IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
ERIC KAYIRA	)	
200 S. Hanley Road	)	**Supreme Court #SC98531**
Suite 208	)	
St. Louis, MO 63105	)	
	)	
Missouri Bar No. 50672	)	
	)	
Respondent.	)	

INFORMANT'S BRIEF

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STATEMENT OF JURISDICTION

This action is one in which the Informant, Region X, Division 1, Disciplinary Committee, 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 Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040, R.S.Mo. 2016.

STATEMENT OF FACTS

PROCEDURAL HISTORY

December 28, 2018	Information
January 28, 2019	Respondent's Unopposed Motion for Additional Time to Answer Information
January 29, 2019	Order Granting Extension of Time
February 28, 2019	Respondent's Answer and Affirmative Defenses to Information
March 5, 2019	Appointment of Disciplinary Hearing Panel
January 2, 2020	Disciplinary Hearing Panel (DHP) Hearing
March 17, 2020	DHP Decision
March 18, 2020	Acceptance of DHP Decision by Informant
April 15, 2020	Rejection of DHP Decision by Respondent

BACKGROUND AND DISCIPLINARY HEARING

Respondent was licensed as an attorney on April 21, 2000. **App. Vol. 1, A57.**[1] Respondent's license is in good standing. **Id.** Respondent has his own law firm in St. Louis, Missouri: Kayira Law, LLC. **App. Vol. 1, A190**. Respondent concentrates his area of practice in entertainment, contract and commercial disputes, and litigation.

[1] Citations to the record are denoted by the appropriate Appendix Volume and page reference followed by the Exhibit number, if applicable, for example "**App. Vol. _ A. __** (Ex. ___)."

Respondent also practiced in the area of personal injury for a short time. **App. Vol. 1, A193.** During the relevant time herein, Respondent was a solo practitioner and responsible for the law firm's maintenance and administration of the Trust Account and Operating Account. **App. Vol. 2, A191-A193.** The law firm's Trust Account and Operating Account were maintained at Bancorp South as follows: a client trust account, Account No. XXX-XXX-0431, in the account name of Kayira Law, LLC, IOLTA Foundation Trust Account ("Trust Account"); and, a law firm operating account, Account No. XXX-XXX-0423, in the account name of Kayira Law, LLC ("Operating Account"). **App. Vol. 1, A191.**

Respondent has prior discipline. **App. Vol. 1, A350-A355.** Respondent was tax suspended pursuant to Rule 5.245 on January 14, 2014 and reinstated by the Supreme Court on January 22, 2014. **App. Vol. 1, A350-A355.** Respondent also acknowledged receiving an informal guidance letter on October 15, 2012 after overdrawing his Trust Account. **App. Vol. 1, A194-A195.**

The Informant filed an Information with the required Notice on December 28, 2018. **App. Vol. 1, A4-A35.** In the first section of the Information, Informant charged Respondent with violating the following rules in connection with his representation of the personal representative of an estate:

1. Rule 4-1.1 (Competence);
2. Rule 4-3.3(a)(1) (Candor Toward the Tribunal);
3. Rule 4-3.4(c) (Duties to Opposing Party and Counsel and Ethical Obligation to follow Court Orders and Rules);

4. Rule 4-5.1 (Responsibilities of Partners, Managers and Supervisory Lawyers);
5. Rule 4-8.1(a) (Bar Admission and Disciplinary Matters); and,
6. Rule 4-8.4(c) (Misconduct - involving dishonesty, fraud, deceit, or misrepresentation).

Id.

The second section of the Information charged Respondent with numerous violations of Rule 4-1.15 (Safekeeping Property) and Rule 4-8.4(c) (Misconduct - involving dishonesty, fraud, deceit, or misrepresentation) for twenty-eight of Respondent's clients committed between July 1, 2013 and March 30, 2018. **Id.** Respondent filed his Answer and Affirmative Defenses on February 28, 2019. **App. Vol. 1, A57-A87.**

The disciplinary hearing was conducted on January 2, 2020. **App. Vol. 1, A95-A94.** Kelly Dillon, the Office of Chief Disciplinary Counsel ("OCDC") Investigator (hereinafter, "OCDC Investigator"), was Informant's primary witness. Informant's thirty-eight exhibits, including testimony regarding Respondent's limited documentation provided, bank records, sworn statements, and the OCDC Investigator's spreadsheets and summaries were admitted into evidence. **App. Vol. 1, A100.** Respondent's three exhibits consisting of a law firm invoice and two character letters were also admitted. **App. Vol. 1**, **A282.** Respondent submitted proof of payment to a client as his fourth exhibit after the disciplinary hearing was concluded. **App. Vol. 5, A1001-A1006.** Respondent's fourth exhibit was admitted without objection. **Id.** The Disciplinary Hearing Panel issued its decision on March 17, 2020 and recommended disbarment.

App. Vol. 5, A1067. Informant filed its letter of acceptance with the Advisory Committee on March 18, 2020. **App. Vol. 5, A1114.** Respondent rejected the decision on April 15, 2020. **App. Vol. 5, A1115-A1116.**

RESPONDENT'S REPRESENTATION OF THE ESTATE OF MILTON BROOKINS

On October 20, 2011, the Estate of Milton Brookins was opened in the Probate Court in the Circuit Court of the City of St. Louis and styled *In re Estate of Milton Brookins, Jr.*, Cause No. 1122-PR00737 (sometimes referred to herein as, the "Estate"). **App. Vol. 1, A58.** Carmen House was appointed as the Personal Representative (hereinafter, the "Personal Representative"). **Id.** The Personal Representative initially retained attorney Herman Jimmerson as counsel for the Estate. **Id.** The Estate was opened as a supervised estate. **Id.** Therefore, any action taken on behalf of the Estate that affected the Estate's assets required prior court authorization. **App. Vol. 1, A196.**

The following year, on July 18, 2012, at the request of the Personal Representative, Mr. Jimmerson withdrew as attorney for the Personal Representative of the Estate and Respondent and his associate attorney, Irene Costas, entered their appearances on July 25, 2012. **App. Vol. 1, A58.** Thereafter, on September 21, 2012, Respondent filed a lawsuit on behalf of the Estate against certain defendants, including Bank of America, in the Circuit Court of the City of St. Louis styled, *Estate of Milton Brookins v. Bank of America, et al.* **App. Vol. 1, A59.** The cause of action alleged that Bank of America wrongfully disbursed funds belonging to the then decedent under a purported Power of Attorney. **Id.** The case was removed by Bank of America to the

United States District Court, Eastern District, but was subsequently remanded back to the Circuit Court of the City of St. Louis where Respondent joined an additional defendant and proceeded to prosecute the case on behalf of the Estate. **App. Vol. 1, A198.** Because the Estate was a supervised estate, Respondent was required to obtain authorization from the Probate Court prior to filing or prosecuting the Estate's lawsuit against Bank of America. **Id.** Respondent failed to do so. **App. Vol. 1, A199**.

On or about July 1, 2013, Respondent reached a settlement with Bank of America in the amount of $12,500.00, in the pending Circuit Court case and executed a confidential settlement agreement. **App. Vol. 1, A59; App. Vol. 1, A199-A200.** Respondent did not obtain the Probate Court's authorization to settle the Estate's claim against Bank of America. **App. Vol. 1, A200.**

On August 1, 2013, Bank of America issued a settlement check to Kayira Law, LLC in the amount of $12,500.00 (sometimes referred to herein as, the "Settlement Check"). **Id.** The Estate was not named as a payee on the Settlement Check. **App. Vol. 1, A202.** Respondent deposited the Settlement Check into Respondent's Operating Account on August 8, 2013 and did not notify the Probate Court of his receipt of the check. **App. Vol. 1, A205-A206.** At that time, the Personal Representative had an outstanding balance with Respondent's law firm in the amount of $12,023.34 for legal services owed in connection with the prosecution of the Estate's claims against Bank of America. **App. Vol. 5, A990-A998 (Ex. 39).** Respondent applied the Settlement Check to the Personal Representative's account balance with Respondent's law firm without prior authorization from the Probate Court. **App. Vol. 1, A206-A207.** Respondent

claims that he did so with the consent of the Personal Representative. **App. Vol. 1, A248.**

On August 8, 2013, Respondent filed a Stipulation of Dismissal with Prejudice in the state court civil lawsuit dismissing Bank of America. Respondent did so without the authorization of the Probate Court. **App. Vol. 1, A30-A61.** Subsequently, on August 29, 2013, Respondent filed a Petition to Convert the Estate to Independent Administration Without Bond (referred to hereinafter, as "Petition to Convert"). **App. Vol. 1, A80-A81.** Respondent stated in the Petition to Convert that the Estate was still in the process of searching for assets through the pending state court case, *Estate of Milton Brookins v. Bank of America, et al.* **Id.** Respondent never disclosed that he had settled the case against Bank of America and had already received and deposited the Settlement Check. **App. Vol. 2, A417-A418.** The Probate Court granted the Petition to Convert the Estate on September 5, 2013. **App. Vol. 2, A432.**

On June 2, 2015, Respondent filed a Motion to Withdraw as counsel for the Personal Representative of the Estate. **App. Vol. 1, A62.** Respondent's motion was set for hearing on June 26, 2015. **Id.** On June 3, 2015, the Deputy Probate Court Clerk filed a Notice of Deficiency and requested that Respondent file a copy of the Bank of America July 1, 2013 settlement agreement by June 25, 2015, prior to the June 26, 2015 scheduled hearing on Respondent's Motion to Withdraw. **Id.** Respondent notified the Probate Court that he would produce the settlement agreement at the hearing given its confidential nature. **Id.**

During the June 26, 2015 hearing on Respondent's Motion to Withdraw, Probate Commissioner Patrick Connaghan (sometimes referred to herein as the, "Commissioner") advised Respondent that the Settlement Check was an asset of the Estate and that the check should have been deposited into the Estate's account, not Respondent's Operating Account as an earned legal fee. **Id.** Respondent was ordered to deposit $12,500.00, the amount of the Bank of America Settlement Check, into the Estate's account immediately. **App. Vol. 1, A63.** The Commissioner informed Respondent that he would address the issue of Respondent's legal fees after the Bank of America settlement funds were returned to the Estate. **App. Vol. 2, A476.** The Commissioner continued Respondent's Motion to Withdraw to July 10, 2015. **App. Vol. 1, A63.** On July 8, 2015, Respondent filed notice with the Probate Court cancelling his Motion to Withdraw. **Id.**

On August 24, 2015, Commissioner Connaghan reported to the OCDC Respondent's unauthorized actions taken on behalf of the Estate, including Respondent's failure to return the Estate's settlement funds. **App. Vol. 2, A416-A435.** The OCDC subsequently opened a complaint against Respondent under File No. 15-1396-X (the "Complaint").

