

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

DANIEL GONZALEZ ZARATE

4408 N. Mulberry Street

Gladstone, MO 64116

Missouri Bar No. 51603

Respondent.

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Supreme Court No. SC98337

INFORMANT'S BRIEF

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STATEMENT OF JURISDICTION

This action is one in which the Chief Disciplinary Counsel is seeking to discipline an attorney licensed in the State of Missouri for violations of the Missouri Rules of Professional Conduct. Jurisdiction over attorney discipline matters is established by this Court's inherent authority to regulate the practice of law, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMo 2000.

STATEMENT OF FACTS

I. OVERVIEW

In this attorney disciplinary matter, an Information was initiated against Daniel Gonzalez Zarate (“Respondent”) in March 2019. **App. 5.** The information alleged multiple violations of the Rules of Professional Conduct including Rule 4-5.5(a) (unauthorized practice of law; multijurisdictional practice of law); 4-8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation); and 4-8.4(d) (conduct prejudicial to the administration of justice). **App. 5–8.**

The matter was heard by a Disciplinary Hearing Panel (“DHP”) on October 17, 2019. **App. 40-198.** Pursuant to a Joint Stipulation entered into by the parties on that date, Respondent admitted a violation of Rule 4-5.5(a), by engaging in the practice of law in the state of Kansas without having a Kansas license. **App. 208–211.** Respondent also admitted to violations of Rule 4-8.4(c) (conduct involving dishonesty) and 4-8.4(d) (conduct prejudicial to the administration of justice), by submitting false entries of appearance and using the bar number of Adam T. Suroff, a Kansas licensed attorney, without Suroff’s knowledge. **App. 211.** Respondent admitted to additional violations of Rules 4-8.4(c) and 4-8.4(d) by appearing in Lenexa Kansas Municipal Court on behalf of Kansas licensed attorney, Nancy Olivares, without obtaining pro hac vice admission. **App. 211.**

A written decision of the DHP was issued in November 2019. **App. 297–310.** Based on the admissions of the Respondent as contained in the Joint Stipulation and his admissions under oath at the hearing, the DHP found that Respondent violated Rule 4-

5.5(a) by engaging in the unauthorized practice of law in Kansas. **App. 301.** In addition, the DHP also found that Respondent violated Rules 4-8.4(c) and 4-8.4(d) by submitting false entries of appearance using the Kansas bar number of a Kansas licensed attorney, Adam T. Suroff, without his knowledge or permission. **App. 301.** Furthermore, the DHP found that Respondent violated Rules 4-8.4(c) and 4-8.4(d) by appearing in Lenexa, Kansas Municipal Court on behalf of a Kansas licensed attorney, Nancy Olivares, without her being present and without permission to appear pro hac vice. **App. 301.** However, because there was no evidence presented that Respondent submitted false entries of appearance using the Kansas bar number of a Kansas licensed attorney, Nancy Olivares, without her knowledge or permission, the panel found that Respondent did not violate Rules 4-8.4(c) or 4-8.4(d) in that regard. **App. 302.**

As a result of the foregoing, the panel found that Respondent was guilty of professional misconduct under Rule 4-8.4(a). **App. 302.** In arriving at their final decision and recommendation, the DHP noted that Respondent had taken full responsibility for his actions by admitting twenty-seven of the twenty-eight allegations made against him in his answer to the Information. **App. 302.** Prior to the hearing Respondent entered into a Joint Stipulation of Facts and Conclusions of law wherein he admitted his conduct and agreed that he violated the Rules of Profession Conduct. **App. 302.** After considering all the evidence presented and factors involved, the DHP recommended that Respondent be suspended indefinitely from the practice of law under Supreme Court Rule 5.16(d), with no leave to apply for reinstatement for a period of one (1) year. **App. 310.** Respondent accepted the panel's recommendation but the Informant rejected it. **App. 311, 312.**

