

IN THE SUPREME COURT OF JACKSON COUNTY, MISSOURI  
AT KANSAS CITY

**FILED**  
**DIVISION 31**  
11-Feb-2020 15:33  
CIRCUIT COURT OF JACKSON COUNTY, MO  
BY *Rosemary Williams* DCA

IN RE: )  
)  
ALLAN H. BELL )  
)  
2022 Swift Street, Suite 202 )  
North Kansas City, MO 64116-3442 )  
)  
MO Bar #19459 )  
)  
Respondent. )

Case No. 1916-CV18267  
Division 31

**AMENDED and FINAL MASTER’S REPORT**  
**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Now on this 11<sup>th</sup> day of February, 2020, the Court, serving as Special Master, takes up the above-captioned matter for the purpose of entering its Amended Findings of Fact and Conclusions of Law.

On the 16<sup>th</sup> day of August, 2019, the Court called this matter for hearing on the Office of Chief Disciplinary Counsel’s (Movant’s) Motion for Criminal Contempt. Movant appeared by counsel, Shannon L. Briesacher, and Respondent appeared in person and by counsel, David Bandre. Prior to beginning the trial, the Court took up Respondent’s Motion for Continuance, which was objected to by the Movant. The basis of the continuance request was to allow the Respondent ample time to obtain and review discovery. As the Defendant was well aware of the findings of Dr. William T. Blessing, who was present and set to testify, the Court ruled that it would hear the testimony of Dr. Blessing and continue the remainder of the trial to September 13, 2019. On September 4, 2019, Movant filed a Motion for Continuance of the September 13, 2019 trial date citing the unavailability of two key witnesses. That motion was granted and the trial was continued to October 18, 2019.

On October 18, 2019, Movant again appeared by counsel, Shannon L. Briesacher. Respondent appeared by counsel, David Bandre, but did not appear in person. Counsel for Respondent informed the Court that his client had called him and claimed to be hospitalized and was therefore requesting a continuance. Counsel for Movant informed the Court that the Defendant had contacted her office the preceding day claiming that he was ill and was going to go to the hospital. The Movant objected to any further continuances. The Court recessed the proceedings to give Respondent's counsel an opportunity to have his client fax some type of verification to the division as to his hospitalization. The Respondent did contact his client, however, said verification was not sent to the division. This Court, finding that Respondent intentionally made himself unavailable for trial and, therefore, waived the right to be present to confront his accusers, proceeded with taking evidence. Evidence was adduced and the matter was again set over to October 25, 2019, to allow Respondent the opportunity to testify, should he so choose. On October 22, 2019, the Respondent filed his Waiver and Election of Fifth Amendment Rights and requested the Court remove the cause from the October 25, 2019 trial setting. The Court directed the parties to submit proposed findings of fact and conclusions of law and took the case under advisement.

Now, being duly apprised, having reviewed the Respondent's Objections and Exceptions to Master's Report, filed January 17, 2020, and Movant's Suggestions in Support of Master's Report and Opposition to Respondent's Objections, filed January 27, 2020, the Special Master submits the following Amended Findings of Fact and Conclusions of Law, to wit:

### **FINDINGS OF FACT**

1. Respondent was licensed as an attorney in Missouri on or about September 2, 1967.
2. Respondent's Missouri Bar number was 19459.
3. Respondent is currently disbarred from the practice of law following the Missouri Supreme Court's September, 2019 acceptance of Respondent's voluntary surrender of license and admission of violating Rules 4-1.15 (pertaining to the safekeeping of client funds) and 4-8.4(c) (pertaining to acts of dishonesty and/or deceit).
4. On or about June 12, 2019, the OCDC filed with the Missouri Supreme Court a Motion for Criminal Contempt Finding and Sanctions against Respondent, asserting its belief that Respondent was continuing to practice law in violation of the Missouri Supreme Court's April 1, 2019 Order.
5. Pursuant to a Show Cause Order from the Missouri Supreme Court, Respondent filed his Answer.
6. Movant is a proper party to bring this action pursuant to its authority.
7. Venue and jurisdiction are properly before the Court.
8. On or about July 8, 2019, the Missouri Supreme Court appointed this Court as Special Master in the matter.
9. Trial was held on August 16, 2019 and October 18, 2019.
10. Certified Fraud Examiner for the Office of Chief Disciplinary Counsel ("OCDC"), Kelly Dillon, testified at trial that upon receipt of multiple client complaints, the OCDC learned that Respondent did not have, nor was he using, a designated IOLTA client trust account.
11. Respondent stipulated that he did not use a designated IOLTA client trust account.

12. Respondent informed the OCDC of the personal accounts in which he believed he held client funds, and the OCDC undertook an audit of those same accounts.