Respondent submitted a written response to the Complaint on November 9, 2015 and admitted that he deposited the Settlement Check without court approval and stated that he was currently holding the fee. **App. Vol. 1, A64.** Specifically, Respondent stated, "Commissioner Connaghan's complaint is accurate to the extent that it alleges that I did receive (and am currently holding) $12,500.00 in attorney fees, which fees I believe I earned…for pursuing a lawsuit against Bank of America…." **Id.** Respondent further

stated in his response that the Estate had been converted to an unsupervised Estate prior to his receipt of the Settlement Check. **Id.**

RESPONDENT'S SWORN STATEMENT BEFORE THE INFORMANT

On November 22, 2016, Respondent was served with a subpoena to appear before the Informant on December 1, 2016 in connection with Informant's investigation of the Complaint. **App. Vol. 1, A65.** Respondent's appearance was rescheduled by the Informant to December 15, 2016. **Id.** On December 13, 2016, just two days prior to Respondent's rescheduled appearance, Respondent remitted to Peter Fiore (new counsel for the Personal Representative for the Estate) two checks payable to the Estate and drawn on the Operating and Trust Accounts, as follows: a check in the amount of $12,500.00, drawn on the Trust Account, as repayment of the Bank of America Settlement Check (hereinafter, "Reimbursement Check"); and, a check in the amount of $3,375.00, drawn on the Operating Account, representing interest accrued on the Settlement Check (an amount previously agreed upon between Peter Fiore and Respondent) (hereinafter, "Interest Check"). **Id.** During Respondent's December 15, 2016 appearance before the Informant, Respondent testified that he had transferred the $12,500.00 from his Operating Account back into his Trust Account because he believed that that was his exposure for the disputed legal fees after the hearing before the Commissioner on June 26, 2015. **App. Vol. 2, A375.** Respondent stated that he was unable to recollect the date that he made the transfer. **Id.**

After Respondent's appearance before the Informant, as part of its continued investigation, the Informant requested that Respondent provide further clarification regarding the source of funds for the Reimbursement Check. **App. Vol. 1, A66**. Respondent responded to the Informant's request and stated, *inter alia*, that the source of the funds for the Reimbursement Check was his share of attorney's fees for a non-related settlement. **Id.** The amount of that fee was $12,600.00. **App. Vol. 2, A485**. Respondent said that he left the earned fee in the Trust Account and remitted the Reimbursement Check, drawn on the Trust Account, to Peter Fiore, for the Estate. **Id.**

AUDIT OF RESPONDENT'S TRUST ACCOUNT AND OPERATING ACCOUNT

At the request of the Informant, the OCDC Investigator audited Respondent's Trust Account and Operating Account and prepared account examination spreadsheets for both accounts reflecting checks, withdrawals, and deposits from July 1, 2013 to March 30, 2018 (the "Audit"). The Audit revealed that with respect to the Bank of America Settlement Check:

A. The balance of the Operating Account was $154.51 prior to Respondent's deposit of the Settlement Check on August 8, 2013, and the balance in the Trust Account was $140.00. **App. Vol. 1, A108-A109; App. Vol. 3, A692 (Ex. 37).**

B. After the deposit of the Settlement Check, Respondent withdrew $8,000.00 from the Operating Account on August 12, 2013 and purchased a Bancorp

cashier's check payable to Daniel Helton, Respondent's residential landlord. **App. Vol. 1, A109.**

C. On August 13, 2013, Respondent redeposited the $8,000.00 Bancorp cashier's check into his Operating Account and remitted a lesser payment from the Operating Account to Daniel Helton in the amount of $5,012.00. **Id.**

D. Respondent was not "holding" $12,500.00, the amount of the Bank of America Settlement Check, as stated in his November 9, 2015 written response to the Complaint. Specifically, the Operating Account balance on November 9, 2015 was $3,687.44 and the balance in the Trust Account was $9.13. **Id.**

The Audit further revealed the following systematic issues with Respondent's trust accounting practice during the Audit period (July 1, 2013 – March 30, 2018):

- Respondent did not maintain the following trust account records: individual client ledgers for his Trust Account; a receipt and disbursement journal; or, records of electronic transfers from his Trust Account.
- Respondent did not reconcile his Trust Account.
- Respondent often deposited unearned fees, clients' settlement funds, and advanced funds directly into his Operating Account.
- Respondent often transferred funds from his Trust Account to his Operating Account without maintaining any records regarding the reasons for the transfers.

- Respondent sometimes did not have settlement sheets and fee agreements.

App. Vol. 1, A67-A69; App. Vol. 1, A243-A244.

A review of twenty-eight (28) additional client payments and settlements during the Audit period along with Respondent's sworn statement revealed the following:

A. Client Darren Vermeulen

i. On July 30, 2013, Mr. Vermeulen entered into an hourly fee agreement with Respondent which required payment of an advance fee in the amount of $3,500.00.

ii. On August 1, 2013, Respondent deposited into the Operating Account a cashier's check in the amount of $3,500.00 representing the advanced fee paid by the client.

iii. By August 6, 2013, the Operating Account fell to a balance of $154.51.

iv. Respondent claimed that $3,500.00 in legal services had been rendered to the client at the time of deposit, but Respondent provided no billing records evidencing that the fee was earned at the time of deposit into the Operating Account.

App. Vol. 1, A110; App. Vol. 2, A511-A521 (Ex. 9).

B. Client Gernine Mailhes

i. In or about February or March 2014, Ms. Mailhes entered into a flat fee agreement with Respondent and remitted to Respondent a check in the amount of $5,000.00 as and for the contracted initial flat fee.

ii. Respondent deposited the $5,000.00 check into his Operating Account on March 3, 2014.

iii. By March 4, 2014, the Operating Account fell to a balance of $665.26.

iv. Respondent alleged that the value of $5,000.00 in legal services had been rendered to the client at the time of deposit, but Respondent provided no billing records evidencing that the fee was earned at the time of deposit into the Operating Account.

App. Vol. 1, A111; App. Vol. 2, A522-A527 (Ex.10).

C. Client Sennie Turnipseed

i. On March 21, 2014, Respondent deposited a $7,000.00 settlement check into his Operating Account.

ii. On April 4, 2014, the Operating Account fell to a balance of $0.70. The balance in the Trust Account was $5.00.

iii. On June 23, 2014, Respondent remitted to the client his share of the settlement proceeds from the Operating Account.

iv. Respondent did not have a settlement sheet for this matter.

App. Vol. 1, A112-A113; App. Vol. 2, A528-A532 (Ex. 11).

D. Client David McAnally

i. On April 25, 2014, Respondent deposited an $11,000.00 settlement check into his Operating Account.

ii. On April 29, 2014, Respondent withdrew funds from the Operating Account for the purchase of a cashier's check payable to the client for his share of the settlement funds.

iii. Respondent had no settlement sheet for this matter.

App. Vol. 1, A114; App. Vol. 2, A533-A537 (Ex. 12).

E. Client Ronald Brooks

i. On May 8, 2014, Respondent deposited a $5,000.00 post-litigation settlement check into his Operating Account.

ii. Pursuant to the client's fee agreement with Respondent, the client's post-litigation share of the settlement was $3,000.00, less costs.

iii. On May 19, 2014, the Operating Account fell to a balance of $204.97 and the balance in the Trust Account was $5.00.

iv. On July 7, 2014, Respondent remitted a check to the client in the amount of $2,600.00, drawn on the Operating Account. Respondent did not pay the full amount owed to Mr. Brooks.

1. Respondent's attorney's fees were $2,000.00. Respondent alleged that that he paid a Circuit Court filing fee in the amount of $97.00 and that there were no third-party providers.

2. Respondent owed Mr. Brooks an additional $303.00.

v. Respondent had no settlement sheet for this matter.

App. Vol. 1, A116-A117; App. Vol. 2, A538-A541 (Ex. 13).

F. Client Erica Broadnex

i. On July 16, 2014, Respondent deposited an $8,666.67 settlement check into his Operating Account. Prior to the deposit, Respondent's Operating Account was overdrawn by $3,316.32.

ii. The client's share of the settlement proceeds was $4,400.00.

iii. Between July 16, 2014 and September 30, 2014, the balance of the Operating Account fell below $4,400.00 repeatedly. Between July 16, 2014 and September 30, 2014, the balance of the Trust Account consistently remained at $5.00.

iv. Respondent paid the client her share of the settlement proceeds on October 1, 2014.

v. Respondent had no settlement sheet for this matter.

App. Vol. 1, A117-A118; App. Vol. 2, A542-A545 (Ex. 14).

G. Client Kenneth Redd

i. On August 18, 2014, Respondent deposited an $8,671.60 settlement check into his Operating Account.

ii. The client's share of the settlement proceeds was $7,800.00.

iii. Between August 29, 2014 and April 26, 2015, the balance of the Operating Account fell below $7,800.00 repeatedly.

iv. On April 27, 2015, Respondent paid the client his share of settlement proceeds.

v. Respondent drafted the client's settlement payment from the Trust Account notwithstanding that the settlement funds were deposited into the Operating Account.

vi. Respondent had no settlement sheet for this matter.

App. Vol. 1, A118-A119; App. Vol. 2, A546-A549 (Ex. 15).

H. Client Rivalry, LLC

i. On October 20, 2014, Respondent deposited a $25,787.75 settlement check into his Operating Account.

ii. On October 28, 2014, Respondent remitted payment in the amount of $20,100.00 to the client from the Operating Account.

iii. Respondent provided no fee agreement or settlement sheet for this matter.

App. Vol. 1, A120; App. Vol. 2, A550-A552 (Ex. 16).

I. Client Sean Caldwell

i. On November 13, 2014, Respondent deposited a $15,000.00 check from the client into his Operating Account.

ii. Respondent alleged that the check represented payment for services previously rendered, but Respondent provided no billing records evidencing that the fee was earned at the time of deposit.

App. Vol. 1, A120; App. Vol. 2, A553-A555 (Ex. 17).

J. Client Eugene Wesley

i. On November 17, 2014, Respondent deposited into his Operating Account a $20,000.00 check received from Uni Music Records for the benefit of Respondent's client, Eugene Wesley.

ii. By December 1, 2014, the Operating Account fell to a balance of $232.16, and the balance in the Trust Account was $5.00.

iii. On December 3, 2014 and December 5, 2014, Respondent remitted two checks to the client for his share of the Uni Music Records proceeds in the amounts of $7,500.00 and $10,500.00, respectively.

iv. Respondent provided neither a fee agreement nor any billing records related to this matter.

App. Vol. 1, A120-A121; App. Vol. 2, A556-A558 (Ex. 18).

K. Client Thomas Keppler

i. In or about March 2013, prior to the Audit of Respondent's Trust Account and Operating Account, Respondent received a $50,000.00 wire transfer from Federated Mutual Insurance Company ("Federated") for a settlement on behalf of Mr. Keppler.

ii. Respondent did not notify Mr. Keppler of the receipt of the Federated settlement payment.

iii. On July 1, 2013, the balance of the Operating Account was $3,789.04 and the balance of the Trust Account was $440.00.

iv. In or about mid November 2014, Mr. Keppler inquired of Respondent about the status of his Federated claim.

v. On November 19, 2014, Respondent remitted a cashier's check in the amount of $44,493.56 drawn on the Operating Account payable to Mr. Keppler for the Federated claim.

vi. Respondent admitted that he used some of the proceeds from the Uni Music November 17, 2014 deposit that belonged to client Eugene Wesley, along with funds he received via a personal loan, to pay Mr. Keppler on November 19, 2014.

vii. Respondent did not have a settlement sheet for this matter.

App. Vol. 1, A121-A123; App. Vol. 2, A559-A563 (Ex. 19).

L. Client Adam Crask

i. On December 19, 2014, Respondent deposited a $7,500.00 settlement check into his Operating Account.

ii. The client's share of the settlement proceeds was $5,250.00.

iii. By December 24, 2014, the balance of the Operating Account fell to $1,916.62, and the balance in the Trust Account was $5.00.

iv. Between March 25, 2015 and April 13, 2015, Respondent remitted the following payments to the client for his share of the settlement proceeds:

1. On March 25, 2015, Respondent remitted a check to the client from the Operating Account in the amount of $3,000.00. The memo line of the check contained the notation "advance

settlement" notwithstanding Respondent's deposit of the settlement check on December 19, 2014.

2. Respondent remitted two additional checks to the client from the Operating Account on April 9, 2015 and April 13, 2015 in the respective amounts of $1,500.00 and $750.00.

v. Respondent had no settlement sheet for this matter.

App. Vol. 1, A123-A125; App. Vol. 2, A564-A569 (Ex. 20).

M. Client Allen Brillhart

i. On December 22, 2014, Allen Brillhart entered into an hourly fee agreement with Respondent. The fee agreement required a retainer fee in the amount of $2,500.00.

ii. On December 22, 2014, Respondent deposited into the Operating Account a partial retainer payment from the client in the amount of $1,000.00.

iii. On December 23, 2014, Respondent deposited into the Operating Account the client's balance of the retainer payment in the amount of $1,500.00.

iv. Respondent began rendering legal services to the client on December 23, 2014, per Respondent's billing records.

App. Vol. 1, A126-A127; App. Vol. 2, A570-A579 (Ex. 21).

N. Client CoCo Curls

i. On February 25, 2015, Respondent deposited a $5,000.00 settlement check into his Operating Account.

ii. The client's share of the settlement proceeds was $3,000.00.

iii. By March 3, 2015, the balance of the Operating Account fell to $2,007.76, and the balance in the Trust Account was $5.00.

iv. On April 21, 2015, Respondent remitted to the client its share of the settlement proceeds.

v. The client's settlement check was drawn on the Trust Account instead of the Operating Account where the settlement proceeds had been deposited.

App. Vol. 1, A127-A128; App. Vol. 2, A580-A583 (Exh. 22).

O. Client Chantelle Nickson-Clark

i. On March 23, 2015, Respondent's Trust Account balance was $5.00. On March 24, 2015, Respondent deposited a $7,500.00 settlement check into his Trust Account.

ii. On March 25, 2015, Respondent purchased two cashier's checks drawn on the Trust Account in the respective amounts of $7,000.00 and $500.00 and deposited the cashier's checks into his Operating Account on March 25, 2015.