II. BACKGROUND

Respondent has been licensed as an attorney in Missouri since 1999 and his bar number is 51603. **App. 5, 199, 208.** Respondent has never been licensed to practice law in Kansas or in any state other than Missouri. **App. 70, 208.** Respondent is a solo practitioner in the city of Kansas City, Missouri. His general practice includes minor criminal defense cases, traffic violations, and municipal court work. **App. 54.** The majority of Respondent's clients only speak Spanish. **App. 51, 55.** Since 2001, approximately five to ten percent of Respondent's cases have been in Kansas courts. **App. 54, 124.** During that time, Respondent failed to disclose to clients that he was not licensed to practice in Kansas. **App. 54-55.** Although he did have the opportunity to seek admission into the Kansas Bar, Respondent explained that he failed to do so because of "[p]ure laziness and informalities of the court." **App. 56.**

Since 2001, Respondent appeared as counsel of record in Kansas municipal courts in Fairway, Gardner, Kansas City, Olathe, Leawood, Lenexa, Merriam, Mission, Mission Hills, Mission Woods, Overland Park, Prairie Village, Lake Quivira, Roeland Park, Shawnee and Westwood Hills. He appeared in at least 1,143 cases in Kansas courts. **App. 209.** Initially, Respondent would ask for permission to appear in the Kansas municipal courts by pro hac vice application and with a licensed Kansas attorney. **App. 209.** In 2002, Respondent stopped using local counsel and began appearing in Kansas municipal courts without a license. **App. 209.** Respondent would enter his appearance when required, using his own name, but noting his Missouri Bar number. **App. 209.** In addition, he would often use Bar Number 19595, the Kansas Bar number of a law school classmate,

Adam T. Suroff. **App. 209, 263, 271, 275.** Mr. Suroff had no knowledge that his Kansas Bar number was being used. **App. 209.** Respondent admitted using Mr. Suroff's Kansas Bar number at least fifty-nine times. **App. 114-115.** Between 2014 and 2018, Respondent routinely appeared in Lenexa Municipal Court on several cases in which his sister-in-law Nancy Olivares, a properly licensed Kansas attorney, was the attorney of record. As a routine, Respondent would appear alone on those cases without requesting pro hac vice application. **App. 201.** Respondent admitted during the DHP hearing that he appeared in at least 1,143 cases without local counsel or having permission following a pro hac vice application. **App. 120.**

While appearing in Kansas courts, Respondent would handle traffic matters, including speeding tickets, driving while suspended and driving under the influence ("DUI") cases. **App. 58.** Although he did some pro bono work, he was paid in at least ninety-five to ninety-eight percent (95-98%) of the cases. **App. 57-58.** His fees ranged from one-hundred dollars (\$100.00) for a speeding ticket to one thousand to fifteen-hundred dollars (\$1,000 - \$1,500.00) for DUI cases. **App. 58-59.** Respondent's Kansas practice allowed him to earn substantial fees and income. **App. 116.** Respondent did not handle felony cases in Kansas due to Kansas District Courts being more formal than municipal courts and because he "knew [he] shouldn't have been in municipal court." **App. 59.** Most of Respondent's clients had immigration or potential immigration issues. **App. 116-117.** Although the matters were filed in a municipal court, they were serious cases because they had potential ramifications for all of his clients who were either in the country undocumented or on a temporary visa. **App. 117.**

The Office of the Chief Disciplinary Counsel (“OCDC”) commenced its investigation following the receipt of complaint letters from Kansas municipal court Judge Karen L. Torline and two Shawnee city prosecutors, dated February 15, 2018 and from Judge Erika N. DeMarco and two Lenexa city prosecutors, dated February 28, 2018. **App. 200-201.** Those letters indicated numerous examples of Respondent’s signatures on entries of appearance, diversion agreements, and other legal documents that were part of the court process in which Respondent held himself out as being licensed in Kansas. **App. 62.**

Terry L. Morgan (“SI Morgan”), a special investigator for the office of the Kansas Disciplinary Administrator, commenced an investigation of the Respondent in February 2018. **App. 276.** SI Morgan mailed letters to several Kansas courts about Respondent and compiled the responses totaling over 3,000-4,000 documents. **App. 277-288.** He then prepared a Final Investigative Report dated July 5, 2018 which was offered and admitted into evidence at the DHP hearing. **App. 47.** The final report summarized in detail Respondent’s appearances in various Kansas municipal courts. **App. 276-288.**