13. The audit examined the previous three years of Respondent's bank records, and the OCDC identified approximately 40 instances in which Respondent had deposited client settlements into his accounts and disbursed 0-40% of the funds to the client thereafter. (Movant's Ex. 28).

14. The audit further revealed that Respondent had taken hundreds of thousands of dollars in high-interest loans, and the repayments of those loans were automatically withdrawn from the account, resulting in frequent overdrafts. (Movant's Ex. 28).

15. On or about March 29, 2019, the OCDC filed an Information for Interim Suspension setting forth its belief that the Respondent posed an immediate threat of irreparable harm to the public and to the reputation of the profession, due to Respondent's failure to maintain a client trust account and repeated instances of misappropriation of client funds.

16. On April 1, 2019, the Missouri Supreme Court ordered the interim suspension of the Respondent and ordered him to comply with all aspects of Rule 5.27.

17. Respondent's suspension became effective on April 16, 2019.

18. Following April 16, 2019, the effective date of Respondent's interim suspension, the OCDC received multiple reports that Respondent was continuing to meet with clients and accept fees for representation.

19. Respondent and/or his counsel were made aware by Ms. Dillon of the reports that Respondent continued to practice law in violation of the Missouri Supreme Court's Order.

20. Prior to his interim suspension, the Respondent was referred by his primary care physician to Neuropsychologist, Dr. William Blessing.

21. On March 25, 2019, Dr. Blessing conducted a neuropsychological evaluation on the Respondent related to his reported memory issues.

22. Dr. Blessing's Neuropsychological Evaluation was admitted into evidence, without objection. (Movant's Ex. 36).

23. The Respondent did not disclose to Dr. Blessing that he was under investigation by the Disciplinary Counsel for misuse of client funds.

24. Dr. Blessing identified mild slowing of mental processing speed and variable memory impairment that was not indicative of a degenerative condition such as Alzheimer's disease.

25. Dr. Blessing opined that Respondent's forgetfulness might be expected to interfere with Respondent's continued practice of law. However, in Dr. Blessing's opinion, it would be highly unlikely that Respondent's mental status would have prevented him from comprehending or remembering that he had been suspended from the practice of law.

26. Respondent's former office assistant, Kandace Denney, testified at trial that the Respondent did not know how to use a computer, therefore, she typed all emails, letters, and other correspondence from dictation by Respondent.

27. When the Missouri Supreme Court issued its April 1, 2019, Order of Interim Suspension, Ms. Denney received the Order via electronic filing.

28. Ms. Denney printed out the Order of Interim Suspension and gave it to Respondent.

29. Respondent also received a copy of the Order of Interim Suspension through the mail.

30. Upon receipt of the Order of Interim Suspension, Respondent informed Ms. Denney that “they had 14 days to do things and get the office in order.”

31. Following Respondent’s interim suspension, he did little to indicate he was winding down his practice of law. To the contrary, Ms. Denney testified the Respondent instructed staff to backdate the forms he continued to use with clients to March 29, 2019, a date just prior to his suspension, and to change how the phone was answered from “the Allan Bell Law Office to Law Office.”

32. When Ms. Denney asked the Respondent why he was taking on new clients after his suspension he responded “Well I’m just helping them out right now. We’re just going to do this for them. It’s just going to be real quick, real easy.”

33. On or about April 27, 2019, Respondent entered into a new fee agreement to represent Roberto Molina in an immigration matter. (Movant’s Ex. 6).

34. Respondent backdated Roberto Molina’s new fee agreement to March 29, 2019, a date preceding Respondent’s interim suspension.

35. Respondent received a check dated April 27, 2019, for \$1500.00 as a fee to represent Roberto Molina. (Movant’s Ex. 8).

36. On or about April 29, 2019, Respondent entered into a new fee agreement to represent Cesar Jose Ocho Gutierrez in an immigration matter. (Movant’s Ex. 9).

37. Respondent backdated Cesar Jose Ocho Gutierrez's new fee agreement to March 29, 2019, a date preceding Respondent's interim suspension. (Movant's Ex. 10, pg. 2 and Movant's Ex. 11, pg. 10).

38. Respondent accepted payment of \$1,400.00 on or around April 29, 2019, as a fee to represent Cesar Jose Ocho Gutierrez. (Movant's Ex. 11, pg. 10).

39. Respondent's receipt book shows at least 21 client payments, all dated March 29, 2019, totaling over \$10,000.00. (Movant's Ex. 11).

40. Respondent instructed Ms. Denney to back-date to March 29, 2019 some payment receipts and fee agreements that he entered into after his license had been suspended.

41. Respondent's receipt book shows another 21 client payments received between May 18, 2019, and June 13, 2019, totaling over \$11,000.00. (Movant's Exhibit 11).

42. Respondent offered no evidence indicating that the client funds received by him following his interim suspension, totaling over \$20,000.00, were for work performed prior to Respondent's suspension.