1. On March 25, 2015, Respondent remitted a check drawn on the Operating Account payable to the Royal Gate automobile

dealership in the amount of $3,500.00. Respondent stated that the payment to Royal Gate was a down payment for a vehicle purchase. Respondent used a portion of Chantelle Nickson-Clark's settlement funds to pay the Royal Gate automobile dealership.

2. On March 25, 2015, Respondent remitted a check in the amount of $3,000.00 payable to a different client, Adam Crask, from the Operating Account. Respondent used a portion of Chantelle Nickson-Clark's settlement funds to pay Mr. Crask the first $3,000.00 payment of his share of his settlement proceeds. The memo line of the check contained the notation "advance settlement" notwithstanding Respondent's deposit of Mr. Crask's settlement check on December 19, 2014, as noted above in subparagraph L.

iii. By March 31, 2015, the balance of the Operating Account fell to $0.01, and the balance of the Trust Account was $5.00.

iv. On April 2, 2015, Respondent remitted to the client her share of the settlement proceeds from the Operating Account.

App. Vol. 1, A128-A129; App. Vol. 2, A393, A584-A595 (Ex. 23).

P. Client Brenda Gosselin

i. On April 13, 2015, Respondent deposited a $5,500.00 settlement check into his Trust Account.

ii. By April 21, 2015, the Trust Account had a zero balance. By April 22, 2015, the Operating Account was overdrawn.

iii. On July 10, 2015, Respondent remitted to the client a check in the amount of $3,000.00 for her share of the settlement proceeds. The settlement check was drawn on the Operating Account instead of the Trust Account where the funds had been deposited.

App. Vol. 1, A130-A132; App. Vol. 3, A599-A607 (Ex. 24).

Q. Jennifer Johnson as Personal Representative for Client Rita Kendrick

i. On April 22, 2015, Respondent deposited a $25,000.00 settlement check into his Trust Account.

ii. By May 26, 2015, the Trust Account fell to a balance of $35.02. By June 8, 2015, Respondent's Operating Account was overdrawn.

iii. On December 22, 2015, Respondent remitted to the client a check for her share of the settlement proceeds drawn on the Operating Account, instead of the Trust Account where the funds were originally deposited.

iv. Respondent did not have a settlement sheet for this matter.

App. Vol. 1, A133-A134; App. Vol. 3, A608-A614 (Ex. 25).

R. Client Martha McKinney-Jacobs

i. On August 13, 2015, Respondent deposited two settlement checks totaling $4,900.00 into his Trust Account.

ii. By September 1, 2015, the Trust Account fell to a balance of $5.00. By September 3, 2015, the Operating Account was overdrawn.

iii. On September 8, 2015, Respondent remitted a check to the client in the amount of $3,000.00 for her share of the settlement funds. The settlement check was drawn on the Operating Account instead of the Trust Account where the funds had been deposited.

iv. Respondent did not have a settlement sheet for this matter.

App. Vol. 1, A134-A135; App. Vol. 3, A615-A620 (Ex. 26).

S. Client Julia Thompson

i. On September 11, 2015, Respondent deposited a $1,000.00 settlement check into his Operating Account.

ii. The client's share of the settlement proceeds was $700.00.

iii. By September 17, 2015, the Operating Account fell to a balance of $133.80. By September 25, 2015, the balance in the Trust Account was $9.13.

iv. On November 5, 2015, Respondent remitted to the client a check for her share of the settlement proceeds drawn on the Trust Account instead of the Operating Account where the funds had been deposited.

App. Vol. 1, A135-A136; App. Vol. 3, A621-A624 (Ex. 27).

T. Clients Leroy and Margaret Berry

i. On September 25, 2015, Respondent deposited into his Operating Account a check from the Berry clients in the amount of $800.00 representing advanced costs for mediation services.

ii. By September 29, 2015, the Operating Account fell to a balance of $39.70.

iii. On October 5, 2015, Respondent remitted to USAM a check in the amount of $800.00 for mediation services on behalf of the Berry clients.

App. Vol. 1, A136-A137; App. Vol. 3, A625-A628 (Ex. 28).

U. Client Michael Hubbard

i. On January 22, 2016, Respondent deposited a $3,354.80 settlement check into his Operating Account.

ii. By February 11, 2016, the Operating Account had reached a negative balance and the balance in the Trust Account was $9.13.

iii. On February 25, 2016, Respondent remitted to the client a check for his share of the settlement proceeds from the Operating Account.

App. Vol. 1, A137; App. Vol. 3, A629-A632 (Ex. 29).

V. Client Sharon Young

i. On June 8, 2016, Respondent deposited a $12,755.96 settlement check into his Trust Account. The client's share of the settlement proceeds was $10,352.95.

ii. By June 22, 2016, the Trust Account fell to a balance of $15.09, and the balance in the Operating Account was $2,283.05.

iii. On December 5, 2016, a check for the client's share of the settlement proceeds was presented against the Trust Account.

App. Vol. 1, A137-A138; App. Vol. 3, A633-A636 (Ex. 30).

W. Client Summitline Industries, Inc./Stan Richards

i. On August 4, 2016, Respondent entered into an hourly fee agreement with Summitline Industries, Inc. The fee agreement required an initial deposit of $5,000.00.

ii. On August 9, 2016, Respondent deposited into his Operating Account a check from Summitline Industries, Inc. in the amount of $5,000.00 representing the initial deposit.

iii. Respondent did not believe that he had earned the full fee at the time of the deposit and he did not have billing records evidencing what portion of the fee was earned at the time of the deposit.

App. Vol. 1, A138-A139; App. Vol. 3, A637-A642 (Ex. 31).

X. Client Valerie Money

i. On August 10, 2016, Respondent deposited a $3,000.00 settlement check into his Trust Account.

ii. By September 27, 2016, the Trust Account fell to a balance of $173.89.

iii. On October 13, 2016, a check for the client's share of the settlement proceeds was presented against the Operating Account instead of the Trust Account where the funds had been deposited.

App. Vol. 1, A139-A140; App. Vol. 3, A643-A647 (Ex. 32).

Y. Client Personal Care Home Health Services, Inc.

i. On December 20, 2016, Respondent entered into an hourly fee agreement with Personal Care Home Health Services, Inc. The fee agreement required an initial deposit of $5,000.00.

ii. On December 20, 2016, Respondent deposited a $5,000.00 check from the client into his Trust Account representing the initial deposit.

iii. Respondent claimed that the $5,000.00 initial deposit check represented payment for services previously rendered but Respondent had no billing records evidencing that the funds were earned at the time of deposit.

App. Vol. 1, A140; App. Vol. 3, A648-A661 (Ex. 33).

Z. Client Betty Matthews

i. In or about September or October 2016, Respondent negotiated a $385,104.30 settlement on behalf of Ms. Matthews after her home was destroyed by fire.

ii. On November 2, 2016, Respondent deposited into his Trust Account a settlement check in the amount of $340,616.75 from Statewide Public Adjusters which was the net settlement to Ms. Matthews (from

Statewide Public Adjusters) after the deduction of $44,487.55 for its lien.

iii. Respondent's attorney's fee was 20% of the gross settlement, or $77,020.86. Ms. Matthews' net share of the settlement proceeds due after Respondent's attorney's fee was $263,595.89.

iv. Between November 16, 2016 and March 9, 2017, Respondent disbursed from the Trust Account payments totaling $226,854.76 to Ms. Matthews, as follows:

1. November 14, 2016 - $136,854.76;
2. February 14, 2017 - $50,000.00; and,
3. March 9, 2017 - $40,000.00.

v. By March 31, 2017, Respondent's Trust Account fell to $94.40 and the balance in Respondent's Operating Account was $670.38. A balance of $36,741.13 in settlement funds remained due and owing Ms. Matthews on March 31, 2017.

vi. Between September 20, 2017 and January 31, 2018, Respondent disbursed the following additional payments from Respondent's Operating Account or personal bank account to the client or to third parties on her behalf, totaling $6,500.00, and leaving Ms. Matthews with a balance due of $30,241.13:

1. September 20, 2017 - $1,500.00;
2. October 4, 2017 - $1,500.00;

3. October 18, 2017 - $1,500.00;

4. January 25, 2018 - $1,000.00; and,

5. January 31, 2018 - $1,000.00.

vii. Respondent admitted to using a portion of Ms. Matthews' share of settlement proceeds to pay his personal expenses.

viii. On July 9, 2018, Respondent submitted information regarding payments to third parties purportedly on behalf of Ms. Matthews to Homelink Corp, Presidential Restoration, Chivas Johnson, and Metro Lighting without any identifying information to connect the payments to Ms. Matthews. Said payments totaled $50,175.89.

ix. If Respondent is given credit for the $50,175.89, then Respondent has overpaid Ms. Matthews by $19,934.76 [$340,616.75 - $77,020.86 (attorney's fees) - $233,354.76 (amount paid to Ms. Matthews) - $50,175.89 (additional payments noted above) = -19,934.76].

x. Respondent admitted to continuing to remit payments to Ms. Matthews after depletion of her settlement funds from the Trust Account because he was uncertain as to whether additional settlement funds were still due Ms. Matthews.

xi. Respondent had no fee agreement or settlement sheet for this matter.

App. Vol. 1, A141-A143; App. Vol. 2, A403; App. Vol. 3, A662-A681 (Ex. 34).

AA. Client Melanie Jackson

i. On February 23, 2018, Respondent deposited into his Trust Account a $5,000.00 settlement check.

ii. By February 28, 2018, the Trust Account fell to a balance of $519.19.

iii. On March 6, 2018, Respondent remitted a check to the client for her share of the settlement proceeds from the Trust Account.

App. Vol. 1, A146; App. Vol. 3, A682-A685 (Ex. 35).

BB. Client Mark Valenti

i. On February 12, 2018, Respondent deposited into his Operating Account a $15,000.00 settlement check.

ii. By February 28, 2018, the Operating Account fell to a balance of $1,545.89.

iii. On February 28, 2018, Respondent remitted a check to the client for his share of the settlement proceeds in the amount of $11,000.00 drawn on the Trust Account instead of the Operating Account where the funds had been deposited.

1. Respondent used a portion of client Melanie Johnson's $5,000.00 settlement check deposited on February 23, 2018, to pay Mr. Valenti's $11,000.00 settlement payment.

App. Vol. 1, A146-A147; App. Vol. 3, A686-A691 (Ex. 36).

DISCIPLINARY HEARING TESTIMONY

The Estate Of Milton Brookins

During the disciplinary hearing, Respondent explained his poor handling of the Estate matter. Respondent testified that he had very limited probate experience. Respondent characterized his knowledge of probate administration and probate procedural practice as "fairly nominal" and admitted that his probate experience consisted of three estate matters, including the instant matter – the Estate of Milton Brookins. **App. Vol. 1, A193-194.** Respondent testified that he entrusted Irene Costas, an associate attorney in his office, also with limited experience, to handle the Brookins Estate matter. **App. Vol. 1, A255; App. Vol. 2, A370.** Respondent admitted, however, that he was the supervising attorney and stated that he should have conducted the necessary research to ensure that the Estate was handled properly. **App. Vol. 1, A255.**

Respondent testified that he did not recall the Commissioner ordering him to reimburse the Estate the $12,500.00 from the Bank of America Settlement during the June 26, 2015 hearing on Respondent's Motion to Withdraw. **App. Vol. 1, A216.** Respondent said that he anticipated that the Commissioner would issue a Show Cause Order. **App. Vol. 1, A216, A257-A258.** Respondent, agreed, however, that the Complaint alleged, *inter alia*, his failure to follow the court's order. **Id.**

Respondent was also questioned about statements made in his November 9, 2015 Answer to the Complaint that he was "holding" the $12,500.00 in funds from the Bank of America settlement and, that the Estate was converted to an unsupervised estate prior to

his receipt of the Settlement Check. Respondent testified that what he meant by "am holding" was that he had "earned the fees." **App. Vol. 1, A218.** Respondent further testified that, prior to submitting his Answer to the Complaint, he confirmed with Ms. Costas that the Estate was unsupervised when he received the Settlement Check. Respondent said that he neglected to verify the information provided by Ms. Costas. **App. Vol. 1, A205.**

Respondent was further questioned about his previous testimony before the Informant concerning the source of the Reimbursement Check wherein Respondent testified that he transferred the funds from his Operating Account into his Trust Account when he had not made any such transfer. In an attempt to explain the discrepancy, Respondent stated that he had gotten "confused." **App. Vol. 1, A223.**

Respondent further admitted that he took several actions on behalf of the Estate without obtaining proper authorization from the Probate Court, including filing and prosecuting the lawsuit against Bank of America, settling the Estate's claim against Bank of America, and depositing funds belonging to the Estate into his Operating Account purportedly for earned fees. **App. Vol. 1, A198, A200-A201, A210-A212.**

The Trust Account Audit

During the disciplinary hearing, the OCDC Investigator provided detailed testimony of the following Audit findings:

1. Respondent deposited advanced costs, advanced fees, and client funds into his Operating Account;
2. Respondent made electronic transfers from the Trust Account to the Operating Account between July 1, 2013 and March 30, 2018 without documenting the reasons for the transfers or to which clients the transfers related;
3. Respondent failed to reconcile his Trust Account reasonably promptly each time an official statement from the bank was provided or available;
4. Respondent deposited earned fees and his personal funds into his Trust Account in excess of amounts necessary to pay financial institution service charges;
5. Respondent failed to pay clients in a timely manner and failed to pay clients the full amount owed to them;
6. Respondent failed to keep or have required trust accounting records including a receipt and disbursement journal, individual client ledgers, settlement sheets, accurate billing records concerning his attorney fees for clients, a retainer agreement or fee agreement for

clients, and records to show why he made electronic transfers from his trust account to his operating account.