While appearing in Kansas courts, Respondent met with his clients prior to their court appearance; he explained Kansas law in regards to their particular matter. **App. 62, 63.** In order to be granted diversion in Kansas, a defendant must either actually plead guilty to a particular charge or at least admit to the charges, as well as waive certain rights. **App. 60–61.** Despite being unlicensed in Kansas, Respondent advised clients in those cases and signed his name to the agreements with Adam Suroff’s bar number. **App. 61, 65, 110.** Over the years Respondent also represented several clients in trials in Kansas municipal courts in connection with domestic violence and DUI cases. **App. 69.** He conducted these

trials knowing he did not have a license to practice law in Kansas. **App. 70.** Respondent admitted that all of the cases he handled in Kansas are potentially void because he was not licensed in the state. **App. 80-81.**

Respondent testified that the routine practice in many Kansas municipal courts often does not require an attorney to enter a formal appearance in writing or on the record, or even conduct proceedings in open court in front of a judge. **App. 302.** A large portion of municipal court practice involves discussions with prosecutors and court clerks regarding plea agreements, continuances, charge reductions, diversion agreements, etc. **App. 302-303.** Respondent testified that the informality of the process made it easy for him to get by without having a Kansas license, using local counsel, and/or applying for permission to appear pro hac vice. **App. 55.** Respondent also testified that, when admission to the Kansas Bar without examination became available to Missouri lawyers, he completed the written application for admission to Kansas, but was unable to complete the process because of the onset of a medical illness that had him sidelined for approximately 7-12 months. **App. 55-56.** Following his recovery, the attempt to obtain admission in Kansas “just kind of got pushed—pushed to the side.” **App. 56.** He failed to complete the paperwork and pay the administrative fee to obtain a Kansas license through reciprocity due to “[p]ure laziness and informalities of the court.” **App. 56.** Respondent ultimately stopped appearing in Kansas courts because, on a particular occasion in January or February of 2018, a court clerk in Prairie Village, Kansas specifically asked him for his Kansas Bar number, and he was forced to admit that he did not have one. **App. 188, 304.**

After learning of the incident with her court clerk, Prairie Village and Shawnee Municipal Court Judge Karen L. Torline called Respondent to discuss the issue. **App. 119, 210.** At first, Respondent told Judge Torline "I appear pro hac vice with Nancy Oliveras." **App. 210.** When Judge Torline told Respondent that he had never filed a motion for admission pro hac vice, his response was "You are correct. I apologize. We got sloppy." **App. 210.**

Respondent was aware that traveling over the state line and appearing in Kansas municipal courts without a Kansas license was a violation of the ethical rules. **App. 66.** Respondent admitted what he did was wrong, and he knew at the time what he was doing was wrong. **App. 68.** Respondent further admitted that he would have continued to appear in Kansas courts if he had not been caught. **App. 68.**

III. MITIGATING AND AGGRAVATING FACTORS

Respondent has been licensed in the State of Missouri since 1999. **App. 52, 208.** Respondent has no prior disciplinary record and fully cooperated with the OCDC during these proceedings. **App. 208.** Respondent has taken responsibility for his actions by admitting twenty-seven of the twenty-eight allegations made against him in the Information and by signing a Joint Stipulation which included facts and rule violations. **App. 302.** His testimony at the DHP hearing was candid and not evasive. **App. 40- 198.** He showed remorse throughout the proceedings. **App. 40- 198.**

Respondent was diagnosed with myeloma cancer in approximately 2015. **App. 105.** He underwent extensive treatment following his diagnosis including a bone marrow

transplant. **App. 105.** He was able to return to the practice of law following this treatment but remains on maintenance chemo therapy. **App. 105.**

During the DHP proceedings, Judge Steven Fuller of the Municipal Court of North Kansas City and attorneys Thomas A. Fields and Ellen Greenberg Jacobs appeared and testified as to Respondent's character. **App. 126- 166.** Other attorneys and judges sent letters which were offered into evidence at the DHP hearing. **App. 289- 295.**

