needs. He lied to the tribunal and never took responsibility for his misdeeds. The facts of Respondent’s case more clearly resemble those of *Gardner* and she is even less culpable than Mr. Gardner who directly defied a court order denying his request to take a full fee. The only factor missing in Respondent’s case is that she did not present evidence of good character. Blame that on the shortcomings of her Counsel who is more used to cases involving criminal defense where character evidence opens up many dangerous windows, even with clients of impeccable character. This Court in *Gardner* concluded: “The primary purposes of discipline are to protect the public, the legal system, and the legal profession. Weier, 994 S.W.2d at 561. A stayed suspension serves those purposes.” *Id.* at 680.

CONCLUSION

In determining the appropriate punishment, it is important to consider the reason behind lawyer discipline and what it attempts to accomplish. Certainly, Respondent has been educated by the disciplinary process to the point where she is maintaining her records appropriately and there have been no further complaints. If the purpose of the discipline process is to educate an attorney then that has been accomplished. If the

purpose is to deter Respondent and others from engaging in similar conduct, there are certainly far more egregious situations that come to mind that would certainly remind all attorneys of the need to engage in appropriate accounting methods in keeping track of their trust accounts. If the purpose of the disciplinary process is retribution, punishment for punishment's sake, then yes, suspension for a minimum of six months would be appropriate. Although Counsel believes that the appropriate application of the ABA standards call for a reprimand of Respondent, she is here, as she was below, prepared to accept a stayed suspension with an appropriate period of probation and appropriate conditions and monitoring to establish to the satisfaction of the OCSC and this Court that she can and will make a contribution to the profession and the clients that she serves.

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IN THE MISSOURI SUPREME COURT

IN RE:	)	
	)	
NANCY J. FISHER,	)	**Supreme Court No. SC97694**
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Missouri Bar No. 62474	)	
	)	
Respondent.	)	

CERTIFICATE PURSUANT TO RULE 84.06(c)

I, William J. Fleischaker, Attorney for Respondent, hereby certify:

1. That on May 8th, 2019, a copy of the foregoing was sent through the Missouri eFiling system to the registered attorneys of record and to all others by facsimile, hand delivery, electronic mail or U.S. mail postage prepaid to their last known address.
2. That the Brief complies with the limitations contained in Rule 84.06(b);
3. That there are 4,876 words in the Brief;

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