

IN THE SUPREME COURT OF THE  
STATE OF MISSOURI

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In re

STEPHEN G. BELL,  
Attorney-Respondent.

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Supreme Court #SC97682

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BRIEF OF RESPONDENT

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## **JURISDICTIONAL STATEMENT**

Respondent Stephen G. Bell does not contest this Court's jurisdiction. This is a lawyer discipline case. Therefore, as stated in Informant's Brief, this Court has jurisdiction over this case pursuant to Article V, Section 5 of the Missouri Constitution; Missouri Supreme Court Rule 5; Missouri common law; and Missouri Revised Statute § 484.040. In addition, this Court has jurisdiction under its inherent authority to regulate the Missouri Bar.

## CASE SUMMARY

The issue of this case is what discipline Mr. Bell should receive for conduct that Mr. Bell has consistently admitted. The material facts are not in dispute.

Mr. Bell has practiced law for thirty-seven years, and has been a leader in many significant community and *pro bono* activities.

In August 2016, Mr. Bell filed a dissolution of marriage petition on behalf of his client Jane Doe. During the course of the representation, Jane Doe became increasingly flirtatious with Mr. Bell. As a result of Jane Doe's flirtations, Mr. Bell engaged in intimate activity with Jane Doe on two occasions. First, after meeting Jane Doe at a tapas bar close to his home, Mr. Bell and Jane Doe returned to his home and engaged in kissing. Weeks later, after a night out at a club celebrating with friends, Jane Doe contacted Mr. Bell late that evening and asked if she could stop by his house. Mr. Bell agreed, expecting they would spend time hanging out. But Jane Doe arrived at Mr. Bell's home wearing only a dress and made sure Mr. Bell knew she was wearing nothing underneath. Mr. Bell and Jane Doe engaged in consensual, non-coital sexual activity. Jane Doe strongly encouraged sexual intercourse with Mr. Bell, but Mr. Bell declined Jane Doe's invitations believing that sexual intercourse with a client would violate the Rules of Professional Conduct and was inappropriate for other reasons.

After the second interaction, Mr. Bell refused Jane Doe's later invitations to socialize and engaged in no further intimate activities. Mr. Bell then continued to represent Jane Doe for several months, until Jane Doe ended the representation in December 2016.

Mr. Bell cooperated in the change of counsel.

Then, eight months later, Jane Doe filed the disciplinary complaint giving rise to this matter. Mr. Bell has admitted his actions and volunteered for an examination under oath. The Office of Chief Disciplinary Counsel then filed an Information, to which Mr. Bell again admitted his conduct.

The matter was tried before a Disciplinary Hearing Panel chaired by attorney Doreen Dodson. Having heard the case, and having considered significant mitigating evidence including Mr. Bell's unblemished thirty-seven year career, the Hearing Panel recommended a stayed suspension, to which Mr. Bell acceded. Informant however rejected the stayed suspension, seeking a more serious sanction, despite Mr. Bell's substantial evidence in mitigation and compelling precedent supporting the recommended stayed suspension. These proceedings then followed.



## STATEMENT OF FACTS

***Bar admissions and personal background.*** Mr. Bell was licensed as Missouri attorney on or about September 18, 1982, and has practiced law for thirty-seven years, with the Missouri Bar Number 30286. (Answer, R. 32)<sup>1</sup> Mr. Bell was himself divorced in June 2013 after thirty years of marriage and the birth of five children. (R. 207-08) One of Mr. Bell's sons has severe disabilities and lives with Mr. Bell fifty percent of the time. (R. 208)

***Absence of prior discipline.*** Mr. Bell has no prior discipline history. (Answer, R. 32) Mr. Bell has been practicing as an attorney for over thirty-seven years – including handling over one-hundred dissolution cases – and has never had any type of ethics problem prior to this matter. (R. 166, 182-83)

***Initial consultation with Jane Doe in March 2016.*** Jane Doe was referred to Mr. Bell by a mutual friend, who had a positive experience when Mr. Bell represented that friend during her own divorce. (R. 88, 185) Mr. Bell first met Jane Doe on March 23, 2016, when he provided an approximately two-hour initial consultation free of charge. (R. 185) Jane Doe arranged this initial consultation to discuss possibly divorcing her husband, a doctor whom Jane Doe had recently discovered was addicted to and unlawfully prescribing painkillers. (R. 185-86)

Mr. Bell has a practice of writing down information about a client's demeanor during client consultations, including whether the client is crying or in despair. (R. 244)

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<sup>1</sup> Citations to the record are denoted by the appropriate Record page, for example "R. (page number)."