The letters offered no first-hand knowledge of the facts charged and found by the DHP. **App. 289- 295.** In addition, the character witnesses appearing before the DHP were not fully informed of the facts of the case; they were not aware Respondent was using another attorney's bar number. **App. 126–166.** For example, Judge Steven Fuller stated, "I don't know the facts really relating to this case." **App. 136.** Judge Fuller stated that he was unaware that that Respondent was using another attorney's bar number and agreed that Respondent's behavior was dishonest. **App 137, 151-152.** Each witness testified that they have known, worked with, and/or observed Respondent for a number of years, but were unaware that he was not licensed in Kansas. **App. 305.** The witnesses testified that Respondent provides valuable access to the legal system to the Hispanic community in the Kansas City metropolitan area, particularly to those who do not speak English. **App. 305.**

In aggravation, Respondent's conduct was dishonest and continued over seven years. Many of his Kansas clients were vulnerable immigrants. He profited from his conduct.

POINTS RELIED ON

I.

RESPONDENT IS SUBJECT TO DISCIPLINE BECAUSE THE PREPONDERANCE OF EVIDENCE, INCLUDING ADMISSIONS, ESTABLISHES THAT RESPONDENT IS GUILTY OF NUMEROUS INSTANCES OF PROFESSIONAL MISCONDUCT, AS FOLLOWS:

- (A) RESPONDENT VIOLATED RULE 4-5.5(a), 4-8.4(c) AND 4-8.4(d) IN THAT HE ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW IN KANSAS BY APPEARING IN AT LEAST 1,143 CASES IN KANSAS MUNICIPAL COURTS WITHOUT FIRST OBTAINING PRO HAC VICE ADMISSION.**
- (B) RESPONDENT VIOLATED RULES 4-8.4(c) AND 4-8.4(d) BY ENGAGING IN MULTIPLE ACTS OF DECEIT AND DISHONESTY BY SUBMITTING FALSE ENTRIES OF APPEARANCE AND SIGNING DOCUMENTS USING HIS BAR NUMBER OR THE BAR NUMBER OF A KANSAS LICENSED ATTORNEY WITHOUT HIS KNOWLEDGE.**

In re Crews, 159 S.W.3d 355 (Mo. banc 2005)

In re Shelhorse, 147 S.W.3d 79, 80 (Mo. banc 2004)

Supreme Court Rule 4-5.5(a)

Supreme Court Rule 4-8.4(c)

Supreme Court Rule 4-8.4(d)

POINTS RELIED ON

II.

IN ORDER TO PROTECT THE PUBLIC AND MAINTAIN THE INTEGRITY OF THE LEGAL PROFESSION, THE COURT SHOULD REMOVE RESPONDENT FROM THE PRACTICE OF LAW BY DISBARMENT.

In re Gardner, SC97207 (Mo. banc 2019)

ABA Standards for Imposing Lawyer Sanctions, (1991 ed.)

ARGUMENT

I.

RESPONDENT IS SUBJECT TO DISCIPLINE BECAUSE THE PREPONDERANCE OF EVIDENCE, INCLUDING ADMISSIONS, ESTABLISHES THAT RESPONDENT IS GUILTY OF NUMEROUS INSTANCES OF PROFESSIONAL MISCONDUCT, AS FOLLOWS:

- (A) RESPONDENT VIOLATED RULE 4-5.5(a), 4-8.4(c) AND 4-8.4(d) IN THAT HE ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW IN KANSAS BY APPEARING IN AT LEAST 1,143 CASES IN KANSAS MUNICIPAL COURTS WITHOUT FIRST OBTAINING PRO HAC VICE ADMISSION.**

- (B) RESPONDENT VIOLATED RULES 4-8.4(c) AND 4-8.4(d) BY ENGAGING IN MULTIPLE ACTS OF DECEIT AND DISHONESTY BY SUBMITTING FALSE ENTRIES OF APPEARANCE AND SIGNING DOCUMENTS USING HIS BAR NUMBER OR THE BAR NUMBER OF A KANSAS LICENSED ATTORNEY WITHOUT HIS KNOWLEDGE.**

