

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

DANIEL G. ZARATE

Respondent.

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Supreme Court #SC98337

RESPONDENT'S BRIEF

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STATEMENT OF FACTS

1. Overview

Daniel Zarate (hereinafter, “Respondent/Mr. Zarate”) is a well-respected attorney who has been practicing in the Kansas City area since 1999. Mr. Zarate has a reputation for integrity and zealous advocacy, and has been recognized by his peers for his ability and his representation of the Kansas City Hispanic community. As set out in more detail in this Brief, it is imperative that Mr. Zarate be able to continue to represent his clients. Taking away his license, his ability to represent an underserved community, will cause his clients irreparable harm.

Mr. Zarate is now before this Court because he made a mistake, and continued to make that mistake over period of time which this Court will find to be inexcusable. As Informant’s Brief states, 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). **R. 3–4.**

A hearing was held before the Disciplinary Hearing Panel (hereinafter, “DHP”) on October 17, 2019. **R. 36-214.** Respondent respectfully urges this Court to read the transcript of that hearing so that the Court is well advised of Mr. Zarate’s testimony. Also, on October 17, 2019, the parties entered into a Joint Stipulation wherein Respondent admitted to 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. **R. 224-228.** Additionally, Respondent 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 entries of appearance using his own name with his Missouri bar number or the bar number of Adam T. Suroff, a Kansas licensed attorney, without Suroff's knowledge. **R. 224-228.** Respondent has admitted to 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. **R. 224-228.**

On November 22, 2019, the DHP issued its written opinion. **R. 313-326.** The DHP found that Respondent violated Rule 4-5.5(a) by engaging in the unauthorized practice of law in Kansas. **R. 316.** Additionally, 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. **R. 316.** The DHP also 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. **R. 316.** No evidence was presented that Respondent submitted false entries of appearance using the bar number of Nancy Olivares without her permission or knowledge, and therefore, the panel found that Respondent did not violate Rules 4-8.4(c) or 4.8(d) in that respect. **R. 317.**

Ultimately, the panel found that Respondent is guilty of professional misconduct under Rule 4-8.4(a). **R. 318.** The panel acknowledged that Respondent took full responsibility for his actions. **R. 318.** 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 Professional Conduct. **R. 318.** During the hearing, Respondent

admitted that what he did was wrong, and that he knew at the time that what he was doing was wrong. **R. 318.** Respondent also did not offer any excuses for his conduct. **R. 318.** After careful consideration and review of all the evidence presented and testimony heard, including considerable evidence in mitigation, 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 year. **R. 326.** While Respondent accepted the Panel's recommendation, Informant rejected the recommendation. **R. 327, 328.**

Mr. Zarate understands that some form of discipline is warranted, as the violations in this matter are serious. The reason this Court should allow Mr. Zarate to continue to practice law is because his clients need him.

2. Background

Mr. Zarate was born in Mexico City and came to America for a better life with his family when he was four years old. **R. 87, 88.** Mr. Zarate became an American citizen when he was a teenager. **R. 87.** Mr. Zarate attended Rockhurst University in Kansas City. **R. 88.** Mr. Zarate graduated from the University of Missouri- Kansas City law school in 1999 and obtained his Missouri license that same year. **R. 48.** Out of law school, Mr. Zarate worked for the National Labor Relations Board. **R. 49.** Mr. Zarate then opened his own firm and is a solo practitioner in Kansas City, Missouri. **R. 314.** Mr. Zarate handles municipal court matters, including minor criminal defense cases and traffic violations. **R. 54.** The majority, 90-95 percent, of Mr. Zarate's clients speak only Spanish. **R. 47, 51.** Approximately 95

percent of Mr. Zarate's clients are undocumented. **R. 67.** Since 2001, approximately five to ten percent of Respondent's cases have been in Kansas municipal courts. **R. 120.**

Mr. Zarate did fill out an application to waive in to the Kansas bar, but was then diagnosed with cancer and never turned in the application. **R. 101.** Mr. Zarate explained that he knew he needed a Kansas license, but that he got busy with work and his medical issues and due to the informality of municipal court, "one day blended into a year, a year went to two years, and that's why I never got it. It's not an excuse, but, in reality that's what happened." **R. 49-50.** Mr. Zarate did not tell his clients that he did not have a Kansas license, but he also did not tell his clients that he did. **R. 50-51.** Mr. Zarate explained, "[I] feel horrible for misleading them. I'm thankful that none of them were harmed in any way, which doesn't excuse my actions." **R. 50-51.**

