IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
HENRY V. GRIFFIN,	)	**SUPREME COURT #SC98235**
P.O. BOX 1437	)	
HOLLISTER, MO 65673-1437	)	
	)	
Respondent	)	

RESPONDENT'S BRIEF

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ATTORNEY FOR RESPONDENT

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STATEMENT OF JURISDICTION

Jurisdiction over attorney discipline matters is established by Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMO 2000.

STATEMENT OF FACTS

A. PROCEDURAL HISTORY

May 29, 2019	Respondent's Answer to Information
August 27, 2019	DHP Hearing
September 27, 2019	DHP Decision and Recommendation
October 4, 2019	Rejection of DHP Decision by Informant
October 24, 2019	Respondent's Letter to Legal Ethics Counsel copied to the Chair and Members of the Advisory Committee of the Supreme Court of Missouri, accepting the written decision and recommendation of the DPH's decision

B. CONDUCT UNDERLYING THE INFORMATION – Legal Arguments and Responses

The letter specifically stating that Griffin Law Firm was in receipt of an earnest money deposit in the amount of $200,000.00 was, Respondent believed, accurate at the time Respondent responded to Mr. Halpin in the letter of January 24, 2018. **App 205-206.** Subsequently, Respondent has learned that a check does not become an earnest money deposit until it is negotiated and deposited in a Trust or Escrow Account. **App 98.**

When Respondent responded to Mr. Halpin via letter dated February 12, 2018, Respondent had not yet received the copy of the Purchase and Sale Agreement that

contained the instructions for escrow that Mr. Grewal had not forwarded to Respondent as had been promised, and Respondent mistakenly relied on oral representations from the individual Respondent believed to be either his Client or a principal of his Client.

Around the time Respondent sent the letter of February 12, 2018 to Mr. Halpin, Respondent was instructed by the individual Respondent believed to be his Client, or representing his Client, to not have any further communication with Mr. Halpin, to refer him to the attorney for the Vintro Group of Companies, Mr. Scheibli. **App 76-81.** Following the instructions of the party Respondent believed to be his Client, he ceased having further communication with Mr. Halpin and referred him to Mr. Scheibli.

As set forth in the DPH's Statement of facts (p. 10), Ultimately, Erie Shore, LLC and Vintro Group of Companies did resolve their issues and Buyer and Seller completed the transaction and the sale closed later in September 2018. **App 396,397, 404, 405, 406 Respondent's Exhibits 1 and 2**

Respondent fully appreciates that errors he made in agreeing to serve as an escrow agent are not exonerated by a complaining party withdrawing his complaint, however, Mr. Halpin did forward to the Office of the Chief Disciplinary Counsel by Overnight Mail dated November 7, 2018 a letter from Mr. Halpin verifying that the parties finally proceeded to settlement on the property known as the "Maui Sands" and that Mr. Halpin's "… client did not incur any damages as a result of Mr. Griffin's actions."; and Mr. Halpin requested the Office of the Disciplinary Counsel to "…please dismiss the action that I previously filed against Mr. Griffin." **App 397-399 Respondent's Exhibits 1 and 2.**

C. THE DISCIPLINARY HEARING PANEL'S DECISION

Except as set forth below, to attempt to clarify a few issues, and not in any way to

reject the acceptance of the Advisory Committee's Recommendations previously set forth in Respondent's communication of October 24, 2019, Respondent respectfully submits that in number 5., in January 2018, Respondent maintained a law office in Branson, Missouri as opposed to Hollister, Missouri.

A. Respondent is somewhat confused by the Panel's conclusion that Respondent failed to maintain third party funds in a separate account, when what Respondent received was a check that was never deposited and was returned to the Buyer as demanded by the Buyer. If the check was not considered to be a deposit, then there were not actually any funds that were received or were co-mingled and not kept separately from the funds of Respondent.

B. Respondent did fail to deliver funds alleged to have been due to a third party (Seller), however, to the best of Respondent's knowledge, the funds were not due to said third party because of alleged defaults of the Seller as communicated by the Buyer to Respondent. Respondent did account for the funds by returning them to the party he believed was entitled to them, the Buyer.

D. DISCIPLINARY HEARING PANEL'S RECOMMENDATION

Respondent believes the unanimous recommendation of the Panel is fair, complies with Rule 5.225 (A) and (B), and as previously stated, accepts the Panel's recommendations. With respect to Rule 5.225 (C), one could reasonably argue that the Respondent has committed such acts, however, in the totality of the circumstances, Respondent would argue as he set forth in his letter of October 24, 2019 **APP 413, Respondents Exhibit 5,** to the Legal Ethics Counsel and the Panel. Suspension would significantly adversely affect Respondent's Municipal Clients. Respondent would be forced to breach contracts with his Clients, his Landlord, and some creditors. He would

be forced to close his office and terminate the services of his administrative assistant (a single Mother with a disabled child).

Respondent has modified his practice so that he will no longer serve as an escrow agent and will not accept funds prior to providing services. He has not utilized either his escrow account or his IOLTA Trust account since August 2019 and closed his escrow account effective December 20, 2019. **Respondents Exhibits 3 (4 PAGES) and 4 (5 PAGES).** Respondent has readily accepted the recommendations of the Panel that he should be on Probation for one year and submit to a review of his Trust Account practices, and additional education including additional ethics classes. Additionally, Respondent agrees with the requirement that he not violate Rules of Professional Conduct Rule 4, Rule 5 or Rule 15. Further, Respondent recognizes and regrets his errors in this Matter and apologizes to the Bar. With the changes in his practice, willing acceptance of additional ethics education, and his renewed commitment to scrupulously adhere to the ethical obligations of the Bar, his desire to ethically serve his Clients, and be a credit to the municipalities he represents, he will faithfully fulfill the obligations of his Practice and his Probation, should he be given that opportunity.