Mr. Bell's notes do not reflect, and Mr. Bell does not recall, that Jane Doe cried or otherwise expressed grief during the initial consultation. (R. 186) Mr. Bell only recorded that Jane Doe seemed mad, angry at her husband. (R. 247-48)

After that initial meeting in March 2016, Jane Doe decided to postpone seeking to dissolve her marriage. (R. 93) Jane Doe sent a friendly email to Mr. Bell, indicating she was not ready to proceed with a divorce at that time. (R. 94) Mr. Bell responded saying he hoped things worked out for Jane Doe, regardless of the path she took. (R. 94)

Later, Jane Doe testified that Mr. Bell had told Jane Doe that she was an "8.5" while her husband was a "4" during the first meeting after the initial consultation. (R. 97) Mr. Bell does not recall this specifically, but has admitted that he sometimes uses numerical references to contrast the overall qualities of the client and the client's spouse. (R. 97) This numerical system is not focused on anyone's physical attractiveness. (R. 248-49) In fact, Mr. Bell had not met or seen and thus could not rate the appearance of Jane Doe's spouse. Rather, Mr. Bell uses numbers to emphasize that someone like Jane Doe had a lot going for her, while her husband did not. Jane Doe was a professional, a board-certified nurse practitioner, and was young, healthy, and financially independent. (R. 71) Jane Doe's husband meanwhile was a drug addict who had ruined his career and was facing felony charges for his misconduct. (R. 288-89) If made, Mr. Bell would have intended the numeric comparison to give a client like Jane Doe confidence that she could proceed with divorce, that she would end up okay – and certainly better than her (ex-)spouse.

***Jane Doe retains Mr. Bell as counsel in June 2016.*** Three months after their March 2016 initial consultation, Jane Doe reached out to Mr. Bell again on June 28, 2016, about

the possibility of filing for divorce, asking Mr. Bell a question about anticipated custody for her children. (R. 94) This reinitiated their communications about Jane Doe's possible divorce.

On July 26, 2016, Mr. Bell sent Jane Doe an email listing six items for Jane Doe to consider before deciding to proceed with a divorce. (R. 100) Mr. Bell's list included Mr. Bell's thoughts on how marital misconduct might influence a marital dissolution. Based on his experience as a divorce attorney in St. Louis County, Mr. Bell explained that marital misconduct is not as significant a factor as it used to be. (R. 250-51) Mr. Bell explained that judges had shifted more to weighing financial impact of such misconduct, as opposed to punishing the marital misconduct itself. (R. 251)

Mr. Bell also advised Jane Doe about his thoughts on the likely outcomes of a dissolution. Jane Doe had been uncertain whether to proceed with the dissolution of her marriage, but finally decided she wanted to proceed with the divorce. On August 1, 2016, Mr. Bell filed the divorce petition on behalf of Jane Doe. (R. 361)

***Meeting at One 19 North Tapas Wine Bar.*** In early September 2016, after Mr. Bell had been representing Jane Doe for slightly more than a month, Jane Doe invited Mr. Bell to have a drink and discuss her case at One 19 North Tapas Wine Bar in Kirkwood, Missouri. (R. 254) Mr. Bell did not consider Jane Doe's request to meet outside the office particularly unusual, as Mr. Bell had previously met with other clients in restaurants and at other public places. (R. 361) Mr. Bell believed Jane Doe wanted to discuss her case in a situation where she would not be charged. (R. 255-56)