43. On or around May 13, 2019, Respondent attempted to enter into a new fee and representation agreement with Tannya Miller and her partner, Tanveer Ahmed, whereby Respondent agreed to represent the couple in obtaining visas for their four children in exchange for an attorney fee of \$10,000.00. (Movant's Ex. 12 and 13).

44. Per Ms. Denney, Tannya Miller and Tanveer Ahmed were new clients, not previously known to Respondent.

45. Ms. Miller and Mr. Ahmed ultimately informed Respondent that they did not wish to proceed with Respondent's services. (Movant's Ex. 12).

46. Former client, Alan Olivas-Herdiz, testified that Respondent represented him prior to Respondent's interim suspension.

47. Mr. Olivas-Herdiz testified that Respondent suggested to Mr. Olivas-Herdiz, a previously documented immigrant from Mexico, that he should pursue an asylum claim and a U-Visa, for which Respondent charged Mr. Olivas-Herdiz \$7,000.00 in attorney's fees.

48. According to Mr. Olivas-Herdiz, on April 12, 2019, Respondent called him at work "maybe 15 times from 9:00am to 3:00pm" asking him to make a \$1,000.00 payment for his pending immigration case and to make that payment directly into Respondent's personal bank account at Community America Credit Union.

49. On April 12, 2019, Mr. Olivas-Herdiz deposited \$1,000.00 into Respondent's personal bank account at Community America. (Movant's Ex. 22).

50. Mr. Olivas-Herdiz provided testimony that as of April 12, 2019, Respondent had not informed Mr. Olivas-Herdiz that Respondent's license to practice law had been suspended.

51. On May 13, 2019, Respondent contacted Mr. Olivas-Herdiz by email, requesting that Mr. Olivas meet with Respondent, the following day, to discuss Mr. Olivas-Herdiz's U-Visa and to discuss Respondent's correspondence with the police department in Mr. Olivas-Herdiz's case. (Movant's Ex. 23).

52. On or about May 14, 2019, Mr. Olivas-Herdiz met with Respondent at Respondent's law office. Respondent informed Mr. Olivas-Herdiz he was continuing to work on his immigration case.



53. Sometime in June, 2019, the Respondent encouraged Mr. Olivas-Herdiz to marry his fiancé, a United States military soldier, as soon as possible as this “would be a game-changer” and he could file an additional immigration action on his behalf.

54. Respondent then proposed that he and Mr. Olivas-Herdiz enter into a new fee agreement, whereby Mr. Olivas-Herdiz would pay \$6,000.00 to Respondent and Respondent would assist him with attaining citizenship based on the proposed wedding.

55. At the conclusion of their last meeting in June, 2019, the Respondent informed Mr. Olivas-Herdiz that he would see him at Mr. Olivas-Herdiz’s September, 2019 hearing date in immigration court.

56. At no point during or after this meeting did Respondent inform Mr. Olivas-Herdiz that he was not licensed to practice law.

57. In June or July, 2019, the Respondent informed Mr. Olivas-Herdiz over the phone that he was retiring and would pass his immigration file onto another attorney.

58. Mr. Olivas-Herdiz’s file was not passed to another attorney by the Respondent, nor did the Respondent return the file to Mr. Olivas-Herdiz.

59. Former client, Raj Patel, testified that on or around August 28, 2018, he hired Respondent to file an Application for a Skilled Worker Visa.

60. Mr. Patel testified that he entered into an agreement with Respondent whereby Mr. Patel was to pay \$9,000.00 for the completion of the visa process and had already paid Respondent \$3,000.00 to gather the necessary documents.

61. On or around April 10, 2019, Mr. Patel received a letter from Respondent indicating that Respondent intended to permanently close his law practice due to health issues. (Movant's Ex. 16).

62. Evidence at trial indicated that there were several versions of the retirement letters sent to clients, one of which stated that Respondent was retiring due to health and "bar-related" issues (Respondent's Ex. A).

63. Mr. Patel testified that he did not believe he received the version of the letter referencing "bar-related" issues, although had that been the letter he received he would not have understood "bar-related issues" to mean that Respondent was suspended from the practice of law.

64. Upon receipt of the April 10, 2019 letter, Mr. Patel immediately contacted Respondent by telephone. Respondent informed Mr. Patel that he would continue to represent him in the visa application through its completion.

65. Respondent also requested Mr. Patel send him money to cover additional work he would be doing on his immigration case.

66. On or about May 22, 2019, Mr. Patel sent Respondent, via priority mail, a check for \$2,000.00. (Movant's Ex. 30).

67. The Respondent never informed Mr. Patel that he was suspended from the practice of law.

68. On February 23, 2019, attorney, Taylor Sloan filed a Petition for Dissolution on behalf of the Petitioner, Melissa Poore, in the case of Poore v. Githere. (Movant's Ex. 40).