App. Vol. 1, A109-A150. Respondent admitted the OCDC Investigator's findings in his Answer to the Information and during the disciplinary hearing. **App. Vol. 1, A67-A69; A243-A245.**

Further, Respondent did not dispute any of the OCDC Investigator's testimony regarding Respondent's banking transactions and admitted that he depleted client funds and used client funds for his own benefit. **App. Vol. 1, A227; A244-A245.** The OCDC Investigator testified that Respondent depleted his Trust Account of $36,741.13 that was owed to his client, Betty Matthews, and of $44,493.56 that was owed to his client, Thomas Keppler. **App. Vol. 1, A122, A141.** Respondent admitted that he used the funds of Matthews for his personal benefit and that he used the funds of Keppler "improperly and wrong." **App. Vol. 2, A403; App. Vol. 1, A229, A232.** Respondent further admitted that he used $3,500.00 of client Chantelle Nickson-Clark's settlement funds as a down payment on a car or for payment of a car note. **App. Vol. 1, A232; App. Vol. 2, A393.**

With respect to the Estate's Bank of America Settlement Check, Respondent admitted that some of the settlement funds were used to settle his own eviction case (filed on June 25, 2013). **App. Vol. 1, A224-A225.** Respondent settled the Estate's claim against Bank of America on July 1, 2013, just five days after the eviction case was filed. **App. Vol. 1, A59.** Respondent then negotiated a settlement with his landlord on August 1, 2013 (the same date of the Bank of America Settlement Check). **App. Vol. 1, A226.**

The Settlement Check was deposited into Respondent's Operating Account on August 8, 2013. **App. Vol. 1, A108-A109.** Respondent subsequently remitted payment to his landlord to settle his eviction case.[2] **App. Vol. 1, A224-A226**. Respondent testified that he treated the Settlement Check as an earned fee for legal services rendered to the Personal Representative. **App. Vol. 1, A216, A222.** Respondent failed to obtain authorization from the Probate Court to apply the funds to attorney's fees notwithstanding an earlier request for ratification of legal fees that he filed with the court just six months prior. **App. Vol. 1, A207-A212; App. Vol. 2, A421-A422 (Ex. 7A)**.

Respondent testified that he was experiencing personal difficulties during the Audit period. Respondent testified that he was involved in divorce proceedings in 2011-12. **App. Vol. 1, A237-241; A263-A264**. Respondent also testified that he experienced depressive episodes during the Audit period and began abusing alcohol, but that he has since sought treatment and is currently in counseling. **App. Vol. 1, A143-A145; A275-A276**. Respondent also testified that he has taken a trust accounting class (taught by his current counsel) and that he has incorporated the use of new legal software. **App. Vol. 1, A274-A275**. Respondent testified about his involvement in the community and with several professional organizations and provided character reference letters from his

[2] Prior to the deposit of the Settlement Check, the balance in Respondent's Trust Account was $140.00 and the balance in his Operating Account was $154.51. **App. Vol. 1, A108; App. Vol. 3, A692 (Ex. 37).**

associate attorney, Ms. Costas, and a friend of his that he has known since law school. **App. Vol. 1, A268-A274; A280-A282; App. Vol. 5, A999-A1000 (Ex. 40, Ex. 41).**

DISCIPLINARY HEARING PANEL'S DECISION

On March 17, 2020, the hearing Panel issued its decision. The Panel found nearly all the factual allegations in the Information as true and concluded that:

- Respondent violated Rule 4-1.1 by failing to provide the Personal Representative for the Estate of Milton Brookins with competent representation.
- Respondent violated Rule 4-3.3(a)(1) when Respondent failed to disclose to the Probate Court in his Petition to Convert the Estate that he had settled the Estate's claim against Bank of America and had already received Bank of America's Settlement Check.
- Respondent violated Rule 4-3.4(c) when Respondent failed to pay back the Estate the $12,500.00 received from the Bank of America settlement as ordered by the Probate Court on June 26, 2015.
- Respondent violated Rule 4-5.1(a) when he failed to ensure that his associate attorney, Irene Costas, possessed the requisite legal knowledge and skill necessary to provide the Estate of Milton Brookins with competent representation.
- Respondent violated Rules 4-8.1(a) and/or 4-8.4(c) when:

- Respondent falsely represented in his November 9, 2015 written response to the Complaint that he was then "holding" the $12,500.00, and that the Estate had been converted to an unsupervised estate prior to his receipt of the Settlement Check.
- Respondent falsely represented to the Informant during his December 15, 2016 sworn statement, that he had transferred the amount of the Bank of America Settlement Check from his Operating Account to his Trust Account prior to remitting the Reimbursement Check to the Estate on December 13, 2016.

- Respondent violated Rule 4-1.15(a) when he deposited advanced costs, advanced fees, and client funds into his Operating Account.
- Respondent violated Rule 4-1.15(a)(5) when he made in excess of seventy electronic transfers from the Trust Account to the Operating Account between July 1, 2013 and March 30, 2018 without documenting the reasons for the transfers or to which clients the transfers related.
- Respondent violated Rule 4-1.15(a)(7) when he failed to reconcile his Trust Account.
- Respondent violated Rule 4-1.15(b) when he deposited earned fees and his personal funds into his Trust Account in excess of amounts necessary to pay financial institution service charges.
- Respondent violated Rule 4-1.15(d) when Respondent failed to pay clients in a timely manner.

- Respondent violated Rule 4-1.15(f) when he:
    - Failed to keep a receipt and disbursement journal,
    - Failed to keep individual client ledgers,
    - Failed to have settlement sheets,
    - Failed to keep accurate billing records concerning his attorney fees for clients,
    - Failed to have a retainer agreement or fee agreement for clients, and
    - Failed to keep records to show why he made electronic transfers from Trust Account to his Operating Account.
- Respondent violated Rule 4-8.4(c) when Respondent delayed paying clients or third parties and/or depleted their share of funds prior to remitting payment (to the client or third party).
- Respondent violated Rule 4-8.4(c) when Respondent deposited the Estate's Bank of America Settlement Check into his Operating Account and then depleted the entire amount before he obtained approval from the Probate Court to apply the Estate's funds to legal fees purportedly owed by the Personal Representative.

App. Vol. 5, A1036-A1047.

The Panel found overwhelming evidence that Respondent misappropriated several thousands of dollars belonging to his clients between July 1, 2013 and March 30, 2018. Guided by the ABA *Standards for Imposing Lawyer Sanctions* (1986 ed., as amended

1992) ("ABA *Standards*"), the Panel noted that disbarment is the presumptive sanction for Respondent's numerous instances of misappropriation. **App. Vol. 5, A1047.**

The Panel went on to consider whether, under the ABA *Standards*, Respondent's testimony of mitigating factors justified a reduction in the degree of discipline to be imposed. The Panel noted that credible evidence of Respondent's emotional and personal problems, his remorse, and his cooperativeness during the disciplinary proceeding was presented during the disciplinary hearing. **App. Vol. 5, A1036-A1048.** In addition, all of Respondent's clients were ultimately paid.[3] **Id.** Respondent also offered evidence of his character and reputation through his own testimony of his charitable work and community involvement. **App. Vol. 5, A1049.** In addition, Respondent offered two letters of support, one from his associate attorney and one from his law school friend in California who stated in his letter that he was aware that Respondent has made "some mistakes" and believed that a reprimand was appropriate. **Id.**

Respondent testified that none of his conduct was committed with a selfish motive. The Panel found Respondent's testimony unpersuasive noting that Respondent

[3] Respondent submitted a final settlement disbursement payment to Mr. Brooks after the conclusion of the disciplinary hearing and provided the Panel with proof of the same prior to the issuance of its decision. **App. Vol. 5, A1001-A1006.** Informant, therefore, abandons its additional Rule 4-1.15(d) charge in the Information that Respondent still owed funds to clients.

knowingly misappropriated $3,500.00 of Ms. Nickson-Clark's settlement funds for a car payment and that Respondent intentionally circumvented the Probate procedural process that required him to obtain approval from the court prior to depositing the Settlement Check as an earned fee (and ultimately paying his rent to avoid eviction days later). **Id.** Further, even after Respondent became aware that he had misappropriated Mr. Keppler's entire share of his settlement in November 2014, Respondent did nothing to alter his course and continued to engage in a "revolving door of misappropriating his client funds for more than three years." **Id.**

The Panel found that none of the mitigating factors were sufficiently compelling to justify a downward departure from the presumptive discipline of disbarment. **Id.**

The Panel found several aggravating factors that reinforced its decision that the appropriate discipline was disbarment, including Respondent's prior disciplinary history, Respondent's substantial experience in the practice of law, a pattern of misconduct, Respondent's multiple violations, and Respondent's selfish and dishonest motive as noted above. **App. Vol. 5, A1049-A1050.** The Panel also found that Respondent submitted false statements (in his Answer to the Complaint) and testimony during the disciplinary process. **App. Vol. 5, A1050.**

On March 17, 2020, the Disciplinary Hearing Panel recommended that Respondent be disbarred. On March 18, 2020, Informant accepted the decision. On April 15, 2020, Respondent rejected the decision.

POINTS RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE RESPONDENT ENGAGED IN PROFESSIONAL MISCONDUCT WHILE REPRESENTING THE ESTATE OF MILTON BROOKINS IN THAT:

1. **RESPONDENT VIOLATED RULE 4-1.1 BY FAILING TO PROVIDE THE PERSONAL REPRESENTATIVE FOR THE ESTATE OF MILTON BROOKINS WITH COMPETENT REPRESENTATION;**
2. **RESPONDENT VIOLATED RULE 4-3.3(a)(1) WHEN RESPONDENT FAILED TO DISCLOSE TO THE PROBATE COURT IN HIS PETITION TO CONVERT THE ESTATE THAT HE HAD SETTLED THE ESTATE'S CLAIM AGAINST BANK OF AMERICA AND HAD ALREADY RECEIVED BANK OF AMERICA'S SETTLEMENT CHECK;**
3. **RESPONDENT VIOLATED RULE 4-3.4(c) WHEN RESPONDENT FAILED TO PAY BACK THE ESTATE THE $12,500.00 RECEIVED FROM THE BANK OF AMERICA SETTLEMENT AS ORDERED BY THE PROBATE COURT ON JUNE 26, 2015; AND,**

4. RESPONDENT VIOLATED RULE 4-5.1(a) WHEN HE FAILED TO ENSURE THAT HIS ASSOCIATE ATTORNEY POSSESSED THE REQUISITE LEGAL KNOWLEDGE AND SKILL NECESSARY TO PROVIDE THE PERSONAL REPRESENTATIVE FOR ESTATE OF MILTON BROOKINS WITH COMPETENT REPRESENTATION.