Mr. Bell and Jane Doe stayed at the tapas bar talking before Jane Doe suggested going to Mr. Bell's house to hear him play the piano. (R. 255) It was at this point that Mr. Bell began sensing Jane Doe liked Mr. Bell more than as just her divorce attorney. (R. 255-56) Mr. Bell also later admitted to kissing Jane Doe at his house, but both Mr. Bell and Jane Doe agreed they did not engage in any sexual activity. (R. 95, 239, 255)

After the evening at One 19 North Tapas, Jane Doe began calling Mr. Bell after work hours both to discuss her case and engage in flirtatious conversation. (R. 362)

***Allegations about a romantic office lunch.*** Jane Doe testified that, after the meeting at One 19 North Tapas, she and Mr. Bell also had a romantic lunch after Jane Doe brought lunch to Mr. Bell's office. (R. 112-13) Mr. Bell recalls Jane Doe bringing lunch to his office but does not recall anything romantic occurred, except they may have kissed at the end of the lunch. (R. 191, 268) Jane Doe then left through the backdoor of the office building, not to hide her departure but because the back staircase leads directly to the parking area. (R. 268)

***Jane Doe's (ex-)husband sentenced for federal felony.*** On September 21, 2016, Jane Doe's soon-to-be ex-husband was sentenced for a federal felony in connection to writing fake prescriptions to fuel his drug habit. (R. 145-46)

***Jane Doe's night out at the Pepper Lounge.*** The next day, on September 22, 2016, Jane Doe and some friends – but not Mr. Bell – went to celebrate a friend's birthday at a retro bar called the Pepper Lounge. After some time celebrating at the Pepper Lounge, during the late hours of September 22, 2016 and early morning of September 23, 2016, Jane Doe then contacted Mr. Bell asking if she could come to his home. (R. 148, 258)

*Mr. Bell and Jane Doe engage in intimate activity.* Jane Doe arrived at Mr. Bell's home in a "very provocative" dress. (R. 258) Jane Doe quickly clued Mr. Bell to the fact she was wearing only a dress with no undergarments underneath. Mr. Bell recalls that, as soon as he greeted Jane Doe at the door, Jane Doe guided Mr. Bell's hands below her waist, alerting Mr. Bell that she was anxious to engage in intimate activities. (R. 258-59) Mr. Bell became aware Jane Doe was not wearing undergarments, as she then told him. (R. 259) Jane Doe removed her dress and matters moved to Mr. Bell's couch, where he and Jane Doe engaged in oral and digital sexual stimulation. (R. 259)

As Mr. Bell has admitted throughout these proceedings, Mr. Bell and Jane Doe engaged in this single incident of voluntary, consensual, non-coital intimacy. (R. 190, 217, 362-367) Jane Doe pressed Mr. Bell to engage in actual sexual intercourse, but Mr. Bell declined, saying that should not happen. (R. 156, 259-60) Mr. Bell felt a bit weird about how excited Jane Doe was to be with him. (R. 260) Mr. Bell recalls Jane Doe demanding they go to his bedroom, repeatedly and explicitly yelling her wishes for him to "f\*\*\*" her. (R. 260) Mr. Bell declined to do so. (R. 260)

Mr. Bell has explained that he rejected Jane Doe's entreaties to have sexual intercourse because he did not think it was ethically or morally right. (R. 260-61) Looking back, Mr. Bell regrets engaging in any intimate activity at all with Jane Doe. (R. 260-61) Mr. Bell testified that the September 2016 encounter would not have occurred but for Jane Doe's urging. (R. 263) Jane Doe caught Mr. Bell in a weak moment – a momentary lapse contrary to his thirty-seven years of law practice. (R. 205)

*Mr. Bell reviews Missouri Supreme Court Rule 4-1.8(j).* The day after their intimate encounter, feeling regret for what had occurred, Mr. Bell researched the Missouri Bar Rule 4-1.8(j) on sexual relations with clients. (R. 264) Mr. Bell had believed he was doing the right thing by not having actual sexual intercourse with Jane Doe. (R. 264) Mr. Bell believed there was a difference in the intimate conduct he had with Jane Doe and sexual intercourse. (R. 204)