69. The Respondent held himself out to Mr. Sloan as the attorney for George Githere, the Respondent in the dissolution case.

70. Mr. Sloan testified at trial that at no point following Respondent's interim suspension did Respondent personally inform Mr. Sloan that Respondent's license to practice law had been suspended.

71. From April 16, 2019 to June 13, 2019, Respondent held himself out to opposing counsel, Taylor Sloan, as Mr. Githere's attorney, capable of representing Mr. Githere in the dissolution action, by corresponding with Mr. Sloan as if he were Mr. Githere's attorney, agreeing to a continuance in the matter, and suggesting language to include in the divorce decree that would be favorable to Mr. Githere's immigration status. (Movant's Ex. 24 and 40).

72. On May 17, 2019, Mr. Sloan asked Respondent to formally enter his appearance for Mr. Githere so Mr. Sloan could add the appearance date and signature block to the documents the two had been negotiating.

73. Rather than telling Mr. Sloan that he was suspended from the practice of law, the Respondent simply informed Mr. Sloan that his client would now represent himself.

74. Respondent's receipt book reflects a payment for a "divorce fee" from George Githere on May 31, 2019. (Movant's Ex. 11).

75. Mr. Sloan learned of Respondent's suspension when he was contacted by a staff member of the OCDC in June, 2019.

76. Respondent continued to file documents with the USCIS and other courts, making filing fee payments from his personal Community America Credit Union account as follows:

- a. 4/29/29: \$725.00 to USCIS
- b. 4/29/19: \$410.00 to UCSIS
- c. 4/29/19: \$410.00 to USCIS
- d. 5/15/19: \$725.00 to USCIS
- e. 5/15/19: \$725.00 to USCIS
- f. 5/15/19: \$725.00 to USCIS
- g. 5/15/19: \$725.00 to USCIS
- h. 6/3/19: \$452.00 to KC Mun Ct.

(Movant's Ex. 31).

77. Respondent deposited approximately \$7,000.00 in checks from clients into his personal Community America Credit Union account after the date of his suspension as follows:

- a. 4/8/19: \$700.00 from Milton Morales
- b. 4/23/19: \$200.00 from Mylene Kemajou and Justine Ngomsi
- c. 4/27/19: \$1,500.00 from Virginia Nieto
- d. 4/29/19: \$500.00 from Mylene Kemajou and Justine Ngomsi
- e. 5/5/19: \$800.00 from Maria Rosario Ventura
- f. 5/22/19: \$2,000.00 from Raj Patel
- g. 5/31/19: \$500.00 from Mylen Kemajou and Justine Ngomsi

h. 6/24/19: \$800.00 from Mylene Kemajou and Justine Ngomsi

(Movant's Ex. 32).

78. On or about June 8, 2019, Respondent entered into a new fee agreement with Vivian Huang to represent her in an I-130 and I-485 Joint Petition for Adjustment of Status.

(Movant's Ex. 30).

79. The fee agreement set forth that \$1,000.00 had been paid by the client and that the client was to pay an additional \$1,000.00 on June 8, 2019; \$1,000.00 on June 13, 2019; \$2,000.00 on June 20, 2019; \$1,000.00 on June 26, 2019; \$500.00 on July 10, 2019; and \$1,760.00 in filing fees, for a total of \$6,500.00 in attorney's fees over the course of four weeks. (Movant's Ex. 30).

80. On June 13, 2019, Investigator and Certified Fraud Examiner, Kelly Dillon, made an unannounced visit to Respondent's office.

81. Ms. Dillon was accompanied by an investigator from the Missouri Division of Workers Compensation.

82. Ms. Dillon took photographs of the office during her June 13, 2019 visit.

83. On June 13, 2019, Respondent's office was open with signs that read, "Allan H. Bell, Attorney at Law." (Movant's Ex. 29).

84. On June 13, 2019, Respondent was present in the office, dressed in a sport coat and tie. (Movant's Ex. 29).

85. On June 13, 2019, Respondent's office was full of files, boxes, furniture, office equipment, filing cabinets, papers and wall hangings. (Movant's Ex. 29).

86. Ms. Dillon testified that when she arrived to Respondent's office, she was informed by Respondent's wife, Ruth Bell, that the Respondent was "meeting with a client."

87. The client in question was identified by Ms. Dillon as Vivian Huang, who was accompanied by a family member.

88. Ms. Dillon found out the Huangs had given Respondent \$1,000.00 in cash while in Respondent's office.

89. Ms. Dillon instructed the Respondent to return the funds to the Huangs.

90. After initially telling Ms. Dillon that he'd refund the Huang's money "at a later date," the Respondent reluctantly returned the \$1,000.00 to the Huangs.