Since 2001, Mr. Zarate has appeared in Kansas municipal courts on 1,143 occasions. **R. 225.** Initially, Mr. Zarate would ask for permission to appear in the Kansas municipal courts by pro hac vice application and with a licensed Kansas attorney. **R. 225.** One of the attorneys that Mr. Zarate asked to appear alongside was Adam Suroff, a law school classmate. **R. 98-99.** In 2002, Mr. Zarate stopped using local counsel and began appearing in Kansas municipal courts without a license. **R. 225.** When Mr. Zarate was required to enter his appearance, he would use his own name but with his Missouri bar number of the bar number of Adam Suroff. **R. 225.** Between 2014 and 2018, Mr. Zarate appeared in Lenexa Municipal Court on several cases in which Nancy Olivares was the attorney of record and without requesting pro hac vice application. **R. 226.** While Mr. Zarate does do some pro

bono work, he was paid for his services in the majority of the cases in which he appeared in Kansas. **R. 53-54.**

The majority of Mr. Zarate's clients were either in the country undocumented or on a temporary visa. **R. 85.** Informant's brief suggests that because Mr. Zarate's clients are undocumented, their less serious municipal matters become serious due to the potential ramifications. Regardless of whether clients were represented by Mr. Zarate, or another attorney, his clients were still subject to criminal prosecution and still subject to be taken into immigration custody. Mr. Zarate's undocumented clients were all fearful of going to court, and of going to court without legal representation. **R. 85.**

The Office of the Chief Disciplinary Counsel ("OCDC") commenced its investigation following the receipt of complaint letter from Kansas municipal court Judge Karen L. Torline and two Shawnee city prosecutors, dated February 28, 2018 and from Judge Erika N. DeMarco and two Lenexa city prosecutors, dated February 28, 2018. App. 229, 266. The respective letters provided examples in which Mr. Zarate held himself out as being licensed in Kansas, including Mr. Zarate's signatures on entries of appearance, diversion agreements, and other legal documents that were part of the court process. **R. 58.** In February of 2018, the special investigator for the office of the Kansas Disciplinary Administrator, commenced an investigation of the Respondent. **R. 292.** The investigative report summarized the appearances of Mr. Zarate in Kansas municipal courts. **R. 292.**

It should be noted that there has been no issue raised as to Mr. Zarate's competence. The Information does not set forth any allegation suggesting that Mr. Zarate is not competent to handle Kansas, nor Missouri matters. In fact, Mr. Zarate testified that he knows Kansas

laws well, stating, “I feel really confident that I know Kansas laws well” and that he “[s]till knows Kansas law...” **R. 118**. As such, of course, Mr. Zarate met with his clients prior to their court appearance and explained Kansas law with respect to their particular matter. And although he freely admits that his conduct was wrong, Mr. Zarate testified that he does not believe that any of his Kansas clients were disadvantaged by him not having a Kansas law license, as he is very familiar with Kansas law as it pertains to municipal practice, and that his lack of a Kansas law license did not result in a deficiency in his knowledge of Kansas law that adversely impacted his Kansas clients. **R. 319**. While Informant’s brief cites to testimony wherein Mr. Zarate admitted that all of the matters he handled in Kansas are potentially void because he was not licensed in the state, it should be noted that since this issue was first raised, Mr. Zarate has not practiced in Kansas and there has been no action taken to overturn or to seek a determination that the matters Mr. Zarate handled in Kansas are void.

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. **R. 318**. A large portion of municipal court practice involves discussions with prosecutors and court clerks regarding plea agreements, continuances, charge reductions, diversion agreements, ect. **R. 318-319**. The informality of the municipal court process made it easy for Mr. Zarate to get by without having a Kansas license, using local counsel, and/or applying for permission to appear pro hac vice. **R. 319**. To be clear, in the one occasion in which Mr. Zarate appeared in a Kansas state court matter, he appeared pro hac vice. **R. 94-95**. Mr. Zarate also testified that, at the

time 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. **R. 319.** Ultimately, Mr. Zarate never submitted his application to obtain admission in Kansas. Mr. Zarate explained to the panel that it was the result of “pure laziness and informalities of the court.” **R. 52.** Mr. Zarate went on to state, “It’s not an excuse. I could have done it and I should have done it.” **R. 52.** When asked why Mr. Zarate did not just apply for his Kansas license, Mr. Zarate stated:

I’ve asked myself that question every day. Every time I go to municipal court now, in Missouri, and I write down my bar number, I think about like what was I thinking? And the – and in reality, it’s hard for you to believe me, but it was just so informal, so – just the informality of it lent itself, and I just became lazy and got busy with work and just didn’t. Now that I – I fill out an entry, every time I fill out now and write down my bar number, I’m like I’m so grateful that I have one, and just kick myself and say why would you jeopardize helping people, which is what I love to do, is help people. Why would you jeopardize that, Daniel? What were you thinking?

R. 103. Mr. Zarate stopped appearing in Kansas municipal courts in 2018, after a court clerk asked him for his Kansas bar number and Mr. Zarate admitted he did not have one. **R. 320.**

3. Mitigating and Aggravating Factors

Mr. Zarate has held a license in the state of Missouri since 1999 and has no prior disciplinary record. **R. 224.** Mr. Zarate has fully cooperated with the OCDC during these

proceedings. **R. 318.** Mr. Zarate has taken full responsibility for his actions, has admitted to the rule violations, and his testimony at the hearing was honest and truthful. **R. 36-214, 318.** Mr. Zarate is more than remorseful, he is ashamed. **R. 91.** In Mr. Zarate’s words, “I feel like I let my community down. I feel like I let my family down. I let my children down.” **R. 91.** Mr. Zarate goes on to explain that, “I’m the only attorney in the immediate family and extended family. And my daughters are so proud of that. And for the last year I haven’t been able to look them in the eye because I feel ashamed.” **R. 108-109.**

Mr. Zarate was diagnosed with myeloma cancer in approximately 2014. **R. 52.** He underwent extensive treatment following his diagnosis, which included a bone marrow transplant. **R. 101.** Mr. Zarate returned to the practice of law following his treatment, but remains on maintenance chemotherapy. **R. 101.** Mr. Zarate is still required to see his physician every three months. **R. 101.**

During the DHP proceedings, Judge Steven Fuller of the Municipal Court of North Kansas City¹ and attorney Thomas A. Fields and Clay County Prosecutor Ellen Greenberg Jacobs appeared and testified as to Mr. Zarate’s character. **R. 122-162.** Six other attorneys and judges sent letter which were offered into evidence at the DHP hearing. **R. 166-169.** All of the witnesses testified that they know Mr. Zarate well, and have worked with, and/or observed Mr. Zarate practice for a number of years. **R. 122-162.** The witnesses all testified that Mr. Zarate 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. **R. 122-**

¹ It should be noted that the Judges who appeared or wrote on behalf of Mr. Zarate were served with a subpoena.

162. Mr. Fields testified that, “I think the integrity of the bar would not be diminished by his – by allowing him to practice” and that “I think we would lose a great member of the bar if he’s not allowed to continue to practice law.” **R. 130-131.** Judge Steven Fuller testified,

I think that he fulfills such a role for these – so many of these Latino people, that, as an aside, I think our society uses and needs them, you know, to cook our meals and to fix our roof and to fix the air-conditioning in buildings like this probably. He fulfills that need so well in the sense that these people, they come to court and they are very nervous, they’re very unsure of themselves. And to have a guy like Dan that can speak their language and give them the comfort and support they need is really special.

R. 138. Judge Fuller, like the rest of the witnesses, agreed that it would be appropriate to allow Mr. Zarate to continue to practice law. Informant’s brief misstates that the character witnesses were not aware that Mr. Zarate utilized another attorney’s bar number. Clay County Prosecutor, Ellen Greenberg Jacobs was aware that Mr. Zarate utilized the bar number of another attorney and testified that it was very out of Mr. Zarate’s character. **R. 160.** Each witness still believed that Mr. Zarate is a zealous advocate for his clients and should be permitted to continue to practice law, despite the fact that he utilized the bar number of another attorney.