Mr. Bell soon learned, however, that he was mistaken, that Missouri law did not distinguish between sexual intercourse and what had occurred between Mr. Bell and Jane Doe. (R. 264) Although Rule 4-1.8(j) does not define “sexual relations,” Mr. Bell does not contest that his conduct violated Rule 4-1.8(j) (R. 264) Mr. Bell used some restraint by not actually engaging in intercourse with Jane Doe; he now only wishes that he had exercised more restraint and avoided the whole circumstance. (R. 264-65)

Mr. Bell has testified that he liked Jane Doe – which is why he allowed her to come over that night, naively believing they would just spend time together. (R. 263) Mr. Bell further conceded and concedes that, although Jane Doe was the instigator, Mr. Bell allowed for intimacy to occur, which was wrong. (R. 263-64, 275-79) Mr. Bell had never engaged in such conduct before, in his thirty-seven years of law practice and handling of thousands of cases, and he would not do it again if confronted with the same situation. (R. 262) Mr. Bell believes his actions in September 2016 are not consistent with the lawyer and person he is, and should not define his law practice. In fact, although divorced, Mr. Bell does not bring home women for short-term liaisons. (R. 262-63)

***Text messages between Jane Doe and Mr. Bell.*** Jane Doe sent intimate images of herself to Mr. Bell. (R. 148) Mr. Bell recalled encouraging Jane Doe to delete one such image, because Mr. Bell was concerned the images might be leaked onto the Internet and possibly embarrass Jane Doe. (R. 267) Mr. Bell was not seeking to protect himself, to hide evidence of their activities. (R. 267)

***Cessation of intimate relationship with Jane Doe.*** After September 23, 2016, Mr. Bell ended all social activities between himself and Jane Doe because he was her attorney and because he was not the type to progress so quickly to an intimate relationship with a woman. (R. 204) Mr. Bell stated that he would have counseled Jane Doe to seek another attorney if they were going to maintain a personal relationship. (R. 196) Mr. Bell was never asked to testify about his personal relationship with Jane Doe, nor does he believe such matters were ever raised in Jane Doe's divorce. (R. 253)

***Continued representation until December 2016.*** Although he had ended the intimate relationship, Mr. Bell continued to represent Jane Doe until December 2016. (R. 119-120, 294) Mr. Bell formalized their communications, avoiding after-hours text-messages and personal phone calls, because he wanted to resume a more formal posture. Mr. Bell felt that he could and did keep any personal relationship with Jane Doe separate from their professional business relationship. (R. 294) Mr. Bell had abruptly halted their friendship when he noticed it was evolving into an intimate relationship. (R. 308-309) But

Mr. Bell believed that he had been productive in tackling the issues arising in Jane Doe's divorce. (R. 270-71)<sup>2</sup>

Mr. Bell recalls that, after he ended their personal relationship, Jane Doe repeatedly encouraged him to resume that relationship. (R. 265) (Jane Doe later explained those communications as a request for Mr. Bell to help appraise her house (R. 272), but Mr. Bell lacked any relevant expertise.) Mr. Bell declined Jane Doe's entreaties. Mr. Bell instead told Jane Doe only that, after her case was over, they might get together for a drink. (R. 265) Mr. Bell recalls Jane Doe's mood was very light: she teased him about resuming their relationship while never appearing upset. (R. 265-66) Mr. Bell did not know Jane Doe was upset with him until he received the ethics complaint against him months after their personal and professional relationships had ended. (R. 269-70) Mr. Bell also had no knowledge of, and Jane Doe had not raised, any issues regarding purported communication during the representation. (R. 276, 283)

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<sup>2</sup> Informant apparently concedes that Mr. Bell provided Jane Doe with a reasonable representation for a reasonable fee. Jane Doe complained about Mr. Bell's competence, diligence, and attorney fees in her initial complaint. (R. 358) Mr. Bell responded thoroughly refuting these allegations. (R. 367) There is no mention of competence, diligence, or attorney fees (the approximately \$4,400 Mr. Bell billed) in the Information. (R. 1-2)



***Jane Doe hires new counsel.*** In December 2016, Jane Doe hired Allison Schreiber Lee to take over representation for her divorce proceeding. Jane Doe later discharged Ms. Schreiber Lee because Jane Doe was concerned about Ms. Schreiber Lee's bills (R. 141)