A disciplinary hearing panel's recommendation is advisory in nature. *In re Crews*, 159 S.W.3d 355, 358 (Mo. banc 2005). This Court conducts a de novo review of the evidence and reaches its own conclusions of law. *Id.* Discipline will not be imposed unless professional misconduct is proven by a preponderance of the evidence. *Id.* Violation of the Rules of Professional Conduct by an attorney is grounds for discipline. *In re Shelhorse*, 147 S.W.3d 79, 80 (Mo. banc 2004). The court begins its analysis by considering whether the facts show counsel violated any disciplinary rules. *Id.* It then turns to the question of the appropriate discipline. *Id.*

VIOLATION OF RULE 4-5.5(a)

Respondent has never been licensed to practice law in the State of Kansas but appeared as counsel of record in various Kansas courts in at least 1,143 cases over a seventeen years, from 2001 to 2018. Although Respondent lacked authority to practice in Kansas, he routinely did so by: appearing in various courts using a Kansas lawyer's Kansas Bar number without that lawyer's knowledge; completing false entries of appearance; negotiating dispositions in municipal court charges; negotiating and signing diversion agreement; advising clients; accepting fees (significantly in excess of \$100,000.00); and participating in trials. When confronted by a municipal court judge in 2018, Respondent lied and claimed to have been granted permission to appear in her court pro hac vice.

Respondent admitted in the Joint Stipulation offered and admitted in the DHP hearing that his conduct violated Rule 4-5.5(a). During DHP testimony, he further admitted to his unethical conduct which he justified do to "[p]ure laziness and the informalities of the court." He testified that Kansas municipal courts are informal and often

do not require an attorney to enter a formal appearance in writing or on the record or even conduct proceedings in open court before a judge. The process made it easy for him to get by without having a Kansas license, using a local counsel, and/or applying for permission to appear pro hac vice in each case. He admitted to making at least 1,143 appearances of over a span of seventeen (17) years. The preponderance of the evidence - and his stipulation - prove Respondent has violated Rule 4-5.5(a).

VIOLATION OF RULE 4-8.4 (c)(d)

Respondent admitted to completing and filing false entries of appearances in Kansas municipal courts where he would sign his name and show his Missouri bar number. He admitted to using the Kansas bar number of a law school classmate at least fifty-nine times on diversion agreements. He admitted to conducting trials in Kansas municipal courts. He admitted to appearing in Lenexa Kansas municipal court on behalf of a Kansas licensed attorney without obtaining pro hac vice admission. Respondent admitted that his conduct involved deceit, misrepresentation and dishonesty and is prejudicial to the administration of justice. Respondent acknowledged, by signing the Joint Stipulation and by testifying, that the allegations of his rule violations were true, that he understood the nature and consequences of the admissions and that he joined it freely and voluntarily. The preponderance of the evidence proves Respondent has violated Rules 4-8.4(c) and 4-8.4(d).

ARGUMENT

II.

**IN ORDER TO PROTECT THE PUBLIC AND
MAINTAIN THE INTEGRITY OF THE LEGAL
PROFESSION, THE COURT SHOULD REMOVE
RESPONDENT FROM THE PRACTICE OF LAW BY
DISBARMENT.**

In determining the appropriate discipline, the Court is guided by two key principals: 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, 807-808 (Mo. banc 2003).

In making a sanction recommendation to the Court, it is necessary to identify the ethical duty violated, the lawyer's mental state, the extent of any injury or potential injury caused by the misconduct, and consideration of aggravating and mitigating factors.

When considering the level of discipline to impose for violation of the Rules of Professional Conduct, this Court has considered the propriety of the sanctions under the American Bar Association model rules for attorney discipline ("ABA Standards"). *In re Crews*, 159 S.W.3d 355, 360 (Mo. banc 2005). The ABA standards divide rule violations into four categories: (1) violations of duties owed to the clients, (2) violations of duties owed to the public, (3) violations of duties owed to the legal system, and (4) violations of

duties owed to the profession. *See* ABA Standards for Imposing Lawyer Sanctions, (1991 ed.). This Court has also considered the gravity of the conduct, as well as aggravating and mitigating circumstances, when determining appropriate attorney sanctions. *In re Wiles*, 107 S.W.3d 228, 229 (Mo. banc 2003). Factors considered in aggravation include prior disciplinary offenses, dishonest or selfish motives, pattern of misconduct, multiple offenses, and refusal to acknowledge the wrongfulness of the conduct, and experience in the law. *In re Cupples*, 979 S.W.2d 932, 937 (Mo. banc 1998).