The attorney whose bar number was utilized by Mr. Zarate, Mr. Adam Suroff, is one of the attorneys who wrote a letter, which was read into the record at the DHP. **R. 166-169.** While Mr. Suroff acknowledges that he was not aware that Mr. Zarate was utilizing his bar number, Mr. Suroff believes that Mr. Zarate should not be disbarred. Mr. Suroff writes,

“None of us are without faults in this world and I try to live my life by extending second chances to those I perceive to be deserving of them. Not all are deserving of it, but I believe Daniel is here.” **R. 167-168.** Mr. Suroff goes on to say,

I’ve known Daniel for over 20 years, and while I have unfortunately lost track of him over the years, I’ve always known Daniel to be one with a kind heart, a good soul and one that understands the consequences of his mistakes. I have no doubt that Daniel has taken his mistakes in this regard to heart and has likely been nearly destroyed by all of this. But perhaps it should not mean the end of his legal career altogether.

R. 168. Lastly, Mr. Zarate needs to be able to continue to practice to support his family and their needs. Mr. Zarate’s wife is a part-time social worker. **R. 102.** Mr. Zarate’s health insurance is provided to him and his family through his law firm. **R 102.** Mr. Zarate will need to take his maintenance chemotherapy for the rest of his life, which is approximately \$9,000.00 per month if Mr. Zarate is unable to maintain his health insurance through his employment. **R. 102.** Mr. Zarate has a nine-year-old daughter and a five-year-old daughter who both attend Notre Dame de Sion, a Catholic school in Kansas City, Missouri. **R. 92.**

POINTS RELIED ON

I.

THE SUPREME COURT SHOULD PLACE MR. ZARATE ON PROBATION, OR, AT MOST, ACCEPT THE RECOMMENDATION OF THE PANEL BASED ON THE MITIGATING FACTORS DESPITE RESPONDENT’S VIOLATIONS OF THE RULES OF PROFESSIONAL MISCONDUCT IN THAT:

(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 Coleman, 295 S.W.3d 857, 869 (Mo. banc 2009)

In re Farris, 472 S.W.3d 549 (Mo. banc 2015)

In re Madison, 282 S.W. 3d 350, 360 (Mo. banc 2009)

Supreme Court Rule 4-5.5(a)

Supreme Court Rule 4-8.4(c)

Supreme Court Rule 4-8.4(d)

Missouri Supreme Court Rule 5.15(d)

II.

THE SUPREME COURT SHOULD BE PLACE MR. ZARATE ON PROBATION, OR, AT MOST, ACCEPT THE RECOMMENDATION OF THE PANEL AS TO DISCIPLINE RESPONDENT’S LICENSE BECAUSE SUCH DISCIPLINE WILL ENSURE THAT THE PUBLIC WILL REMAIN PROTECTED AND SUCH DISCIPLINE WILL MAINTAIN THE INTEGRITY OF THE LEGAL PROFESSION.

In re Dade, SC92970 (2013)

In re Hanlin, SC96607 (2017)

In re Sanderson, SC94975 (Mo. banc 2015)

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

ARGUMENT

I.

THE SUPREME COURT SHOULD PLACE MR. ZARATE ON PROBATION, OR, AT MOST, ACCEPT THE RECOMMENDATION OF THE PANEL BASED ON THE MITIGATING FACTORS DESPITE RESPONDENT’S VIOLATIONS OF THE RULES OF PROFESSIONAL MISCONDUCT IN THAT:

(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.

1. Standard of Review

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. banc 2009). In assessing the proper sanction, this Court has recognized that the ABA Standards for Imposing Lawyer Sanctions (the “ABA Standards”) provide useful guidance for appropriate discipline. *In re Madison*, 282 S.W. 3d 350, 360

(Mo. banc 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. “But the ABA Standards are merely guidance, and they do not supplant this Court's prior decisions.” *In re Farris*, 472 S.W.3d 549, 563 (Mo. banc 2015). Informant has the burden to prove its allegations by a preponderance of the evidence. Rule 5.15(d). In its review, this Court considers only the allegations of the Information in determining whether Respondent has committed violations that subject him to discipline. Rule 5.15(b).

2. Violation of Rule 4-5.5(a)

Respondent admits that he has never been licensed to practice law in the state of Kansas and admits that he appeared as the counsel of record in numerous Kansas municipal court proceedings between 2001 and 2018. While Respondent admits that he did not have the authority to practice law in Kansas, he felt well versed in Kansas law as it pertained to his municipal cases and diligently and zealously represented his clients. Informant argues that Respondent earned fees in excess of \$100,000.00, and while there is no testimony to that figure, if Informant is correct, the earnings would be approximately \$5,882.00 per year. When confronted by a Kansas municipal judge in 2018, Respondent, in that same conversation, admitted that he did not have a Kansas license and that he got sloppy.