***Jane Doe dates others during divorce proceeding.*** Mr. Bell had information that he was not the only man Jane Doe dated during her divorce proceedings. In fact, Jane Doe entered a four- or five-month relationship with a man beginning in December 2016. (R. 176-77)

***Finalization of Jane Doe's divorce.*** Jane Doe's divorce was finalized in July 2017, by Jane Doe's third counsel. (R. 153) At the conclusion of the dissolution proceedings, Jane Doe received a majority of the property distribution, including the house, in the same manner that Mr. Bell had predicted at the outset. (R. 253) Jane Doe then briefly reconciled with her ex-husband from approximately October 2017 to February 2018. (R. 126, 153) Jane Doe said this reconciliation was short-lived, however, because Jane Doe's ex-husband could not get over the fact she had divorced him. (R. 153)

***Jane Doe files ethics complaint.*** In July 2017, as her divorce was being finalized, Jane Doe filed her ethics complaint against Mr. Bell. Jane Doe's ethics complaint indicates that she "felt that [she and Mr. Bell] had developed a relationship," and that "[t]his led to a sexual relationship in which [Jane Doe] went to [Mr. Bell's] house twice." (R. 358) A larger portion of the complaint, however, complained that Mr. Bell was charging her for legal services, including throughout the relationship, and that her total legal bills were \$4,436.80, of which Jane Doe paid \$3,350. (R. 358, 366) Jane Doe also complained about a lack of diligent progress being made on her case. (R. 358)

***Mr. Bell's remorse and growth.*** As noted, Mr. Bell has consistently admitted his conduct, and admitted that he made mistakes both in entering an intimate relationship with Jane Doe and in continuing to represent her after that relationship. (R. 237, 262) This includes that, in his initial response, Mr. Bell admitted that he and Jane Doe had engaged in some intimate activities, although those activities had not included intercourse. (R. 359, 362)

Further, Mr. Bell has consistently and – the Hearing Panel specifically found – credibly stated that, if the situation presented itself today, Mr. Bell would never do it again. Mr. Bell has had other situations where he felt clients liked him (due to the nature of the attorney-client relationship) and acknowledges there was a “big difference when they cross that line.” (R. 271) Mr. Bell further acknowledged the devastating effects of his actions and the potential consequences it could have on other people besides himself. (R. 271)

Mr. Bell has offered to speak with lawyers about the lessons he has learned from this matter and red flags to look out for when it seems as if a client is romantically pursuing his or her lawyer. (R. 271) Mr. Bell is dedicated to serving his clients. (R. 284)

***Mr. Bell's community service and good character.*** Mr. Bell provided substantial testimony to support his good character and reputation. Mr. Bell has held an AV rating for approximately 20 years. (R. 212) He founded and is a director of the Gabriel Project, which for nine years has provided *pro bono* legal services to the disadvantaged, primarily working on clergy referrals. (R. 212) Also, as the father of a child with severe disabilities from cerebral palsy, Mr. Bell has been involved in a number of related charities for more than thirty years, including serving as a member of the Executive Committee for Catholic

Charities and also the State Board for the United Cerebral Palsy Association; helping organize working with DAKOTA (Dads and Kids Out Together Association) for approximately fifteen years; teaching school children about law through Rockwood School District's Partners in Education program; and serving as the chairman for his family's charitable foundation, the Proffitt Foundation. (R. 212-17, 224) He is now working with two new charities, Rachel's Rainbows and Gwendolyn's Gifts. (R. 223) In addition, Mr. Bell has served on the finance committee for De Smet Jesuit High School and as the chairman of the Religious High Schools Foundation. (R. 219, 220). Mr. Bell even serves as the general counsel *pro bono* for St. Louis HELP (Health Equipment Lending Program), and he has provided *pro bono* legal assistance to victims of the Joplin tornado. (R. 220, 222)

Mr. Bell has also been active in his community, including serving on the Health and Environmental Services Advisory Board and Planning Commission for the City of Webster Groves in the 1990s. (R. 214-15)