91. Respondent's receipt book reflects payments from the Huangs of \$1,000.00 on June 6, 2019, \$1,000.00 on June 9, 2019 and another \$1,000.00 payment on June 13, 2019. (Movant's Ex. 11).

92. According to Ms. Dillon, the Huangs were not aware that Respondent's license to practice law had been suspended. When she informed them of this, the Respondent told them he was retiring but "would still be able to help them."

93. The June 8, 2019 fee agreement with the Huangs indicated that the work was to be performed by the Law Office of Allan H. Bell & Associates "with associate counsel." (Movant's Ex. 30).

94. Ms. Dillon was told by Respondent that the associate counsel in question was an attorney named Jeffrey Bennett.

95. Jeffrey Bennett testified at trial that he had not agreed to represent the Huangs.

96. Jeffrey Bennett testified at trial that he had not authorized Respondent to enter into fee agreements on his behalf.

97. Jeffrey Bennett testified at trial that he had not authorized Respondent to collect client funds on his behalf.

98. Ms. Dillon informed this Court that while in Respondent's office, she requested to examine Respondent's receipt book.

99. The Respondent denied the existence of any receipt books as did his wife.

100. Ms. Dillon informed the Respondent she knew there were at least two receipt books kept in the office and told him she wanted to see those receipt books.

101. After going "round and round" with Ms. Dillon, the Respondent eventually produced a receipt book.

102. From June 5, 2019 to June 13, 2019, the date of Ms. Dillon's visit, Respondent's day planner contained full pages of entries indicating appointments and telephone calls with dozens of clients. (Movant's Ex. 17).

103. On more than one occasion after his interim suspension, Ms. Dillon communicated to Respondent that he was obligated to shut down his practice, refrain from taking new clients, refrain from accepting new client funds and refrain from holding himself out as an attorney able to practice law.

104. From June 14, 2019 to June 24, 2019, following Ms. Dillon's visit, Respondent's day planner contained almost no entries (Movant's Exhibit 17).

105. In June, 2019, Angela Williams, Kathleen Irish, Carlos Hernandez and Michele Buschart filed a Petition for the Appointment of Trustee in Clay County, Missouri,

requesting that they be appointed trustees to examine and return client files to the clients of Respondent, notify clients and opposing counsel of Respondent's suspension and take possession of Respondent's law office and delivered mail. (Movant's Ex. 4).

106. On June 18, 2019, the Circuit Court of Clay County, Missouri ordered the appointment of the Trustees. (Movant's Ex. 5).

107. Respondent was informed that Trustees had been appointed and that he was to cooperate with their appointment.

108. At their first meeting in June, 2019 with the Respondent, the Trustees requested that Respondent turn over all client files in his possession so that the trustees could examine the files and, where appropriate, and expeditiously return the files to the clients. This was important to protect the interests of the clients who would need to be notified of the necessity of obtaining alternate counsel.

109. Respondent informed the Trustees at this first meeting that the files in his office were all he had and that he did not have a storage unit for files.

110. After examining the files that were found at Respondent's office, the Trustees determined that they were old or dated files that were no longer active.

111. Most of the files located by Ms. Williams and the Trustees in the office were pre-2017. This raised concern with Ms. Williams as she often saw the Respondent on master calendar dockets at USCIS and in court post 2016 and therefore expected to find current files.

112. Ms. Williams did find contracts that were signed post 2016 but not the corresponding files.



113. After being assured by the Respondent that he didn't have a storage unit, Ms. Williams found a contract for a storage unit located at about 75<sup>th</sup> Street and Wornall in Kansas City, Missouri and informed the Respondent about this discovery.

114. Respondent acknowledged the existence of this storage unit and in August, 2019 contacted Ms. Williams to inform her of a second storage unit he had that contained some 40-50 boxes of files.

115. When Ms. Williams and others met the Respondent at the storage unit they uncovered only 3-5 boxes containing some "files and junk." The files located were not post-2016 files.

116. Respondent informed Ms. Williams that he meant to say there were only 4-5 boxes of files when he initially spoke to her about the contents of the unit.

117. As of trial, Respondent had yet to turn over to the Trustees any recent or active client files.

118. Per Ms. Williams, due to the sensitive nature of immigration cases, general information not obtained through the USCIS must be obtained through a Freedom of Information Act request, which generally takes six months to one year to complete. This is why it was imperative that the current files be located.

119. According to Ms. Williams, the Trustees attempted to take control of Respondent's office following their initial appointment.

120. Ms. Williams informed the Respondent that the Trustees had forwarded the mail and phone away from him to them and that they were changing the locks to the office.

121. Ms. Williams told the Respondent the Trustees were forwarding his call and mail because they were concerned he was continuing to work and take money from clients.

122. Ms. Williams did find many contracts dated March 31, 2019 and others dated post suspension.

123. Upon being notified of the transfer of the mail and phone, the Respondent told Ms. Williams he was concerned “this would affect his travel agency and booking business.”