Respondent has never “justified” his conduct as Informant suggests. In fact, Respondent has never made excuses for his conduct, and as the DHP found, has taken full responsibility for his actions. The Kansas municipal court system is informal and often does 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. Clearly the process did make it easy to

appear without holding a Kansas license, as evidenced by the lengthy period in which Mr. Zarate appeared in Kansas municipal courts. Respondent admits that he was practicing law in Kansas without a Kansas license, in violation of Rule 4-5.5(a). With that said, Respondent's actions and conduct were out of a real desire to help his clients and represent an underserved community who trusted Respondent.

As noted by Assistant City Prosecutor for the City of Kansas City, Michael Heffernon, "Daniel is a good man and a good attorney who I believe deserves a second chance." **R. 305.** City Prosecutor for the City of Independence, Mitchell Langford, also wrote in support of Mr. Zarate, stating, "I know he is both deeply regretful and embarrassed by his actions" and "I believe you will never again see him before you for a violation." **R. 306.** Mr. Langford goes on, writing, "Our court, Daniel's clients, and the legal community are well served by Mr. Zarate and look forward to working with him for years to come." **R. 306.** The Director of Student Services for the Guadalupe Centers for Charter Schools, Ed Mendez, is well acquainted with Mr. Zarate, both as a friend and as a volunteer of over 15 years. Mr. Mendez wrote in support of Mr. Zarate, stating, "Daniel is also considered to be an asset to the Latino community when it comes to legal services" and that "he has earned the respect of his colleagues, clients, and friends by working with them closely and his unyielding commitment to make a positive difference in the lives of those around him." **R. 307.** Kansas City Municipal Court Judge, Keith Ludwig, wrote in support of Mr. Zarate, stating, "While I am not fully informed regarding the complaint that brings Mr. Zarate before you, I have to believe that his actions stem from a lapse in judgment rather than a fundamental character flaw." **R. 308.** Lastly, Kansas City Municipal Court Judge, Katherine

Bromfield Emke wrote in support of Mr. Zarate, stating, “I hope that the committee will treat the incident leading to the complaint as an anomaly in an otherwise stellar legal career.”

R. 311.

None of Respondent’s clients were harmed as a result of his violation of Rule 4-5.5(a).

3. Violation of Rule 4-8.4(c)(d)

Respondent admits that he completed and filed false entries of appearances in Kansas. Respondent admits that he used the bar number of his law school classmate on some diversion agreements, he admits to conducting trials in Kansas municipal courts and he admits to appearing in Lenexa, Kansas Municipal Court on behalf of a Kansas licensed attorney without obtaining pro hac vice admission.

Respondent admits that he violated Rule 4-8.4(c) and 4-8.4(d). With that said, Respondent’s actions and conduct were out of a real desire to help his clients and represent an underserved community who trusted Respondent. Ultimately, none of Respondent’s clients were harmed as a result of his violation of Rule 4-8.4(c) and 4-8.4(d).

II.

THE SUPREME COURT SHOULD BE PLACE MR. ZARATE ON PROBATION, OR, AT MOST, ACCEPT THE RECOMMENDATION OF THE PANEL AS TO DISCIPLINE RESPONDENT'S LICENSE BECAUSE SUCH DISCIPLINE WILL ENSURE THAT THE PUBLIC WILL REMAIN PROTECTED AND SUCH DISCIPLINE WILL MAINTAIN THE INTEGRITY OF THE LEGAL PROFESSION.