Mr. Bell estimates he works approximately 150 hours of *pro bono* work a year. (R. 225) Mr. Bell never turns down *pro bono* legal service requests. (R. 225) Mr. Bell's commitment to *pro bono* work has placed him in the Missouri Bar *Pro Bono* Hall of Fame. (R. 360)

In addition to Mr. Bell's remarkable *pro bono* resume, Mr. Bell's has received hundreds of testimonials and "thank-you" notes from his clients. (R. 561-73)<sup>3</sup> Jane Doe's own friend recommended Mr. Bell as a divorce attorney based on her positive experience with Mr. Bell through her own divorce. (R. 185)

Finally, Mr. Bell has sole financial responsibility for himself and his son who is severely disabled and functions at the level of an infant. Mr. Bell also employs two people at his law firm, and is the sole source of financial support of his ex-wife. (R. 209-10, 231-232)

***Hearing Panel's recommendation.*** A Hearing Panel heard the case against Mr. Bell on November 8, 2018. Throughout the Hearing, Mr. Bell admitted to the improper intimate relationship with Jane Doe described in this Brief. The Hearing Panel chaired by Doreen Dodson (the first woman president of the Missouri Bar, a long-serving member of the Missouri Advisory Committee, and an attorney well-experienced in dealing with gender discrimination and related issues) and included panel member Sheryl Butler (the non-lawyer member, but a law school graduate experienced with minority- and woman-owned business compliance issues) recommended that Mr. Bell be suspended indefinitely with no right to reapply for six months, and that the suspension should be stayed and Mr. Bell placed on a six-month probation. (R. 592, 595)

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<sup>3</sup> The Hearing Panel excluded this evidence at trial, and refused to admit it when Mr. Bell sought reconsideration of the exclusion. (R. 581-82) This evidence should have been admitted, and weighs in favor of a lesser sanction.

Of particular importance here, the Panel found credible that Mr. Bell now understands he should have promptly withdrawn from the representation after what occurred, and that he would not engage in this misconduct again. (R. 595)

***Informant rejects Panel recommendation for stayed suspension.*** Upon receiving the Panel's recommendation, the Informant rejected it. (R. 597)

This proceeding followed.

**POINTS RELIED UPON**

1. THE UNDISPUTED FACTS, COMPELLING EVIDENCE IN MITIGATION, AND APPLICABLE PRECEDENT SUPPORT MR. BELL SHOULD RECEIVE NO MORE THAN A STAYED SUSPENSION.

*People v. Zeilinger*, 814 P.2d 808 (Colo. 1991).

*In re Walker*, 24 P.3d 602 (Ariz. 2001).

*In re Yarborough*, 524 S.E.2d 100 (S.C. 1999).

*In re Bergman*, SC94683 (Missouri, May 26, 2015).

## ARGUMENT

**Preliminary statement.** Mr. Bell has consistently admitted that, in violation of Missouri Supreme Court Rule 4-1.7(a) and 4-1.8(j), he engaged in improper but consensual (non-coital) intimate activities with his client Jane Doe while Mr. Bell was representing Jane Doe in a marital dissolution proceeding. Mr. Bell further admits that, after the improper intimate activities occurred, Mr. Bell did not promptly terminate his representation of Jane Doe.

**Standard of review.** In lawyer discipline cases, this Court reviews the disciplinary hearing record and the evidence *de novo*. *In re Wiles*, 107 S.W.3d 228 (Mo. 2003). This Court then “decides the facts *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 Eisenstein*, 485 S.W.3d 759, 762 (Mo. 2016).

**Standard of imposition of discipline.** The twin aims of the Missouri lawyer discipline system are “to protect the public and maintain the integrity of the legal profession,” not to punish the lawyer. *In re Coleman*, 295 S.W.3d 857, 869 (Mo. 2009). In assessing the proper sanction, this Court has recognized the ABA Standards for Imposing Lawyer Sanctions (the “ABA Standards”) provide useful guidance for appropriate discipline. *In re Madison*, 282 S.W.3d 850, 860 (Mo. 2009). Consideration is given to the nature of the conduct at issue, as well as any evidence in aggravation or mitigation. ABA Standard 9.1.