ETHICAL DUTY VIOLATED

This Court has considered similar issues in two recent reciprocal disciplinary cases. First, the court considered a remarkably similar case involving a Missouri lawyer practicing in Illinois. That case, *In re Sanderson*, SC94975 (Mo. banc 2015), involved the unauthorized practice of law by a Missouri attorney who was not licensed in Illinois. Over a seven year period, between April of 2007 and March of 2014, Sanderson entered his appearance in more than 3,000 cases in Illinois state courts. *Id.* Much like Respondent in the instant case, Sanderson falsely represented that he was admitted to practice in Illinois and used the attorney registration number of a licensed Illinois attorney without her permission or knowledge. *Id.* He drafted, signed and filed pleadings, and made courts appearances. *Id.* In response to disciplinary authorities Respondent falsely stated he had been admitted pro hac vice in several cases. *Id.* The Illinois Supreme Court disbarred Sanderson under disciplinary authority over lawyers who practice there but are not admitted in Illinois. *Id.* Following the filing of an information and motion for reciprocal

discipline pursuant to Missouri Supreme Court Rule 5.20, this court also disbarred Sanderson in May of 2015. *Id.*

In November 2017, a similar disciplinary case reached this court by information and motion for reciprocal discipline. *In re Hanlin*, SC96607 (2017). Respondent Hanlin was granted a Missouri law license in 1963. *Id.* He was never licensed to practice law in Illinois. *Id.* Nonetheless, he appeared in Illinois courts sixteen times over seven years between June of 2007 and July of 2014. He handled traffic and misdemeanor cases. *Id.* Like Respondent and Sanderson, Hanlin used the name and bar number of an Illinois licensed attorney who had no knowledge that his number was being used. *Id.* As a defense or claim of mitigation, Hamlin argued that his Illinois clients, who he described as Hispanic and indigent, would not otherwise have been represented. *Id.* He was suspended for one year by the Illinois Supreme Court. On November 21, 2017, this Court sustained a motion for reciprocal discipline and suspended Hanlin for one year. *Id.*

A third case, *In re Dade*, SC92970 (2013), involved a Missouri licensed attorney serving as in-house counsel to a company headquartered in Kansas. *Id.* Dade was not licensed to practice law in Kansas but appeared in a Kansas court on one occasion to represent the company in a replevin action. *Id.* He also filed a Notice of Appeal on the company's behalf and used the name and Kansas bar number of his sister without her knowledge. *Id.* This court found that Dade engaged in the unauthorized practice of law and issued a six-month stayed suspension with probation. *Id.*

In this case, Respondent's conduct violates his duty owed to the legal system and to the profession. ABA Standards 6.0, 7.0. Lawyers are officers of the court and the public

expects lawyers to abide by the legal rules of substance and procedure which affect the administration of justice. ABA Standard 6.0. The Model Rules include many ethical standards that are not fundamental to the professional relationship but which define certain standards of conduct. These standards have been developed out of a desire to protect the public. ABA Standard 7.0. Licensing is intended to ensure that only competent and ethical individuals are authorized to give an individual the right to practice in a certain field. Respondent violated a duty he owed the legal profession not to practice law where he was not authorized to do so.

MENTAL STATE

The record is replete with evidence as well as admissions from the Respondent that his conduct was intentional and dishonest. He was consciously aware of the nature and attendant circumstances of his conduct which was purposeful and deceitful. He knowingly engaged in such conduct over a period of seventeen years with the intent to benefit himself. He took fees between \$100 and \$1,500 in over 95% of his 1,143 known Kansas cases. In other words, his dishonest misconduct garnered in significant excess of \$100,000.00. Repeatedly, throughout seventeen years, Respondent made choices to lie, and to violate court rules and ethics rules, for his own profit.

EXTENT OF POTENTIAL HARM

“Potential injury” is defined in the ABA Standards as the harm to a client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer’s misconduct, and which, but for some intervening factor or event would probably have resulted from the lawyers’ misconduct.