In re Coleman, 295 S.W.3d 857 (Mo. ban. 2009)

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

In re Gardner, 565 S.W.3d 670 *(Mo. banc 2019)*

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

Rule 4-1.1, Rules of Professional Conduct

Rule 4-3.3(a)(1), Rules of Professional Conduct

Rule 4-3.4(c), Rules of Professional Conduct

Rule 4-5.1, Rules of Professional Conduct

POINTS RELIED ON

II.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE RESPONDENT ENGAGED IN PROFESSIONAL MISCONDUCT DURING THE DISCIPLINARY PROCESS BY VIOLATING RULES 4-8.1(a) AND/OR RULE 4-8.4(c) IN THAT:

1. **RESPONDENT FALSELY REPRESENTED IN HIS WRITTEN RESPONSE TO THE COMPLAINT THAT THE ESTATE HAD BEEN CONVERTED TO AN UNSUPERVISED ESTATE PRIOR TO HIS RECEIPT OF THE BANK OF AMERICA SETTLEMENT CHECK AND THAT HE WAS THEN "HOLDING" $12,500.00, REPRESENTING THE AMOUNT OF THE BANK OF AMERICA SETTLEMENT CHECK; AND,**
2. **RESPONDENT FALSELY REPRESENTED TO THE INFORMANT DURING HIS DECEMBER 15, 2016 SWORN STATEMENT THAT HE TRANSFERRED $12,500.00 FROM HIS OPERATING ACCOUNT BACK INTO HIS TRUST ACCOUNT (AFTER THE HEARING BEFORE THE COMMISSIONER) REPRESENTING THE BANK OF**

AMERICA DISPUTED LEGAL FEES, PRIOR TO REMITTING THE REIMBURSEMENT CHECK TO THE ESTATE OF MILTON BROOKINS.

In re Waldron, 790 S.W.2d 456, 461 (Mo. banc 1990)

Rule 4-8.1(a), Rules of Professional Conduct

Rule 4-8.4(c), Rules of Professional Conduct

POINTS RELIED ON

III.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE RESPONDENT VIOLATED RULE 4-1.15 IN THAT:

1. **RESPONDENT DEPOSITED ADVANCED COSTS, ADVANCED FEES, AND CLIENT FUNDS INTO HIS OPERATING ACCOUNT IN VIOLATION OF RULE 4-1.15(a);**
2. **RESPONDENT MADE IN EXCESS OF SEVENTY ELECTRONIC TRANSFERS FROM THE TRUST ACCOUNT TO THE OPERATING ACCOUNT BETWEEN JULY 1, 2013 AND MARCH 30, 2018 WITHOUT DOCUMENTING THE REASONS FOR THE TRANSFERS OR TO WHICH CLIENTS THE TRANSFERS RELATED IN VIOLATION OF RULE 4-1.15(a)(5);**
3. **RESPONDENT FAILED TO RECONCILE HIS TRUST ACCOUNT REASONABLY PROMPTLY EACH TIME AN OFFICIAL STATEMENT FROM THE BANK WAS PROVIDED OR MADE AVAILABLE IN VIOLATION OF RULE 4-1.15(a)(7);**

4. **RESPONDENT DEPOSITED EARNED FEES AND HIS PERSONAL FUNDS INTO HIS TRUST ACCOUNT IN EXCESS OF AMOUNTS NECESSARY TO PAY FINANCIAL INSTITUTION SERVICE CHARGES IN VIOLATION OF RULE 4-1.15(b);**

5. **RESPONDENT FAILED TO PAY CLIENTS IN A TIMELY MANNER IN VIOLATION OF RULE 4-1.15(d);**

6. **RESPONDENT FAILED TO KEEP OR HAVE THE FOLLOWING REQUIRED TRUST ACCOUNTING RECORDS IN VIOLATION OF RULE 4-1.15(f): A RECEIPT AND DISBURSEMENT JOURNAL; INDIVIDUAL CLIENT LEDGERS; SETTLEMENT SHEETS; ACCURATE BILLING RECORDS CONCERNING HIS ATTORNEY FEES FOR CLIENTS; A RETAINER AGREEMENT OR FEE AGREEMENT FOR CLIENTS; AND, RECORDS TO SHOW WHY HE MADE ELECTRONIC TRANSFERS FROM TRUST ACCOUNT TO HIS OPERATING ACCOUNT.**

Rule 4-1.15(a), Rules of Professional Conduct

Rule 4-1.15(a)(5), Rules of Professional Conduct

Rule 4-1.15(a)(7), Rules of Professional Conduct

Rule 4-1.15(b), Rules of Professional Conduct

Rule 4-1.15(d), Rules of Professional Conduct

Rule 4-1.15(f), Rules of Professional Conduct

POINTS RELIED ON

IV.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE RESPONDENT VIOLATED RULE 4-8.4(c), IN THAT:

1. **RESPONDENT DEPLETED CLIENT SETTLEMENT FUNDS AND/OR THIRD-PARTY FUNDS PRIOR TO REMITTING PAYMENT TO RESPONDENT'S CLIENTS OR TO THIRD PARTIES; AND,**
2. **RESPONDENT DELAYED PAYING CLIENTS AND/OR THIRD PARTIES.**

In re Ehler, 319 S.W.3d 442 (Mo. banc 2010)

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

In re Griffey, 873 S.W.2d 600 (Mo. banc 1994)

In re Schaeffer, 824 S.W.2d 1 (Mo. banc 1992)

Rule 4-8.4(c), Rules of Professional Conduct

POINTS RELIED ON

V.

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

In re Belz, 258 S.W.3d 38 (Mo. banc 2008)

In re Ehler, 319 S.W.3d 442 (Mo. banc 2010)

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

In re Kohlmeyer, 327 S.W.2d 249 (Mo. banc 1959)

ABA Standards for Imposing Lawyer Sanctions (1986 ed., as amended 1992)

Rule 4-8.4(c), Rules of Professional Conduct

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE RESPONDENT ENGAGED IN PROFESSIONAL MISCONDUCT WHILE REPRESENTING THE ESTATE OF MILTON BROOKINS IN THAT:

1. **RESPONDENT VIOLATED RULE 4-1.1 BY FAILING TO PROVIDE THE PERSONAL REPRESENTATIVE FOR THE ESTATE OF MILTON BROOKINS WITH COMPETENT REPRESENTATION;**
2. **RESPONDENT VIOLATED RULE 4-3.3(a)(1) WHEN RESPONDENT FAILED TO DISCLOSE TO THE PROBATE COURT IN HIS PETITION TO CONVERT THE ESTATE THAT HE HAD SETTLED THE ESTATE'S CLAIM AGAINST BANK OF AMERICA AND HAD ALREADY RECEIVED BANK OF AMERICA'S SETTLEMENT CHECK;**
3. **RESPONDENT VIOLATED RULE 4-3.4(c) WHEN RESPONDENT FAILED TO PAY BACK THE ESTATE THE $12,500.00 RECEIVED FROM THE BANK OF AMERICA SETTLEMENT AS ORDERED BY THE PROBATE COURT ON JUNE 26, 2015; AND,**

4. RESPONDENT VIOLATED RULE 4-5.1(a) WHEN HE FAILED TO ENSURE THAT HIS ASSOCIATE ATTORNEY POSSESSED THE REQUISITE LEGAL KNOWLEDGE AND SKILL NECESSARY TO PROVIDE THE PERSONAL REPRESENTATIVE FOR ESTATE OF MILTON BROOKINS WITH COMPETENT REPRESENTATION.

1. Standard of Review

Professional misconduct is established by a preponderance of the evidence. *In re Coleman*, 295 S.W.3d 857, 863 (Mo. banc 2009). This Court reviews the evidence *de novo* and reaches its own conclusion of law. *Id.* In matters of attorney discipline, the disciplinary panel's decision is advisory. *In re Farris*, 472 S.W.3d 549, 557 (Mo. banc 2015). An attorney must comply with the Rules of Professional Conduct as set forth in Supreme Court Rule 4 as a condition of retaining his license. *In re Shelhorse*, 147 S.W.3d 79, 80 (Mo. banc 2004). Violation of the Rules of Professional Conduct by an attorney is grounds for discipline. *Id.*

2. Violation of Rule 4-1.1

Rule 4-1.1 provides that "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Rule 4-1.1.

Respondent violated Rule 4-1.1 by failing to provide the Personal Representative for the Estate of Milton Brookins with competent representation. Respondent testified

that he had only "nominal" knowledge of probate administration and procedural practice and, that since 2008, his probate experience consisted of only three estate matters, including the Estate of Milton Brookins. **App. Vol. 1, A193-A194.** Respondent entrusted the Brookins Estate matter to Ms. Costas, an associate attorney in his office whose previous area of practice was fundamentally family and domestic law. **App. Vol. 2, A370.** When asked about her level of probate experience, Respondent testified, "she did family matters, and done probate before, so that was better than me." **App. Vol. 1, A255.**

Respondent acknowledged during the disciplinary hearing that the Brookins Estate matter was not handled properly. Respondent admitted that he was the supervising attorney and that he failed to conduct the necessary research to provide the Personal Representative of the Estate with proper representation. **Id.** Respondent admitted to taking several actions on behalf of the Estate without obtaining proper court authorization, including filing and prosecuting the lawsuit against Bank of America, settling the Estate's claim against Bank of America, and depositing settlement funds belonging to the Estate into his Operating Account purportedly for earned fees. **App. Vol. 1, A198-A200, A206-A208.**

Respondent's admitted lack of experience combined with the numerous unauthorized actions establishes by a preponderance of the evidence that Respondent violated Rule 4-1.1.

3. Violation of Rule 4-3.3(a)(1)

Rule 4-3.3(a)(1) provides that a lawyer shall not knowingly make a false statement of fact to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

Respondent violated Rule 4-3.3(a)(1) when Respondent knowingly and intentionally failed to disclose in his Petition to Convert the Estate that he had settled the claim against Bank of America, received a settlement check in the amount of $12,500.00, and applied it to legal fees owed by the Personal Representative. Respondent stated in paragraph 6 of the Petition to Convert that "[t]he current value of the Estate is unknown as the Estate is in the process of searching for assets through a court case, *Estate of Milton Brookins v. Bank of America*, et al., Cause No. 1222-CC09796-01." **App. Vol. 2, A430 (Ex. 7A).**

The Bank of America Settlement was an asset of the Estate that should have been disclosed to the Probate Court and Respondent should have obtained court authorization prior to applying the settlement to outstanding legal fees owed by the Personal Representative. **App. Vol. 2, A418 (Ex. 7A).** Respondent stated that he did not disclose the Bank of America Settlement in the Petition to Convert, or at any time prior, because (1) he did not think it was material because the Personal Representative was the sole beneficiary, (2) the settlement was confidential, and (3) the Estate was still pursuing claims against other defendants. **App. Vol. 1, A61, A253-A254**. Respondent's explanation is not worthy of belief. The Panel found that:

> Respondent knowingly and intentionally failed to disclose his receipt of the Settlement Check in the Petition to Convert because not only had Respondent failed to obtain authorization from the Probate Court to prosecute and settle the Estate's claim against Bank of America, but Respondent had also deposited the entire amount of the Settlement Check into his Operating Account without the court's authorization. Respondent should have known that he needed to obtain court authorization to receive estate funds as payment for attorney's fees, particularly since Respondent had filed a Consent to Attorney's Fees on February 5, 2013 (only six months prior to his receipt of the Bank of America Settlement Check) requesting the Probate Court to ratify a disbursement of the Brookins Estate's funds to Respondent for legal fees.

App. Vol. 5, A1098-A1099.

Respondent's payment to himself of the Estate's Bank of America Settlement funds, without court authorization, and Respondent's failure to disclose the same to the Probate Court in his Petition to Convert violated Rule 4-3.3(a)(1). *See*, *In re Gardner*, 565 S.W.3d 670, 677 (Mo. banc 2019) (holding that lawyer's payment to himself of a personal representative fee, without court authorization, along with his failure to disclose the unauthorized fee in a ledger submitted to the court as part of the estate's final settlement violated Rule 4-3.3(a)(1) and Rule 4-8.4(c)).

4. Violation of Rule 4-3.4(c)

Rule 4-3.4(c) provides that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal.