**POINT RELIED #1: The undisputed facts, compelling evidence in mitigation, and applicable precedent support Mr. Bell should receive no more than a stayed suspension for his misconduct.**

In seeking precedent to determine the appropriate sanction, it may be instructive to note that Mr. Bell and undersigned counsel have not found any cases with facts similar to the activities in which Mr. Bell and Jane Doe engaged, a very limited instance of consensual, non-coital sexual activity primarily initiated by the client. This appears to support that such activities do not often result in (published) formal discipline. Before the Hearing Panel, Mr. Bell argued for a reprimand. (R. 554)

Despite the potential for such argument, Mr. Bell has admitted his conduct violated Rules 4-1.7(a)(2) and 4-1.8(j), and is prepared to accept the discipline recommended by the Hearing Panel, a stayed suspension.

***Applicable precedent support no more than a stayed suspension.*** Mr. Bell believes there is solid authority supporting imposition of a sanction no greater than a stayed suspension, particularly in light of Mr. Bell's substantial evidence in mitigation. Particular authorities that support imposition of such a sanction include the following four cases:

First, *People v. Zeilinger*, 814 P.2d 808 (Colo. 1991), where Zeilinger received a public censure (Missouri's reprimand). Like Mr. Bell, Zeilinger admitted to engaging in sexual relations with a woman whom he was representing in a dissolution of marriage proceeding involving the custody of minor children and property settlement. Applying the American Bar Association ("ABA") *Standards for Imposing Lawyer Sanctions* Standard 4.33, which this Court also employs, the Colorado Supreme Court determined a public



censure was appropriate because the lawyer has been “negligent in determining whether the representation of a client may be materially affected by the lawyer’s own interests...and causes injury or potential injury to the client.” The Colorado Supreme Court determined a reprimand was appropriate, despite the potential vulnerability of the client, including because (like Mr. Bell) Zeilinger had no prior discipline.

Second, *In re Walker*, 24 P.3d 602 (Ariz. 2001). Walker was similarly censured after Walker touched a client’s breast and attempted to enter into a sexual relationship with the client whom Walker was representing in claims arising from an automobile accident. Of particular significance here, Walker received only a censure despite the fact the client was not a willing participant and had responded to the unconsented touching and or proposition by engaging new counsel to sue Walker and helped the police arrest Walker for public indecency and solicitation of prostitution. The Arizona Supreme Court still held censure was appropriate, including because – like Mr. Bell – the court found there was no reasonable probability that Walker would reoffend.

Third, *In re Yarborough*, 524 S.E.2d 100 (S.C. 1999), where Yarborough received a public reprimand after he made unwanted sexual advances and inappropriate sexual comments toward his client, including hugging and kissing her. When the client resisted Yarborough’s advances, Yarborough responded rudely, including asking the client if she was a lesbian or had been molested as a child. Also, Yarborough later described the physical effects the client had on him and asked the client to have his baby. The South Carolina Supreme Court found a pattern of sexual harassment and improper sexual conduct toward a client, but imposed only a public reprimand – despite Yarborough having prior

discipline – because it concluded there was no evidence of any failure to provide adequate representation for the client, as Yarborough had continued to be a zealous advocate for her.

Fourth and finally, *In re Bergman*, SC94683 (Missouri, May 26, 2015), where Bergman had served as outside general counsel and corporate secretary for Kansas City Terminal Railway Company (“KCT”), while maintaining a ten-year sexual relationship with a KCT engineer and later KCT president, Charles Mader. Without disclosing her sexual relationship to persons then on the KCT board, Bergman represented KCT when it negotiated an employment contract with Mader and submitted invoices from her law firm totaling more than \$1 million for Mader’s sole review and approval. The Missouri Supreme Court imposed a stayed suspension and two years’ probation for violating rules 4-1.7, 4-1.8(j), 4-1.13(d), and 4-8.4(c).