124. Ms. Williams never received any calls regarding these alleged businesses while under control of the mail and phone.

125. Ms. Denney confirmed that Mr. Bell did not run a travel agency or any other business not related to law out of the office while she worked for him.

126. The Trustees began handling incoming calls from Respondent’s office number but those calls stopped as Respondent transferred the office calls to his personal line.

127. The Trustees never received any calls for related to travel or other non-legal business.

128. Ms. Williams testified that the Trustees posted signs on Respondent’s office doors, in several languages, informing the public that Respondent was not licensed to practice law and that they should not give Respondent money.

129. The signs posted by the Trustees were not present at the office when Kelly Dillon appeared on June 13, 2019 and found the Respondent meeting with a new client.

130. Ms. Williams testified that upon entry to Respondent’s office, there were living and dead rodents, as well as excrement contaminating the paperwork, boxes and files. The files dated back to the 1980s.

131. According to Ms. Williams, management of Respondent's office has been a labor-intensive undertaking.

132. The Court finds that Dr. William Blessing, Angela Williams, Kandace Denney, Raj Patel, Alan Olivas-Herdiz, Taylor Sloan, Jeffrey Bennett, and Kelly Dillon were all credible witnesses.

133. The Respondent did not call any witnesses. Respondent offered one exhibit.

### **CONCLUSIONS OF LAW**

“Criminal contempt is punitive in nature and acts to protect, preserve, and vindicate the authority and dignity of the judicial system and to deter future defiance.” *State ex rel. Chassaing v. Mummert*, 887 S.W.2d 573, 577 (Mo. banc 1994). The distinction between criminal and civil contempt is reflected in the content of the judgment, whether the remedy is coercive or punitive. *Id.* (citing *McMilian v. Rennau*, 619 S.W.2d 848, 851 (Mo.App.1981)). The Movant has the burden of proving the elements of criminal contempt beyond a reasonable doubt, which consist of actual knowledge of a court order on the part of the defendant and willful conduct in violation of its terms. *State ex rel. Girard v. Percich*, 557 S.W.2d 25, 36 (Mo.App.1977). “Direct evidence of criminal intent is rarely obtainable and more frequently must be inferred from the evidence of defendants’ conduct.” *Ramsey v. Grayland*, 567 S.W.2d 682, 691 (Mo.App.1978). In *Teefey v. Teefey*, the Missouri Supreme Court examined the intent necessary to sustain a criminal contempt finding and stated that “[t]he thrust of criminal contempt is the intentional interference with the judicial process and demonstrated refusal to be bound by judicial determinations.” 533 S.W.2d 563, 566 (Mo. banc 1970).

In the present case, the Court finds the Movant has met its burden in proving, beyond a reasonable doubt, that Respondent had actual knowledge of the Missouri Supreme Court's interim order suspending Respondent from the practice of law. Respondent's former assistant, Kandace Denney, provided credible testimony that she showed the order to Respondent on the date that it was sent to Respondent's office by electronic filing. OCDC Investigator and Certified Fraud Examiner, Kelly Dillon, also provided credible testimony that the Respondent was informed that he was not permitted to practice law by providing legal services, holding himself out as an attorney capable of practicing law, entering into new fee agreements or accepting money from clients for work not yet performed by Respondent, due to Respondent's interim suspension. Trustee Angela Williams provided similar testimony indicating that she discussed with Respondent the interim suspension and the actions the Trustees would be taking to protect clients and prevent him from continuing to practice law. There was no evidence that the Respondent was unaware that he was suspended from the practice of law. This Court concludes that the Respondent had actual knowledge of the Missouri Supreme Court's order of April 1, 2019 suspending him from the practice of law.

This Court further concludes that the Movant has met its burden in proving, beyond a reasonable doubt, that Respondent engaged in willful conduct in violation of the terms of the Missouri Supreme Court's Order. There is no doubt that the Respondent engaged in the practice of law following his interim suspension, and failed to adhere to the Missouri Supreme Court's demand that Respondent comply with Rule 5.27. Missouri Supreme Court Rule 5.27 provides the suspended attorney shall not accept any new retainer or act as a lawyer for any new legal matter; shall withdraw from representation in pending

matters; shall notify all clients in writing and any counsel in pending matters that the lawyer has been suspended; and shall deliver to all clients any fees paid in advance that have not been earned, as well as any papers or other property to which the client is entitled. Respondent repeatedly entered or attempted to enter into new fee agreements with clients like Mr. Olivas-Herdiz, Ms. Huang, and the Miller-Ahmeds; failed to notify opposing counsel, like Mr. Sloan, of his suspension; and failed to notify his clients, such as Mr. Olivas-Herdiz or Mr. Patel of his suspension. This Court finds that Respondent engaged in conduct in violation of the Missouri Supreme Court's Order.

