

IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:

JOHN W. STAPLETON

Respondent.

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Supreme Court #SC97922

INFORMANT'S REPLY BRIEF

ALAN D. PRATZEL #29141
CHIEF DISCIPLINARY COUNSEL

Nancy L. Ripperger

NANCY L. RIPPERGER #40627
STAFF COUNSEL
3327 AMERICAN AVENUE
JEFFERSON CITY, MO 65109
(573) 635-7400
(573) 635-2240 (FAX)
Nancy.Ripperger@courts.mo.gov

ATTORNEYS FOR INFORMANT

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POINTS RELIED ON

III.

**THE SUPREME COURT SHOULD DISBAR RESPONDENT
BECAUSE ABA STANDARDS FOR IMPOSING LAWYER
SANCTIONS, CASE LAW, AND AGGRAVATING FACTORS
SUGGEST THAT DISBARMENT IS THE APPROPRIATE
DISCIPLINE.**

Rule 84.16(d)

ARGUMENT

III.

THE SUPREME COURT SHOULD DISBAR RESPONDENT BECAUSE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS, CASE LAW, AND AGGRAVATING FACTORS SUGGEST THAT DISBARMENT IS THE APPROPRIATE DISCIPLINE.

Respondent argues that this Court should impose a stayed suspension with probation against Respondent's license instead of disbaring Respondent as Informant recommends. In support of his argument, Respondent points to this Court's Orders in: (1) *In re Norsigian*, SC97130; (2) *In re (James) Boggs*, SC96897; (3) *In re (William) Boggs*, SC96896; (4) *In re Williams*, SC96752; and (5) *In re Risler*, SC96743. These cases all involved trust account violations and this Court imposed either a stayed suspension with probation or straight probation against the attorneys' licenses.

Respondent is wrong in his assertion that these cases support a lesser discipline for Respondent than disbarment. First, these cases were decided by per curiam order of this Court. Pursuant to Rule 84.16(d), they cannot be cited in unrelated cases and they have no precedential value. Second, the cases easily are distinguishable from Respondent's case. In the *Boggs* cases, the attorneys failed to keep complete trust account records and commingled client funds. Unlike Respondent's case, these cases did not involve the attorneys failing to promptly pay clients or third parties or misappropriation by the attorneys.

The *Williams* case involved a situation whereby the attorney's paralegal executed settlement agreements and settlement checks in two small personal injury matters without the clients' or attorney's knowledge. Because the attorney was unaware of the paralegal's actions, he failed to provide the funds to the clients in a prompt manner. In the instant case, Respondent handled all trust account bookkeeping and there was no alleged wrongdoing upon the part of his legal assistants which caused clients or lienholders to go without their funds.

The *Norsigian* and *Risler* cases are the most factually like Respondent's case. They both, however, have significant differences from Respondent's case. In the *Risler* case, the attorney failed to pay one lienholder \$731.43 and used the funds for his own purposes. The attorney also failed to keep adequate trust account records and commingled funds.

In the *Norsigian* case, the attorney failed to keep complete trust account records, prematurely disbursed settlement funds to clients and third-party lienholders, and failed to pay third-party lienholders promptly in four settlements. Three of the four lienholders were owed less than \$200 each and the attorney paid the lienholders before the disciplinary hearing occurred. The fourth lienholder was Medicare and its lien was \$8,419.09. The attorney attempted to pay the lien within six months of receiving the funds but overdrew his trust account due to his poor bookkeeping practices. The overdraft caused Informant to begin its audit.

In the instant case, Respondent failed to pay more clients and lienholders in a timely manner than in either the *Risler* or *Norsigian* cases.¹ The amount owed to the clients and lienholders was much larger than in either *Risler* or *Norsigian*.² Moreover, unlike the attorneys in the *Risler* and *Norsigian* cases, Respondent had clients and lienholders he still had not paid at the time of the hearing.³ Finally, in neither *Risler* nor *Norsigian* did the attorneys use deceptive practices during the disciplinary hearing process.⁴ These differences strongly support Informant's argument that disbarment is the appropriate discipline for Respondent.

¹ Respondent failed to pay seven clients and 24 lienholders in a timely manner. See footnotes 16 and 19 of Informant's Brief.

² The total amount that Respondent failed to pay in a timely manner to clients and lienholders totaled \$29,085.83 and \$51,477.40, respectfully. See footnotes 16 and 19 of Informant's Brief.

³ At the time of the hearing, Respondent had not paid three clients \$4,381.51 owed to them and 17 lienholders \$24,490.65 owed to them. See footnotes 17 and 20 of Informant's Brief.

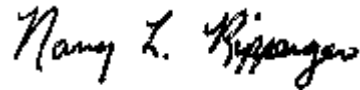
⁴ Respondent used deceptive practices when he provided Informant with false proof of payment to lienholders in the Tionne Gillians and McKayla Robinson settlements. **App. 19 (Tr. 67-68).**

CONCLUSION

For the reasons set forth in Informant's Brief and Reply Brief, this Court should find that Respondent violated Rules 4-1.15(a), (a)(5), (a)(7), (d), (f) and 4-8.4(c), disbar Respondent, and impose the \$2,000 fee and costs provided for by Rule 5.19(h) against Respondent.

Respectfully submitted,

ALAN D. PRATZEL #29141
Chief Disciplinary Counsel



By: _____
Nancy L. Ripperger #40627
Staff Counsel
3327 American Avenue
Jefferson City, MO 65109
(573) 635-7400
(573) 635-2240 fax
Nancy.Ripperger@courts.mo.gov

ATTORNEYS FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of September 2019, a copy of Informant's Reply Brief is being served upon Respondent's counsel through the Missouri Supreme Court electronic filing system pursuant to Rule 103.08.

Nancy L. Ripperger

Nancy L. Ripperger

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) and;
3. Contains 894 words, according to Microsoft Word, which is the word processing system used to prepare this brief.

Nancy L. Ripperger

Nancy L. Ripperger