Mr. Bell’s relationship with Jane Doe was much shorter than Bergman’s relationship with Mader, and did not involve conduct as egregious as negotiating Mader’s employment agreement and submitting bills totaling \$1 million for Mader’s review and approval, without disclosing the sexual relationship. Accordingly, any penalty Mr. Bell receives should no greater than the stayed suspension imposed in Bergman.

***Mr. Bell’s evidence supports no more than a stayed suspension.*** Mr. Bell’s evidence in mitigation further supports imposition of a lesser sanction, such as a stayed suspension (or even reprimand). *ABA Standard 9.32* lists the following mitigating factors that support imposition of a lighter sanction than facts and circumstances might otherwise indicate:

- (a) absence of a prior disciplinary record;

- (b) absence of a dishonest or selfish motive;
- (c) personal or emotional problems;
- (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;
- (g) character or reputation;
- (h) physical disability;
- (i) mental disability or chemical dependency including alcoholism or drug abuse [];
- (j) delay in disciplinary proceedings;
- (k) imposition of other penalties or sanctions;
- (l) remorse; and
- (m) remoteness of prior offenses.

*See also In re Madison*, 282 S.W.3d at 860 (applying the mitigating standards listed in ABA *Standard* 9.32). Mr. Bell has offered compelling evidence on virtually all these mitigating factors. Mr. Bell has practiced law for thirty-seven years with no prior discipline. He has been quite cooperative with the investigation, even volunteering to appear for an examination under oath, and has admitted his misconduct throughout these proceedings. Mr. Bell has also offered compelling evidence of his character and reputation, including an extensive record of civil, charitable, and *pro bono* service, including his

service on the Executive Committee for Catholic Charities and also the State Board for the United Cerebral Palsy Association; work with DAKOTA (Dads and Kids Out Together Association); teaching school children about law through Rockwood School District's Partners in Education program; serving as the chairman for his family's charitable foundation, the Proffitt Foundation; serving on the finance committee of De Smet High School and as the chairman of the Religious High School Foundation; and providing *pro bono* legal services including with St. Louis HELP (Health Equipment Lending Program), and Joplin Tornado Disaster Center. (R. 212-17, 219, 220, 224)

Finally, Mr. Bell has shown remorse for his actions, and provided credible evidence that he will not repeat his misconduct.

***No evidence of some premeditated plan for misconduct.*** Finally, Informant appears to suggest a more serious sanction should be imposed on a theory that Mr. Bell had planned and carried out a premeditated plan to "love and leave" Jane Doe. This may ease Informant's decision to move from the discipline Informant had initially supported – a reprimand at most – to the more severe discipline Informant sought at the Hearing, but this tale is simply not supported by the facts in evidence.

Mr. Bell has no prior history of intimate activity with female clients, or of any other type of unethical conduct. Jane Doe alone made the decision to ask about stopping by Mr. Bell's house after her night out celebrating at the Pepper Lounge and to then pursue sexual activity with Mr. Bell. Mr. Bell made no attempt to lure her in. Further, it was Mr. Bell's sole decision not Jane Doe's not to consummate their relationship, despite – even she admits – Jane Doe multiple eager requests for intercourse.

There is, therefore, no evidence to conflate this to more than what actually occurred: a singular mistake of a well-experienced lawyer with a long, excellent reputation to engage in an intimate relationship with a very willing and eager client, and then not to promptly withdraw from the representation after the intimate activities occurred. These facts deserve no more than the stayed suspension the Hearing Panel had recommended, and which Mr. Bell was prepared to accept.

**Conclusion.** Proper consideration of all evidence in this case, as well as the applicable precedent (and lack of precedent), support that Mr. Bell should receive a sanction no greater than a stayed suspension. The Court should therefore follow the Hearing Panel's guidance as to the appropriate sanction.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing document was served via email, this 12<sup>th</sup> day of June, 2019, to the following:

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**CERTIFICATE OF COMPLIANCE**

The undersigned certifies that this brief includes the information required by Missouri Supreme Court Rule 55.03. It was drafted using Microsoft Word. The font is Times New Roman, proportional 13-point font, which includes serifs. The brief complies with Missouri Supreme Court Rule 84.06(b) in that it contains 5,983 words.

*/s/ Michael P. Downey*\_\_\_\_\_