Respondent maintains that while he may have engaged in conduct that violated the Supreme Court's order of suspension, his conduct was not willful in nature. That assertion is not credible. As stated, *supra*, direct evidence of criminal intent is rarely available and can be inferred from the defendant's conduct. *Ramsey v. Grayland* at 691. In the present action, Respondent went to great lengths to cover or hide his continued practice of law. The documentary evidence, as well as credible testimony from Ms. Denney, establishes that Respondent continued to enter into new fee agreements with would-be clients and backdated the agreements to a date preceding his suspension. In the case of Roberto Molina, the fee agreement, which was backdated to March 29, 2019, noted that \$1500.00 was paid "today." Mr. Molina's check for \$1500.00 was dated April 27, 2019. Similarly, the fee agreement for Cesar Ocho Gutierrez was backdated to March 29, 2019, yet his corresponding intake paperwork states that \$600.00 was paid on April 29, 2019.

Respondent engaged in similar deceptive conduct in backdating his receipt book and instructing staff to backdate receipts and fee agreements. Respondent's receipt book showed

21 entries, all dated March 29, 2019, totaling over \$11,000.00 in client payments.

Respondent's deception relating to his continued practice of law is further evidenced by his denial of the existence of a receipt book when Ms. Dillon visited his office and asked to see said book.

Respondent also engaged in deceptive practices to coerce clients into giving Respondent money. In the case of Mr. Patel, Respondent called Mr. Patel, urgently, insisting that he was still working on his case, but needed a \$2,000.00 payment, immediately. Mr. Olivas-Herdiz testified that Respondent contacted him as late as June, 2019, after the Movant had filed its Motion for Criminal Contempt, attempting to persuade Mr. Olivas to pay him \$6,000.00 so he could file a new immigration case on his behalf. Respondent told Mr. Olivas-Herdiz that he would see Mr. Olivas at his September, 2019 removal hearing, knowing that Respondent would be prohibited from appearing in court. In both matters, Respondent failed to inform his clients, as he was asking for money to continue working, that he was suspended from the practice of law.

Respondent's conduct in frustrating the work of the trustees further demonstrates his willful intent. Ms. Williams testified that the trustees were unable to find hardly any active case files more recent than 2016 in Respondent's office or empty storage units, despite overwhelming evidence that those case files existed. Mr. Olivas-Herdiz testified that when he was last contacted by Respondent, in June or July, 2019, Respondent stated that he would be willing to give Mr. Olivas Herdiz's file to a new attorney, indicating that Respondent was in possession of Mr. Olivas-Herdiz's file. Testimony from Ms. Williams further established that Respondent attempted to subvert the work of the Trustees when he transferred his office

telephone number, which he was aware had been forwarded to the Trustees, to his personal line so that he could continue to receive incoming calls from the office.

The totality of the evidence establishes that Respondent was in substantial debt, having taken out hundreds of thousands of dollars in high interest loans the year prior, the payment of which was being automatically withdrawn from his bank account on a daily basis. The evidence in this case establishes that Respondent continued taking money from clients, which was comingled with his own funds and used in part to pay these debts, even after his suspension for misappropriating client funds. Respondent held himself out as an attorney capable of practicing law by keeping his office open and functional, by providing legal advice and services, by entering into new client agreements and by taking payments from unsuspecting clients.

Respondent maintains that he lacked the *mens rea* to be found guilty of criminal contempt. The Court disagrees. The Respondent's actions and interactions with attorney, Taylor Sloan, in the Githere case underscore the fact that the Respondent was operating with full knowledge of his deceptive actions. In May, 2019, after months of interactions with the Respondent, Mr. Sloan requested that the Respondent formally enter his appearance in the case so that he could include the date of entry and his signature block on the decree of dissolution they were jointly submitting to the Court. Rather than inform Mr. Sloan that his license was suspended, the Respondent informed Mr. Sloane that his client would now be acting on his own. The Respondent intentionally avoided filing his entry of appearance with the Court as said e-filing would have been proof he was continuing to practice law. Further evidence of Respondent's knowledge is his directing Mr. Sloan as to the appropriate language

to include in the divorce decree to protect his client's immigration status. There is also the fact that the Respondent instructed Ms. Denney to backdate receipts and forms to March 29, 2019, a date just prior to his interim suspension and that he instructed Ms. Denney to answer the phone as the Law Office versus the Allan Bell Law Office. In addition, when asked by Ms. Denney as to why he was continuing to take on new clients after his suspension date, the Respondent, simply responded with "It will be quick and easy."