Informant's reliance on *In re Sanderson*, SC94975 (Mo. banc 2015), can be distinguished from Respondent's case because Respondent Sanderson's actions were far more egregious than Respondent's actions. *In re Sanderson* is a reciprocal discipline from the discipline administrated by the Illinois bar. Specifically, Respondent Anderson entered his appearance in over 3,000 cases in Illinois without an Illinois license; falsely represented he was admitted to practice on the entries of appearance; signed and filed pleadings indicating he was licensed in Illinois; made countless court appearances and misled his law firm to believe he was licensed in Illinois. In addition, Mr. Sanderson lied to the disciplinary authorities related to the allegations by falsely stating he was admitted pro hac vice, or that a firm employee had filed the Illinois pleadings in his name without his authorization, and that he was in the process of applying for reciprocal admission to the Illinois bar; he failed to cooperate with the Illinois Attorney Registration and Disciplinary Commission investigation of the case; and he defaulted on a disciplinary Complaint charging him with professional misconduct. The court found that Sanderson's conduct was for a selfish motive in that he was working for a law firm that believed he had an Illinois license, and he

continued his deception in order to keep his job. He lied to his law firm and Illinois courts about his lack of an Illinois license. The Missouri Supreme Court found that Respondent Sanderson had violated Rules 4-5.5(a), 4-8.4(c), 4-8.1(a), 4-8.1(c) and 4-8.4(d), and disbarred Respondent Sanderson. The present case can be distinguished from *In re Sanderson* because Respondent fully admitted his violation, is fully remorseful, did not lie to the disciplinary authorities relating to his allegations, and did not fail to cooperate in the investigation of his case, all of which served as aggravating factors for Respondent Sanderson.

Further, Respondent's case can be distinguished from *In re Hanlin*, SC96607 (2017), also a reciprocal discipline matter, on which Informant relies. Respondent Hanlin represented 16 clients in Illinois from 2007 to 2014 without an Illinois license. Further, Respondent Hanlin used the name and bar number of an attorney licensed in Illinois without the attorney's consent in certain cases. The Missouri Supreme Court found that Respondent Hanlin violated Rules 4-5.5(a), 4-8.4(c) and 4-8.4(d), and suspended Respondent Dade for a period of one year.

Informant's reliance on *In re Dade*, SC92970 (2013) can be easily factually distinguished from Respondent's case in many respects, as the attorney's conduct in that case was much more egregious than the conduct here. With that said, the discipline administered by this Court to Respondent Dade was much less severe than in the *Sanderson* and *Hanlin* cases. Prior to the disciplinary action in SC92970, Respondent Dade had accepted a written admonition for the unauthorized practice of law in Kansas five years earlier. Specifically, Respondent Dade maintained a private office in Kansas without a

Kansas license. The written admonition warned Respondent Dade against continuing the unauthorized practice of law and stated “please ensure that you do not continue to engage in the unauthorized practice of law in Kansas.” Despite the written admonition, Respondent Dade continued to practice law in Kansas without a Kansas license, which ultimately led to his suspension. Respondent Dade appeared on behalf of his client at a state court replevin hearing before the Honorable Judge Hauber without a Kansas license and then filed a Notice of Appeal under his sister’s name and Kansas bar number without her consent. Not recognizing Respondent’s sister in the appeal, the judge asked Respondent Dade for his bar number in which Respondent Dade gave his federal bar number. The judge recognized the federal bar number and that Respondent Dade was not a licensed Kansas attorney. Despite his prior admonition and warning, this Court suspended Respondent Dade’s license indefinitely with no leave to apply for reinstatement for a period of six months. The suspension was stayed and Respondent Dade was placed on probation for a period of two years.

Respondent Dade was not appearing in Kansas municipal courts, he appeared in Kansas District Court. Further, Respondent Dade provided false information to the judicial assistant of Judge Hauber when questioned about his Kansas bar number. Despite his conduct, Respondent Dade was not only given a second chance, but was provided a third chance to correct his behavior by being placed on probation. Here, Respondent has no prior discipline history and was not specifically warned against engaging in the unauthorized practice of law. If Respondent Dade was afforded a third chance through his probation, it seems fitting that Mr. Zarate should be afforded a second chance. Respondent has

cooperated completely throughout this process and has not appeared in any Kansas municipal court or otherwise handled a Kansas case since the issue arose that he did not hold a Kansas license.

The following mitigating factors found in Standard 9.32 of the ABA Standards for Imposing Lawyer Sanctions (ABA Standards) apply in this case:

(a) absence of a prior disciplinary record;

* * * *

(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;

* * * *

(g) character or reputation; and

* * * *

(l) remorse.

Here, Respondent has had no prior discipline. Respondent was fully cooperative in the disciplinary process. He has stipulated to the facts and the DHP and Informant has acknowledged his full cooperation. Respondent's character witnesses established that Respondent is a man of excellent character. In sum, their testimony establishes that, despite his errors, Respondent is a highly respected and valuable member of the legal profession. He is an honest attorney who cares deeply about his clients.