Respondent admitted that all of the cases he handled in Kansas are potentially void because he was not licensed to practice in that state. The cases were serious because they had potential ramifications for all of his clients who were either in the country undocumented or on a temporary visa. The conduct has caused injury or potential injury to the municipal court system in the State of Kansas. His misconduct has damaged the integrity of the legal profession.

MITIGATING AND AGGRAVATING FACTORS

After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose. ABA Standard 9.0. Mitigating factors in this case include absence of a prior disciplinary record; personal problems; full and free disclosure to the disciplinary board or cooperative attitude toward the proceedings; character or representation; and remorse. ABA Standards 9.32(a), (c), (e), (g), (i).

Respondent has been licensed in the State of Missouri since 1999. He has no prior disciplinary record and fully cooperated with the OCDC during these proceedings. Respondent has taken responsibility for his actions by admitting twenty-seven of the twenty-eight allegations made against him in the Information and by signing a Joint Stipulation which included facts and rule violations. His testimony at the DHP hearing was candid and not evasive. He showed remorse throughout the proceedings.

Respondent was diagnosed with myeloma cancer in approximately 2015. Although Respondent blamed his cancer diagnosis and treatment as an excuse for not completing his application for reciprocal admission to the Kansas Bar, it cannot be

considered in mitigation given that his unethical conduct occurred both before his diagnosis in 2015 and after his recovery seven-twelve months later.

Critical to any opinion as to the appropriate sanction is a full knowledge of the conduct alleged and charged. *In re Frick*, 694 S.W.2d 473, 480 (Mo. banc 1985). The letters and character witness testimony at the hearing offered no first-hand knowledge of the facts of the case charged and found by the DHP. The character witnesses appearing before the DHP were not fully informed of the facts of the case and were unaware, for example, that Respondent was using another attorney's bar number. Judge Steven Fuller stated, "I don't know the facts really relating to this case." In addition, Judge Fuller stated that he was unaware that that Respondent was using another attorney's bar number and agreed that Respondent's behavior was dishonest. Each witness testified that they have known, worked with, and/or observed Respondent for a number of years, but were unaware that he was not licensed in Kansas.

Aggravating factors in this case include a dishonest or selfish motive; a seventeen year pattern of misconduct; multiple (more than a thousand) offenses; and substantial experience in the practice of law. ABA Standards 9.22(b), (c), (d), (l).

By representing clients in Kansas municipal courts for over seventeen years without a license in at least 1,143 cases, Respondent's conduct was dishonest and clearly establishes a pattern of misconduct with multiple offenses. His motive was selfish in that he gained financially from each improper representation. Using the bar number of a law school classmate without his knowledge at least fifty-nine times is dishonest. Continuing to unlawfully practice because it was "easy" was also dishonest and selfish. Appearing in

a Kansas court on behalf of a Kansas licensed attorney without first filing for pro hac vice admission is dishonest.

Respondent had an opportunity to seek admission in Kansas courts as early as 1999 but he chose not to. He was given another opportunity to gain admission by reciprocity in 2015 but chose not to complete the application process. He took advantage of the informalities of the Kansas court personnel who trusted him all to his economic gain. His conduct was selfish.

Respondent violated duties owed to the general public as the community expects lawyers to exhibit the highest standards of honesty and integrity. His dishonest conduct violates duties owed to his clients and the administration of justice. Finally, Respondent violated his duty to the legal profession by engaging in the unauthorized practice of law and thus failing to maintain the integrity of the profession. Respondent's mental state is the most culpable used in the model. He acted with the conscious objective to accomplish a particular result.

CONCLUSION

Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system. ABA Standard 7.1. For Respondent's repeated and knowing violations of an ethical duty he owed to the profession over a period of seventeen years Informant recommends that he be disbarred.

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of March, 2020, the Informant's Brief was sent to Respondent's counsel via the Missouri Supreme Court e-filing system to:

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Charles W. Gotschall

CERTIFICATION OF COMPLIANCE: 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 Respondent through the Missouri electronic filing system pursuant to Rule 103.08;
3. Complies with the limitations contained in Rule 84.06(b);
4. Contains 5,400 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



Charles W. Gotschall