As noted above, Respondent failed to obtain authorization from the Probate Court to apply the Estate's settlement funds to the Personal Representative's outstanding balance of legal fees owed to the Respondent's firm. On June 26, 2015, during the hearing on Respondent's Motion to Withdraw, the Probate Commissioner ordered Respondent to deposit $12,500.00 (the amount of the Bank of America settlement) into the Estate's account immediately. **App. Vol. 2, A476 (Ex. 7C)**. Respondent testified at the disciplinary hearing that he was unaware of the Commissioner's order until he received a copy of the Probate Court hearing transcript just before his scheduled appearance before the Informant on December 15, 2016. **App. Vol. 1, A215-A216**. Respondent testified, "I expected that there would be a Show Cause Order, and then we would appear, and I would explain why we believed we earned the fees, and had the proper authorization." **App. Vol. 1, A216**. A reading of the June 26, 2015 Probate Court hearing transcript renders Respondent's testimony doubtful. The relevant exchange between the Commissioner and Respondent during the hearing was as follows:

> **THE COURT**: You already had the money in hand. You got a check. What I consider the assets of the estate, in your name only. And you had it for a month, and then you converted

> it into independent administration, and you waited another month, then you deposited into your account.
>
> **MR. KAYIRA:** Well, maybe - - perhaps part of this is a matter of we should file and have a hearing on the originalness of the attorneys fees of the services that were rendered, and deal with any cure--
>
> **THE COURT**: We'll do that after you pay $12,500.00 back into the estate. Then we'll do that.
>
> **MR. KAYIRA**: Your Honor, I don't believe that I have appropriate notice for such a sanction today….

App. Vol. 2, A475-A476.

Respondent further acknowledged during the disciplinary hearing that he had received (from the OCDC) and reviewed the Complaint wherein the Commissioner stated, "I advised him that the $12,500.00 needed to be deposited into the estate account immediately." **App. Vol. 1, A257-A258**. Instead of depositing the funds into the Estate's account upon receipt of the OCDC Complaint, Respondent again disregarded the Court's order and responded in his Answer to the Complaint stating, in part,

> I have previously indicated my willingness to repay some or all of the $12,500.00 to Milton's Estate, should the Court (Commissioner Connaghan) indicate such repayment was appropriate, but Commissioner Connaghan had not held a hearing or given such a directive prior to apparently preparing and filing his ethics

complaint. Therefore, I believe that Commissioner Connaghan's complaint is unnecessary, and that I have done nothing wrong.

App. Vol. 2, A436 (Ex. 7B).

Respondent's blatant and continued disregard of the Commissioner's order to deposit the $12,500.00 into the Estate's account after Respondent's unauthorized taking of a fee was a violation of Rule 4-3.4(c).[4] *See, In re Gardner*, 565 S.W.3d 670, 677 (holding that lawyer violated 4-3.4(c) when he took a personal representative fee without court authorization, and in violation of the court's prior order).

5. Violation of Rule 4-5.1(a)

Rule 4-5.1(a) provides that, "[a] partner in a law firm, …, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct." Rule 4-5.1(a). Thus,

[4] It is compelling to note that Respondent did not have sufficient funds in his Trust Account or Operating Account to comply with order of the Probate Court on June 26, 2015 or at the time of his response to the Complaint on November 9, 2015. On June 26, 2015, the balance in Respondent's Trust Account was $35.00 and the balance in the Operating Account was $286.27. **App. Vol. 3, A693 (Ex. 37), A757 (Ex. 38)**. On November 9, 2015, the balance in Respondent's Trust Account was $9.13 and the balance in the Operating Account was $3,687.44. **App. Vol. 1, A109; App. Vol. 3, A694 (Ex. 37); App. Vol. 4, 773 (Ex. 38)**.

lawyers with managerial authority within a firm must ensure that inexperienced lawyers are properly supervised. *See*, Rule 4-5.1(a), Comment [2].

Respondent violated Rule 4-5.1(a) when Respondent failed to properly ensure that Ms. Costas possessed the requisite legal knowledge and skill necessary to provide the Estate of Milton Brookins with competent representation. Not only was Respondent's probate experience limited, but so was Ms. Costas's, as her experience was fundamentally family and domestic law. **App. Vol. 1, A255; App. Vol. 2, A370**. Respondent admitted that there were numerous instances in which the procedural rules of probate practice were not followed. **App. Vol. 1, A198, A200-A201, A210-A212.**

Respondent acknowledged that he was the supervising attorney charged with overseeing the legal services performed on behalf of Estate and that it was his responsibility to ensure that the Brookins Estate matter was properly handled. **App. Vol. 1. A255.** Respondent's failure to ensure that Ms. Costas was competent to be entrusted with the Brookins case and Respondent's failure to properly supervise Ms. Costas was a violation of Rule 4-5.1(a).

ARGUMENT

II.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE RESPONDENT ENGAGED IN PROFESSIONAL MISCONDUCT DURING THE DISCIPLINARY PROCESS BY VIOLATING RULES 4-8.1(a) AND/OR RULE 4-8.4(c) IN THAT:

1. **RESPONDENT FALSELY REPRESENTED IN HIS WRITTEN RESPONSE TO THE COMPLAINT THAT THE ESTATE HAD BEEN CONVERTED TO AN UNSUPERVISED ESTATE PRIOR TO HIS RECEIPT OF THE BANK OF AMERICA SETTLEMENT CHECK AND THAT HE WAS THEN "HOLDING" $12,500.00, REPRESENTING THE AMOUNT OF THE BANK OF AMERICA SETTLEMENT CHECK; AND,**
2. **RESPONDENT FALSELY REPRESENTED TO THE INFORMANT DURING HIS DECEMBER 15, 2016 SWORN STATEMENT, THAT HE TRANSFERRED $12,500.00 FROM HIS OPERATING ACCOUNT BACK INTO HIS TRUST ACCOUNT (AFTER THE HEARING BEFORE THE COMMISSIONER) REPRESENTING THE BANK OF**

AMERICA DISPUTED LEGAL FEES, PRIOR TO REMITTING THE REIMBURSEMENT CHECK TO THE ESTATE OF MILTON BROOKINS.

Rule 4-8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Rule 4-8.1(a) provides that a lawyer in connection with a disciplinary matter shall not knowingly make a false statement of material fact. An attorney's lack of veracity with respect to any part of the disciplinary proceeding necessarily taints his credibility with respect to the entire proceeding. *In re Waldron*, 790 S.W.2d 456, 461 (Mo. banc 1990).

1. Respondent's False Statements in his Answer to the Complaint

Respondent represented in his November 9, 2015 written response to the Complaint, that he was then "holding" $12,500.00 (representing the amount of the Bank of America Settlement) and that he was willing to repay some or all of the $12,500.00 to the Estate upon the court's directive. **App. Vol 2, A436 (Ex. 7B).** Respondent further represented that the Estate had been converted to an unsupervised estate prior to his receipt of the Settlement Check and he therefore treated the Settlement Check as a "properly earned fee". **Id.**

It is undisputed that Respondent was not "holding" $12,500.00 in either the Trust Account or the Operating Account (or even in those accounts combined) on the date of

his November 9, 2015 response to the Complaint.[5] In an attempt to explain his prior statement, Respondent testified during the disciplinary hearing that, "[w]hen I say that I am holding, I meant I have it. I wasn't disputing that I believed I earned the fees, and have - - you, like I received them. I wasn't holding them in escrow or a trust account." **App. Vol. 1, A218.** Respondent's explanation is illogical and the Panel correctly found Respondent's explanation not credible.

With respect to the status of the Estate at the time of Respondent's deposit of the Settlement Check on August 8, 2013, there is no dispute that the Estate was still supervised. Respondent did not file the Petition to Convert the Estate until August 29, 2013, well after Respondent had applied the Settlement Check to the Personal Representative's outstanding balance and settled his eviction case with his landlord. **App. Vol. 1, A201-A202; App. Vol. 2, A430-A431 (Ex. 7A).** Respondent's explanation for the "incorrect statement" in his Answer to the Complaint was that it was his associate who advised him that the Estate had been converted prior to his receipt of the Bank of America Settlement Check. **App. Vol. 1, A204-A205.** Respondent stated that he did not confirm her statement before submitting his Answer to the OCDC. **App. Vol. 1, A205.** Respondent's explanation here is also lacking in credibility. A truthful acknowledgement

[5] The combined balance in Respondent's Trust Account and Operating Account on November 9, 2015 was $3,696.57. **App. Vol. 1, A109; App. Vol. 3, A694 (Ex. 37); App. Vol. 4, 773 (Ex. 38)**.

by Respondent that the Estate was still supervised would have required immediate repayment of the settlement funds, which Respondent did not have on November 9, 2015.

2. Respondent's False Testimony before the Informant

Respondent was questioned about the Bank of America Settlement Check and the Estate's Reimbursement Check that was drawn on his Trust Account. Respondent testified before the Informant that he "deposited the check appropriately within the Trust Account" and then transferred it to his Operating Account. **App. Vol. 2, A372 (Ex. 6).** Respondent's relevant testimony was as follows:

> **MS. HARRIS**: And while you're looking for that, do you recall where you deposited the check?
>
> **MR. KAYIRA**: Yes, I deposited the check appropriately with the -- within the Trust account subject to -- Let me get this. Here's the Settlement Agreement. I thought I had that. Well, the difference was $82 between how much she owed and the amount of the -- the amount of fees.

Id.

Respondent testified that he transferred the amount of the Bank of America Settlement ($12,500.00) from his Operating Account back into his Trust Account because he believed that that was his exposure for the disputed legal fees for services rendered to the Estate (after the hearing before Commissioner Connaghan) and he presumed that he would file and await the Commissioner's ruling on his petition for attorney's fees. **App.**

Vol. 2, A375 (Ex. 6). Respondent's relevant testimony before the Informant was as follows:

> **MS. HARRIS**: Okay, I just have a couple more questions for you. The check is drawn on your Trust account. Did you at some point transfer that $12,500 from your Trust account to your Operating account?
>
> **MR. KAYIRA**: Yes, that would -- yes.
>
> **MS. HARRIS**: Okay. So, this is a transfer from your Operating account back into your Trust account?
>
> **MR. KAYIRA**: Yes, that's correct. We -- We -- I returned the funds. I don't remember exactly when I put the funds in -- in there as I sit here today, but I transferred the -- the $12,500 which is what I thought my exposure was and those were the disputed fees with the full --with the full idea that to whatever extent the Court ruled on our Petition for attorneys' fees, if the Court said you only get ten bucks --
>
> **MS. HARRIS**: Uh-huh
>
> **MR. KAYIRA**: --then those disputed fees would then be, you know, whatever—whatever was due to the client, would be paid."

Id.

After Respondent's December appearance, he was asked to submit additional information regarding the source of the $12,500.00 used to reimburse the Estate. Respondent subsequently explained that the source of the funds for the Reimbursement Check was an earned fee from a contingency matter that he left in his Trust Account.

App. Vol. 2, A484-A486 (Ex. 7E).

During the disciplinary hearing, Respondent was questioned about the discrepancy in his December 2016 testimony before the Informant. Respondent's explanation was that he was "confused." **App. Vol. 1, A223.** The practice of transferring funds from the Operating Account to the Trust Account, however, was an extremely rare occurrence for Respondent. The OCDC Investigator pointed out during the disciplinary hearing that Respondent had made only one transfer from his Operating Account to his Trust Account between July 1, 2013 and December 2016. **App. Vol. 1, A150-A151.** That transfer was made on July 31, 2013, more than three years prior to Respondent's alleged transfer, and only in the amount of $200.00. **App. Vol. 1, A151.** Respondent's explanation that he was confused is not credible.

Respondent attempted to further explain the inconsistencies in his testimony and stated, "I was just trying to give the best answers that I thought were correct at the time, instead of just saying I don't know." **App. Vol. 1, A256.** Simply stated, Respondent ensured during his appearance that he answered the Informant's questions in a manner that was ethically compliant, even if untrue: Respondent testified that he initially deposited the Settlement Check "appropriately" within his Trust Account; and, Respondent testified that he transferred the settlement funds from his Operating Account back into his Trust Account as "disputed legal fees."

Respondent violated Rules 4-8.1(a) and/or 4-8.4(c) by falsely representing in his Answer to the Complaint that he was then "holding" $12,500.00, and that the Estate had been converted to an unsupervised Estate prior to his receipt of the Settlement Check.

Respondent violated Rules 4-8.1(a) and/or 4-8.4(c) when he falsely testified before the Informant that he transferred $12,500.00 back into his Trust Account representing the disputed legal fees for Respondent's prosecution of the Estate's claim against Bank of America. Respondent's lack of veracity during the initial investigative phase of this disciplinary proceeding taints Respondent's credibility with respect to the entire proceeding.