Of far less importance than his responsibilities to his Clients, the citizens of Missouri and the Bar, as a practical matter at the age of almost 76, suspension of Respondent for two years, as suggested by the Chief Disciplinary Counsel (discussed further infra) would financially decimate Respondent and Respondent's family, and unfairly punish Respondent's creditors, in addition to punishing Respondent. The likelihood of someone Respondent's age obtaining other gainful employment and being a contributing member of society is minimal. The likelihood of applying for reinstatement and if successful, trying to rebuild a limited practice is even less likely.

POINTS RELIED ON BY THE CHIEF LEGAL COUNSEL

Respondent is not guilty of professional misconduct in the Erie Shore, LLC and Vintro Group of Companies. LLC matter by reliance on the Rules as set forth in the Points Relied on by the Office of the Chief Disciplinary Counsel (OCDC) and the conclusion that suspension of Respondent's License is the appropriate sanction. Respondent acknowledges the RULES set forth in the OCDC's Points Relied On I are accurately cited. Respondent does not agree that suspension of Respondent's License is the appropriate sanction in this case, as will be addressed in the Legal Argument of the Chief Legal Counsel hereinbelow.

LEGAL ARGUMENT OF CHIEF LEGAL COUNSEL

Although the ABA Standards for imposing lawyer sanctions may **suggest** suspension, they do not **require** suspension (emphasis added). As suggested by the DHP in their recommendations, remedies such as Probation may be more appropriate.

Arguably, Respondent should have known that he was improperly dealing with "Client" property, however Respondent believed the Buyer was his Client and did not know that the Seller was also his Client, as he has previously served as an escrow agent less than five times in his forty plus years of practice. **App 97, App 298.**

Respondent did not knowingly deceive anyone he believed to be a Client, and assuming Seller was a Client, the Seller received no loss or injury – in fact, requested the complaint be dismissed. (supra, page 6 D., first paragraph).

Respondent did not "knowingly" engage in conduct that is a violation of a duty, and did not cause injury to either the Buyer or the Seller (Respondent knows now that both were his Clients). **App 397-399, Respondents Exhibits 1 and 2.** Respondent currently understands and deeply regrets that there was potentially injury to the Seller

Client, the Public and the Legal System.

CONCLUSION OF CHIEF LEGAL COUNSEL

The OCDC cites the ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS (1986 ed., as amended 1992). Those guidelines recommend baseline discipline…taking into account the lawyer's mental state "(level of intent)", and the extent of injury or potential injury. Once the baseline discipline is known, the ABA STANDARDS allow for consideration of aggravating and mitigating circumstances. STANDARDS 9.2 and 9.3. The Court also considers as advisory the recommendation of the Disciplinary Hearing Panel. In this matter, although Respondent's intent was to protect the interests of the party he believed to be his Client, his intent was erroneously focused on serving the only party he believed to be his Client, but not harming intentionally the other party whom he erroneously did not believe to be his Client. **App 298.**

Although the Respondent should have known the fiduciary responsibilities owed by an Escrow agent to both parties to a transaction, there was no actual knowledge, and Respondent did not have the requisite intent.

Additionally, Respondent spent considerable time with the DHP, was under oath, cooperative and answered all their questions to the best of his ability. The DHP had the opportunity to ask questions and observe and hear the responses and see the demeanor of Respondent, and to clarify responses of the Respondent, if DHP deemed clarification necessary. The DHP followed this with their **unanimous** (emphasis added) decision that Probation with conditions was the appropriate disciplinary action. Apparently, the OCDC

choose not to give much weight to the DHP's recommendations based on their personal interaction with Respondent, whereas the OCDC made its recommendations without the benefit of personal interaction with Respondent.

The OCDC cites STANDARD 4.62 that states that suspension is generally appropriate when a lawyer **knowingly (emphasis added)** deceives a Client and causes injury or potential injury to the Client. STANDARD 7.2 also states "knowingly". As stated supra, although arguably Respondent should have known his duties to both parties as an escrow agent, he did not have such knowledge and did not knowingly violate his duty to the party he believed to be his Client.

The OCDC cites STANDARD 9.2 Aggravation, STANDARD 9.22(a) citing prior disciplinary offences. Four of the five admonitions did not relate at all to the matters alleged in this action and the one for violating Rule 4-1.15 was due primarily because of a bank error that was promptly corrected when discovered. **App 114-115.** The brief suspension for unpaid taxes was promptly corrected when discovered by Respondent. None of those prior admonitions and suspensions correlate to the allegations in this matter.

The OCDC cites STANDARD 9.22(i) substantial experience in the practice of law. Admittedly, Respondent has practiced law for over forty years, however, until September 1994, Respondent was an in-house administrator dealing primarily with administrative matters and contracts with physicians and hospitals, never as an escrow agent. From 1994 to present Respondent as stated supra, has acted as an escrow agent less than five times. Respondent submits this very limited experience should not be considered as aggravating "substantial experience", and does not agree that the "aggravating circumstances" as alleged warrant the imposition of a two-year suspension

of Respondent.

CONCLUSION OF RESPONDENT

RESPONDENT acknowledges and accepts the recommendations of the DHP and believes them to be fair, appropriate, and with adequate safeguards for Respondent's Clients, the Bar and the Public.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 19th day of February 2020, the

Respondent's Brief was sent through the Missouri Supreme Court filing system to:

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INFORMANT

Joseph W. Allen

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 through the Missouri electronic filing system pursuant to Rule 103.08;
3. Complies with the limitations contained in Rule 84.06(b);
4. Contains 2,313 words according to Microsoft Word, which is the word processing system used to prepare this brief, exhibits excluded.

Joseph W. Allen #57669