The cumulative evidence establishes that Respondent deceived clients by promising to either take them on as new clients or to continue representing former clients after his suspension. Respondent's assertion that he would help the Huangs at a later date was an attempt to deceive the Huangs, not indication that Respondent was unaware of his wrongdoing. Respondent's failure to inform existing clients such as Mr. Patel or Mr. Olivas-Herdiz of his suspension while simultaneously seeking out additional funds from both were intentional, knowing acts of deception not confusion as to the status of his license. Respondent has repeatedly demonstrated his willful refusal to be bound by or abide the Court's suspension order.

These actions described by the Respondent herein were not the actions of a confused lawyer rather of one acting in a knowing, intelligent and deceptive manner. As such, this Court finds that Movant has met all elements necessary to prove and sustain an action for criminal contempt.

In 1986, Missouri adopted the American Bar Association's Model Rules of Professional Conduct and though the Rules in Missouri now exist with variation, the Model Rules are used by a majority of other states, making other state disciplinary cases relevant



to Missouri attorneys. *State ex rel. Horn v. Ray*, 138 S.W.3d 729 (Mo.App. E.D. 2002). See also *In re Cupples*, 952 S.W.2d 226 (Mo. banc 1997) and *In re Belz*, 258 S.W.3d 38 (Mo. banc 2008) (where this Court analyzed other state disciplinary law in reaching a conclusion in Missouri). Cases similar to the one at hand have arisen in other states with disciplinary rules comparable to those in Missouri. In Maine, a respondent attorney was disbarred and thereafter prepared a deed and two wills on behalf of clients. *Board of Overseers of the Bar v. Murphy*, 607 A.2d 530, 531 (Me. 1992). The Supreme Judicial Court of Maine found the respondent attorney guilty of criminal contempt. *Id.* In South Carolina, an attorney was placed on interim suspension and was thereafter ordered to show cause why he should not be held in criminal contempt for failing to file his suspension affidavit and engaging in the practice of law under suspension. *In re Lapham*, 748 S.E.2d 779, 780 (2013). The Supreme Court of South Carolina found the attorney guilty of criminal contempt and ordered him to serve sixty days imprisonment. *Id.* In Wisconsin, a respondent attorney was found to be in criminal contempt by the Supreme Court of Wisconsin for failing to wind up his practice following the revocation of his license, failing to communicate his revocation to his clients and failing to return client files. *In re Moran*, WI 90-2481-D, slip op. (Jul. 14 1992). The attorney in question was ultimately jailed for 30 days or as long as the contempt continued. *Id.*

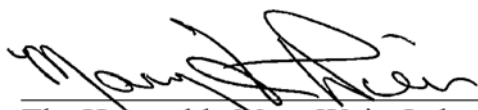
The Court is mindful that the Respondent is elderly. That is the only mitigating factor the Court can find in this action. There is neither remorse nor contrition on the part of the Respondent, which causes grave concern as to future deterrence. As outlined in *Teefey*, the Respondent has clearly “demonstrated a refusal to be bound” by the Supreme

Court's order of suspension. Many of the people the Respondent was taking money from after his suspension were immigrant clients in need of time-sensitive representation. Each year attorneys in the State of Missouri reaffirm their Oath to among other vows "conduct myself with the dignity becoming of an officer of the court," "conduct myself at all times in accordance with the Rules of Professional Conduct," and to "practice law to the best of my knowledge and ability with consideration for the defenseless and oppressed." The knowing, voluntary and deceptive actions of the Respondent are a disgrace to this Oath, to the profession and frankly shock the conscience of the Court.

WHEREFORE, the Court, serving as Special Master, recommends the following,  
to wit:

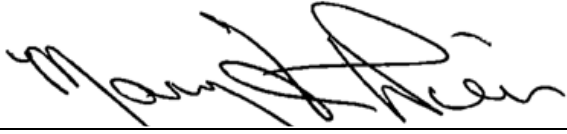
1. Respondent be adjudicated guilty of criminal contempt of the Missouri Supreme Court's order of suspension.
2. Respondent be sentenced to serve thirty (30) days in the Jackson County Jail.
3. Respondent be ordered to pay to the Clerk of the Missouri Supreme Court a fine of \$21,000.00.
4. These Amended Findings of Fact and Conclusions of Law shall be forwarded to the Supreme Court of Missouri for their consideration and further action.
5. Each party shall pay and be responsible for their own attorney's fees.
6. Costs taxed to Respondent.

February 11, 2020  
Date

  
\_\_\_\_\_  
The Honorable Mary Weir, Judge  
Circuit Court of Jackson County, Missouri

**CERTIFICATE OF SERVICE**

I certify the Court has notified the Deputy Clerk of the Supreme Court that the Amended Master's Report was filed this 11<sup>th</sup> day of February, 2020. The Transcript is on file and all exhibits shall be forwarded to the Deputy Clerk of the Supreme Court.

A handwritten signature in black ink, appearing to read "Mary F. Weir", written over a horizontal line.

Mary F. Weir, Judge