ARGUMENT

III.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE THE RESPONDENT VIOLATED RULE 4-1.15 IN THAT:

1. **RESPONDENT DEPOSITED ADVANCED COSTS, ADVANCED FEES, AND CLIENT FUNDS INTO HIS OPERATING ACCOUNT IN VIOLATION OF RULE 4-1.15(a);**
2. **RESPONDENT MADE IN EXCESS OF SEVENTY ELECTRONIC TRANSFERS FROM THE TRUST ACCOUNT TO THE OPERATING ACCOUNT BETWEEN JULY 1, 2013 AND MARCH 30, 2018 WITHOUT DOCUMENTING THE REASONS FOR THE TRANSFERS OR TO WHICH CLIENTS THE TRANSFERS RELATED IN VIOLATION OF RULE 4-1.15(a)(5);**
3. **RESPONDENT FAILED TO RECONCILE HIS TRUST ACCOUNT REASONABLY PROMPTLY EACH TIME AN OFFICIAL STATEMENT FROM THE BANK WAS PROVIDED OR MADE AVAILABLE IN VIOLATION OF RULE 4-1.15(a)(7);**

4. **RESPONDENT DEPOSITED EARNED FEES AND HIS PERSONAL FUNDS INTO HIS TRUST ACCOUNT IN EXCESS OF AMOUNTS NECESSARY TO PAY FINANCIAL INSTITUTION SERVICE CHARGES IN VIOLATION OF RULE 4-1.15(b);**

5. **RESPONDENT FAILED TO PAY CLIENTS IN A TIMELY MANNER IN VIOLATION OF RULE 4-1.15(d);**

6. **RESPONDENT FAILED TO KEEP OR HAVE THE FOLLOWING REQUIRED TRUST ACCOUNTING RECORDS IN VIOLATION OF RULE 4-1.15(f): A RECEIPT AND DISBURSEMENT JOURNAL; INDIVIDUAL CLIENT LEDGERS; SETTLEMENT SHEETS; ACCURATE BILLING RECORDS CONCERNING HIS ATTORNEY FEES FOR CLIENTS; A RETAINER AGREEMENT OR FEE AGREEMENT FOR CLIENTS; AND, RECORDS TO SHOW WHY HE MADE ELECTRONIC TRANSFERS FROM TRUST ACCOUNT TO HIS OPERATING ACCOUNT.**

1. Violation of subsection (a) of Rule 4-1.15

Rule 4-1.15(a) provides, in relevant part, that a lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.

Respondent admitted in his Answer to the Information and during the disciplinary hearing that he deposited advanced costs, advanced fees, and client funds into his Operating Account during the Audit period in violation of Rule 4-1.15(a). **App. Vol. 1, A68-A70, A243-A244**.

The evidence during the disciplinary hearing revealed that Respondent deposited advanced costs, advanced fees, and/or client funds into his Operating Account for twenty of the twenty-nine clients whose transactions were audited by the OCDC Investigator. **App. Vol. 1, A108-A148.**

2. Violation of subsection (a)(5) of Rule 4-1.15

Rule 4-1.15(a)(5) provides that withdrawals from a trust account shall be made only by check payable to a named payee, and not to cash, or by authorized electronic transfer.

The Audit revealed that Respondent made in excess of seventy electronic transfers from the Trust Account to the Operating Account between July 1, 2013 and March 30, 2018. **App. Vol. 3, A692-A702 (Ex. 37).** Respondent failed to document the reasons for the transfers or to which clients the transfers related in violation of Rule 4-1.15(a)(5). **App. Vol. 1, A244-A245.**

3. Violation of subsection (a)(7) of Rule 4-1.15

Rule 4-1.15(a)(7) provides that a reconciliation of a trust account shall be performed reasonably promptly each time an official statement from the financial institution is provided or available.

Respondent admitted in his Answer to the Information and during the disciplinary hearing that he failed to reconcile his Trust Account during the Audit period in violation of Rule 4-1.15(a)(7). **App. Vol. 1, A71, A235.**

4. Violation of subsection (b) of Rule 4-1.15

Rule 4-1.15(b) provides that a lawyer may deposit the lawyer's own funds in his trust account for the purpose of paying financial institution service charges on that account, but only in an amount necessary for that purpose.

Respondent admitted in his Answer to the Information and during the disciplinary hearing that he violated Rule 4-1.15(b) when he deposited earned fees and his personal funds into his Trust Account in excess of amounts necessary to pay financial institution service charges. **App. Vol. 1, A72, A243.**

5. Violation of subsection (d) of Rule 4-1.15

Rule 4-1.15(d) provides that upon receiving funds in which a client or third person has an interest, a lawyer shall promptly notify the client or third person and shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive.

Respondent admitted in his Answer to the Information and during the disciplinary hearing that he violated subsection (d) of Rule 4-1.15 by failing to pay his clients in a timely manner. **App. Vol. 1, A69, A72, A244.**

6. Violation of subsection (f) of Rule 4-1.15

Rule 4-1.15(f) provides that an attorney shall keep complete trust account records. It further provides that complete records shall include, among other things,

a. A receipt and disbursement journal,

b. Individual client ledgers,

c. Accountings to clients or third persons showing the disbursement of funds to them or on their behalf,

d. Retainer agreement or fee agreement for clients,

e. Bills for legal fees and expense rendered to clients, and

f. Records of all electronic transfers from client trust accounts.

Respondent admitted that he:

a. Failed to keep a receipt and disbursement journal,

b. Failed to keep individual client ledgers,

c. Failed to have settlement sheets,

d. Failed to keep accurate billing records for legal fees and expenses rendered to clients,

e. Failed to have a retainer agreement or fee agreement for clients, and

f. Failed to keep adequate records to show why he made electronic transfers from Trust Account to his Operating Account.

App. Vol. 1, A74, A235-A236, A244-A245.

Respondent's admitted failure to maintain the required trust accounting records set forth above is a violation of Rule 4-1.15(f).

ARGUMENT

IV.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE THE RESPONDENT VIOLATED RULE 4-8.4(c), IN THAT:

1. **RESPONDENT DEPLETED CLIENT SETTLEMENT FUNDS AND/OR THIRD-PARTY FUNDS PRIOR TO REMITTING PAYMENT TO RESPONDENT'S CLIENTS OR TO THIRD PARTIES; AND,**
2. **RESPONDENT DELAYED PAYING CLIENTS AND/OR THIRD PARTIES.**

Rule 4-8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Converting client funds necessarily involves deceit and misrepresentation. *In re Ehler*, 319 S.W.3d 442, 450 (Mo. banc 2010).

1. Respondent Depleted Client Settlement Funds and/or Third-Party Funds Prior to Remitting Payment to Respondent's Clients or to Third Parties

There is no dispute in this case that Respondent depleted the funds of several of his clients for his own use. Between Keppler and Matthews alone, Respondent depleted more than $80,000.00. Keppler's $50,000.00 settlement was deposited into Respondent's Trust Account via a wire transfer in March 2013, prior to the commencement of the Audit

on July 1, 2013. **App. Vol. 1, A122.** Keppler's share of the settlement was $44,493.56. **Id.** By July 1, 2013, Respondent's Trust Account balance was $440.00. **Id.** Ms. Matthews' settlement payment was deposited into Respondent's Trust Account on November 2, 2016. **App. Vol. 1, A141.** By March 31, 2017, Respondent's Trust Account balance had fallen to $94.40, yet Respondent still owed Ms. Matthews an additional $36,741.13. **Id.** After the deposits of Keppler's and Matthews' settlement funds into his Trust Account, Respondent made numerous undocumented transfers from his Trust Account to his Operating Account and admitted to using Keppler's funds "improperly" and Matthews' funds for his own benefit.[6] Respondent further admitted that he made a $3,500.00 car payment with Nickson-Clark's funds and that he used the Estate's settlement from Bank of America to settle his eviction case. **App. Vol. 1, A225. A231, A245.**

Respondent's Trust Account and/or Operating Account fell below the amount of funds Respondent was required to hold in trust for sixteen additional clients whose transactions were analyzed by the OCDC Investigator during the Audit (as mentioned in this brief). **App. Vol. 1, A109-A150.** When an attorney deposits client funds into an account used by the attorney for his own purpose, and particularly when the account balance is reduced to an amount less than the amount of the funds being held for the

[6] Keppler received his settlement disbursement of $44,493.56 on November 19, 2014. **App. Vol. 1, A122.** By September 6, 2017, Matthews had received the balance of her settlement. **App. Vol. 3, A662-A681 (Ex. 34).**

client, it is characteristic of misappropriation. *In re Schaeffer*, 824 S.W.2d 1, 5 (Mo. banc 1992).

The OCDC Investigator testified that Respondent would also use the settlement funds belonging to one client to remit payment to another client. Respondent used Wesley's settlement funds to pay Keppler a portion of his settlement. **App. Vol. 1, A122.** Respondent used a portion of Johnson's settlement funds to pay Valenti's settlement payment. **App. Vol. 1, A147.** Respondent used the settlement funds of Nickson-Clark to pay a portion of Crask's settlement. **App. Vol. 1, A129.** Respondent used Johnson's settlement funds to pay a portion of Redd's settlement and Gosselin's settlement funds were used to pay CoCo Curls its settlement. **App. Vol. 1, A119, A131.** The fact that such funds were not used for Respondent's own personal benefit is of no consequence. Misappropriation is "any unauthorized use of client funds entrusted to [the lawyer], including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom." *In re Abbey*, 169 A.3d 865, 872 (D.C. 2017). Respondent's use of funds belonging to one client to pay another constitutes misappropriation.

Respondent eventually paid all clients their settlement share and/or any other funds they were due. This Court has held "[r]estitution of converted funds is not a defense" to a finding of misconduct. *In re Schaeffer*, 824 S.W.2d at 5; *In re Mentrup*, 665 S.W.2d 324, 325 (Mo. banc 1984).

During the disciplinary hearing, Respondent denied misappropriating client funds. **App. Vol. 1, A245.** Respondent said that he made trust accounting mistakes, that

everything was "a mess," and that he "got lost." **App. Vol. 1, A240-A241.** Respondent testified,

> "…But that doesn't -- the mistake happened. And then when you make a bad decision, and then you try to cover it up, it's like I tell my kids all the time; one lie begets another lie. And once that dollar is not accounted for, it has to be accounted for. I did not know how to ask for help. I don't know what all everyone was asking me about. I did not -- The only thing I did have to say is that I did not intend to deprive people…"

Id.

Respondent became aware of his misappropriation as early as November 2014 when Keppler contacted him about the status of his $50,000.00 settlement with Federated. Respondent testified, "…in fact, that was probably the biggest alarm bell that I had was how bad the situation had gotten at the firm. I mean, that was the beginning of, oh, my God, I can't get off this ride ….." **App. Vol. 1, A280.** Respondent testified that he was thereafter constantly putting out a "fire" until "Peter and Paul" could not make it work any longer. **App. Vol. 1, A276-277.** Respondent's continued attempts to cover up his misappropriation for more than three years compounds the seriousness of his conduct and belies his argument of mistake. *In re Griffey*, 873 S.W.2d 600, 603 (Mo. banc 1994) (lawyer's "subsequent attempt to cover up the improper conduct [misappropriation] compounds the seriousness of the deeds and belies his argument of mistake").

"When a lawyer misappropriates property belonging to a client or a third party, that lawyer breaches one of the fundamental duties of this profession. Doing so not only

injures the property owner, but also the Bar as a whole." *In re Farris*, 472 S.W.3d 549, 566 (Mo. banc 2015). Respondent's numerous instances of misappropriation of his clients' funds constituted deceitful conduct and a violation of Rule 4-8.4(c).

2. Respondent Delayed Paying Clients and Third Parties

Respondent admitted in his Answer to the Information and during the disciplinary hearing that he delayed in remitting payments to clients or third parties. **App. Vol. 1, A69, A72, A244.** The OCDC Investigator testified that of the twenty-nine clients whose transactions were audited, Respondent delayed paying fourteen clients their share of settlement proceeds or other payments by more than sixty days. **App. Vol. 1, A109-150.** Respondent's failure to timely remit settlement payments, particularly where there is overwhelming evidence that Respondent has repeatedly failed to preserve client funds, constitutes misappropriation and a violation of Rule 4-8.4(c).

ARGUMENT

V.