As detailed above, Respondent has shown nothing but remorse and heartache throughout this process, even unable to hold back tears as he testified. Mr. Zarate is more than remorseful, he is ashamed. **R. 91.** In Mr. Zarate's words, "I feel like I let my community

down. I feel like I let my family down. I let my children down.” **R. 91.** Mr. Zarate goes on to explain that, “I’m the only attorney in the immediate family and extended family. And my daughters are so proud of that. And for the last year I haven’t been able to look them in the eye because I feel ashamed.” **R. 108-109.**

Many judges, prosecutors, and fellow attorneys have shown their support for Mr. Zarate and all contend that he should be permitted to continue to practice law. All of the witnesses testified that they know Mr. Zarate well, and have worked with, and/or observed Mr. Zarate practice for a number of years. **R. 122-162.** The witnesses all testified that Mr. Zarate 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. **R. 122-162.** Mr. Fields testified that, “I think the integrity of the bar would not be diminished by his – by allowing him to practice” and that “I think we would lose a great member of the bar if he’s not allowed to continue to practice law.” **R. 130-131.** Judge Fuller, like the rest of the witnesses, agreed that it would be appropriate to allow Mr. Zarate to continue to practice law. Informant’s brief misstates that the character witnesses were not aware that Mr. Zarate utilized another attorney’s bar number. Clay County Prosecutor, Ellen Greenberg Jacobs was aware that Mr. Zarate utilized the bar number of another attorney and testified that it was very out of Mr. Zarate’s character. **R. 160.** Each witness still believed that Mr. Zarate is a zealous advocate for his clients and should be permitted to continue to practice law, despite the fact that he utilized the bar number of another attorney. In fact, even the attorney whose bar number was utilized by Mr. Zarate, Mr. Adam Suroff, is one of the attorneys who

supports Mr. Zarate. Even Mr. Suroff believes that Mr. Zarate deserves a second chance and should be permitted to continue to practice law.

Mr. Zarate simply needs to be able to continue to practice law to support his family and their needs. Mr. Zarate's wife is a part-time social worker. **R. 102.** Mr. Zarate's health insurance is provided to him and his family through his law firm. **R 102.** Mr. Zarate will need to take his maintenance chemotherapy for the rest of his life, which is approximately \$9,000.00 per month if Mr. Zarate is unable to maintain his health insurance through his employment. **R. 102.** Mr. Zarate has a nine-year-old daughter and a five-year-old daughter who both attend Notre Dame de Sion, a Catholic school in Kansas City, Missouri. **R. 92.**

Informant cites to aggravating factors that are not supported by the facts or the evidence and constitute mere speculation. While Respondent has admitted to Rule violations and improper conduct, Respondent has never testified, or otherwise stipulated that his conduct was a result of greed and money. In fact, quite to the contrary, Respondent has consistently explained that his mental state was that of an attorney who wants to help his particular clients and feels sincerely about helping his clients and providing excellent representation for his clients.

Further, there is absolutely no evidence that Respondent's conduct caused injury or potential harm to the municipal court system in the state of Kansas. Each diversion agreement that Respondent handled for his clients in Kansas has been completed. As evidenced by the character witnesses and letters on Respondent's behalf, it is clear that there is no member of the bar that has come forward alleging that Respondent's conduct has damaged the integrity of the legal profession. The evidence presented and testimony given

has been that Respondent is a well-respected and valuable member of the Missouri bar and that allowing Respondent to continue to practice would not damage the integrity of the bar.

CONCLUSION

Taking into consideration the Supreme Court's recent actions described above and considering the mitigating and aggravating factors present in this case, Respondent requests a stayed one-year suspension with probation as the appropriate discipline. For the reasons set forth above, this Court should find that Respondent violated Rules 4-5.5(a), 4-8.4(c) and 4-8.4(d) and impose a one-year suspension but stayed with probation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of April 2020, a copy of the Respondent's Brief is being served upon Informant's counsel through the Missouri Supreme Court electronic filing system pursuant to Rule 103.08.

Respectfully submitted,

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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 6,358 words, according to Microsoft Word, which is the word processing system used to prepare this Brief.

Respectfully submitted,

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