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

The fundamental purpose of discipline is to protect the public and maintain the integrity of the legal profession. *In re Ehler*, 319 S.W.3d 442, 451 (Mo. banc 2010); *In re Wiles*, 107 S.W.3d 228, 229 (Mo. banc 2003); *In re Coleman*, 295 S.W.3d 857, 869 (Mo. banc 2009). In determining an appropriate sanction for misconduct, the Court considers "the duty violated, the lawyer's mental state, the actual or potential injury caused by the lawyer's conduct, and the existence of aggravating or mitigating factors." *In re Wiles,* 107 S.W.3d at 229 (the Court considers the gravity of the attorney's misconduct, as well as any mitigating or aggravating factors that tend to shed light on the attorney's moral and intellectual fitness as an attorney).

In 1994, this Court began relying upon the ABA *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*") in determining appropriate discipline. *In re Coleman*, 295 S.W.3d at 869; *In re Farris*, 472 S.W.3d at 562-563. When an attorney violates multiple Rules of Professional Responsibility, as is charged in the case of Respondent, the ultimate sanction imposed should be at least consistent with the sanction for the most

serious instance of misconduct. *In re Coleman*, 295 S.W.3d at 870; *In re Ehler*, 319 S.W. 3d 442 at 451. As discussed below, the most serious instances of misconduct in this case are Respondent's misappropriation of client funds, Respondent's failure to disclose to the Probate Court his receipt of the Bank of America settlement funds which he treated as an earned fee, and Respondent's false statements and testimony made during the course of the disciplinary proceedings.

Application of the ABA Standards

a. Respondent Knowingly Converted Client Money

ABA *Standard* 4.11 provides that absent aggravating or mitigating circumstances, disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client. ABA *Standard* 4.11. This Court has consistently agreed and found that disbarment is the presumptive appropriate discipline for misappropriating client funds. *See*, *In re Farris*, 472 S.W.3d 549, 563 (Mo. banc 2015); *In re Ehler*, 319 S.W.3d 442 at 451; *In re Belz*, 258 S.W.3d 38, 42 (Mo. banc 2008) (noting that, in the absence of mitigation or aggravating circumstances, Standard 4.11 provides that disbarment is the baseline sanction for failing to preserve client property).

Respondent's conduct with respect to Nickson-Clark, Crask, and the Estate of Milton Brookins, among others, demonstrated that Respondent knowingly converted and misappropriated client funds. Respondent deposited Nickson-Clark's $7,500.00 settlement into his Trust Account which had a prior balance of $5.00. Two days later,

Respondent withdrew the $7,500.00 and purchased two cashier's check totaling $7,500.00 and deposited them into his Operating Account. That same date, Respondent remitted a check drawn on the Operating Account to Royal Gate in the amount of $3,500.00 for a car. Respondent's actions taken with respect to Nickson-Clark's settlement demonstrates that he acted knowingly.

Respondent deposited Crask's $7,500.00 settlement check into his Operating Account on December 19, 2014. It was not until March 25, 2015 (utilizing some of Nickson-Clark's settlement), that Respondent remitted to Crask a partial settlement disbursement in the amount of $3,000.00. Respondent mislead Mr. Crask into believing that Respondent had not yet received his settlement when he noted in the memo line of the check "advance settlement." On March 25, 2015, Respondent's ending Operating Account balance was $580.72 and his Trust Account balance $5.00. The awareness by Respondent that he possessed insufficient funds to remit Crask's full settlement disbursement constitutes knowledge on the part of Respondent that he had misappropriated Crask's money.

With respect to the Estate of Milton Brookins, Respondent misappropriated the Estate's assets by depositing the settlement check into his Operating Account, purportedly as an earned fee, and using a portion of the funds to settle his rent and eviction case. Respondent elected not to obtain the court's authorization to apply the Estate's funds to his legal fees even though he knew such authorization was necessary as Respondent had submitted a prior request for court approval of fees six months before his receipt of the Bank of America Settlement Check. The Panel properly found that

Respondent intentionally circumvented the probate procedural rules in order to use the Estate's funds to settle his eviction case. **App. Vol. 5, A1110.** Respondent's conduct demonstrates that he knowingly misappropriated the Estate's funds for his own benefit.

Further, Respondent deposited client settlement checks directly into his Operating Account for the following nine clients: Turnipseed; Brooks; Broadnex; Redd; Wesley; CoCo Curls; Gosselin; Thompson; and Valenti. For each of these clients, the OCDC Investigator testified that Respondent's Operating Account fell below the amount that was to be held in trust on behalf of each client. **App. Vol. 1, A109-A150.**

Further, Respondent was aware that he was frequently overdrawing his Operating Account during the Audit period. Respondent testified,

> Like, I was behind in my rent, my personal rent. I mean, it doesn't - -you go through that, you can see that the cash flow, I was always trying to put out a fire. That's why there were zero - -that is why there were overdrawn operating account statements. … It became a mess. And, you know, eventually, you know, Peter and Paul just couldn't make it work anymore.

App. Vol. 1, A276-A277.

Respondent's knowledge that his Operating Account was frequently overdrawn during the Audit period, where he repeatedly deposited client settlement checks, constitutes his direct knowledge that he was misappropriating client funds. As noted above, the Missouri Supreme Court recognizes that disbarment is the baseline sanction for misappropriation. *In re Farris*, 472 S.W.3d at 562; *In re Belz*, 258 S.W.3d at 42; *In re Mentrup*, 665 S.W.2d at 325. Respondent's knowing misappropriation of client funds

makes disbarment the appropriate presumptive sanction. As explained by this Court in *In re McMillin*, 521 S.W.3d 604, 611 (Mo. banc 2017), "there simply is no room in this profession for attorneys who take property held in trust for others and use it as their own."

b. Respondent's False Testimony and False Statements During the Disciplinary Process and to the Tribunal

Disbarment is also the presumptive appropriate sanction for Respondent's false statements and intentional misrepresentations made during the course of the disciplinary process. *See*, ABA *Standard* 6.11. ABA *Standard* 6.11 provides that, absent aggravating or mitigating circumstances, "[d]isbarment is generally appropriate when a lawyer, with intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding." Courts have held that disbarment is the appropriate sanction for false statements and intentional misrepresentations made during the disciplinary process. *See*, *In re McClain-Sewer*, 77 A.D. 3d 204, 205 (N.Y. App. Div. 2010) (disbarment of lawyer for misconduct including false statements and testimony before disciplinary committee regarding his knowledge of suspension and his continued practice of law); *In re Rawls*, 936 N.E. 2d 812, 816 (Ind. 2010) (citing Standard 6.11, *inter alia,* in disbarring lawyer for misconduct that included making a series of intentional misrepresentations to the disciplinary committee during its investigations.)

Disbarment is also the presumptive appropriate sanction for Respondent's failure to disclose his receipt of the Bank of America Settlement Check. In *In re Gardner*, 565 S.W.3d 670 (Mo. 2019), however, this Court found that a stayed suspension was the appropriate sanction for a lawyer's various ethical violations, including a Rule 4-3.3 violation where the lawyer failed to disclose an unauthorized personal representative fee. *Id.* at 680. The Court noted that *Gardner* was not a case of misappropriation and, further, there was no evidence that Gardner acted intentionally or with any selfish or dishonest motive. *Id.* at 679. In so noting, the Court stated, *inter alia*, there was no evidence that Gardner took the fees early because he was suffering personal financial difficulties, that he needed the funds for cash flow purposes, or that he derived any benefit from taking the funds early rather than waiting until the estate closed two months later per the court's order. *Id.*

Unlike *Gardner*, this case is clearly one of misappropriation as discussed above. Further, Respondent acted knowingly, intentionally, and with a selfish and dishonest motive. Not only was Respondent aware that his application of Estate funds to the Personal Representative's legal fees required court authorization, but Respondent's misconduct (his failure to disclose the settlement) was motivated by financial gain. Respondent admitted that he was having cash flow problems, that he could not pay his rent, and that a portion of the Bank of America settlement funds had been used to settle his own rent and possession lawsuit thereby avoiding imminent eviction. Disbarment, not suspension, is the applicable sanction for Respondent's violation of Rule 4-3.3(a)(1).

c. Aggravating and Mitigating Circumstances

Once misconduct is established, aggravating and mitigating circumstances must be evaluated prior to determining to depart from the presumptive sanction of disbarment. *In re Belz*, 258 S.W.3d at 42. Mitigating factors do not constitute a defense to a finding of misconduct but might justify a downward departure from the presumptively appropriate discipline. *In re Farris*, 475 S.W.3d at 563; *see also*, ABA *Standard* 9.31 (mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed). Aggravating factors, on the other hand, may justify a greater level of discipline than the presumed discipline or confirm the presumed discipline is the appropriate discipline in a particular case. *In re Farris*, 475 S.W.3d at 563; *see also*, ABA *Standard* 9.21 (aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed).

Respondent offered testimony of several mitigating factors during the disciplinary hearing. Respondent testified that, during the period of the Audit, he was going through a divorce, that his children were not with him, that he was depressed, and that he was abusing alcohol. While Respondent's personal or emotional problems may be considered a mitigating factor under ABA *Standard* 9.32(c), the Court's adoption in 2010 of Rule 5.285 makes consideration of any alleged mental disorder, including substance abuse, as a mitigating factor possible only by a respondent attorney's compliance with the rule. Therefore, to be considered as a mitigating factor, the respondent must obtain an

independent licensed mental health professional's report diagnosing the mental disorder and stating that it caused or had a direct and substantial relationship to the professional misconduct. *See*, Rule 5.2859(c). That was not done in this case. As such, Respondent's testimony of his depression should not be considered in mitigation of a sanction.

Respondent also testified that one of his mistakes was relying too much on a non-attorney office manager, but as this Court held in *In re Farris*, the obligation to safeguard others' property and distribute such property to its rightful owners is non-delegable. *In re Farris*, 472 S.W.3d at 560. The Panel also found that ultimately all of Respondent's clients were paid. Respondent remitted payment to Brooks after the disciplinary hearing concluded but before the Panel issued its decision. Restitution, however, does not automatically make one fit, who has already proven himself unfit. *In re Kohlmeyer*, 327 S.W.2d 249, 252 (Mo. banc 1959).

As further mitigating evidence, under ABA *Standard* 9.32(g) Respondent offered evidence of his character or reputation through his own self-serving testimony of his charitable work and community involvement, a letter from his associate attorney, Ms. Costas, and a letter from his best friend, a lawyer in California, who is aware that Respondent has made "some mistakes" and believes that a reprimand is appropriate. **App. Vol 5, A999-A1000 (Ex. 40, Ex. 41).** Respondent testified "I didn't have a bunch of letters, you know why: you can call my colleagues, and they will tell you I'm a good lawyer …." **App. Vol. 1, A240.** It is not the duty of the Informant to prove Respondent's moral character and fitness. Respondent's letters of support should be accorded little weight, if any.

Respondent testified that none of his conduct was committed with a selfish motive. **App. Vol. 1, A276.** The Panel disagreed and found that Respondent knowingly misappropriated $3,500.00 of his client's money for a car payment for his own benefit and that Respondent circumvented probate procedural rules by depositing estate funds directly into his Operating Account (without prior authorization from the Probate Court) in order to avoid eviction and settle his rent and possession case. **App. Vol. 5, A1110.** Informant concurs with the Panel's finding.

Respondent further presented mitigating evidence of his cooperativeness during the Audit phase of the disciplinary proceeding. *See,* ABA *Standard* 9.32(e). Respondent's cooperativeness during the Audit phase, however, is tempered by Respondent's false statements and testimony during the earlier stages of the disciplinary proceedings.

This court has acknowledged that "in a rare but appropriate case a sanction other than disbarment may be appropriate for intentional misappropriation where mental illness is shown to have played a role in the misconduct and other substantial mitigation factors are also present." *In re Farris*, 472 S.W.3d at 567 (quoting *In re Belz*, 258 S.W. 3d at 46). Not only did Respondent not comply with Rule 5.285, but an analysis of Respondent's additional mitigation factors demonstrates that none are substantial, and thus disbarment is appropriate.

Numerous aggravating factors are present that confirm that the presumptive sanction is appropriate in this case. Respondent has a prior disciplinary history. *See*, ABA *Standard*, 9.22(a). Respondent was tax suspended in 2014. Respondent also

engaged in a pattern of misconduct. *See*, ABA *Standard*, 9.22(c). Respondent committed numerous trust account violations during his representation of twenty-nine separate clients between July 1, 2013 and March 30, 2018. Further, Respondent violated multiple rules of professional misconduct. *See,* ABA *Standard*, 9.22(d). Respondent violated Rules 4-1.1, 4-3.3(a)(1), 4-3.4(c), 4-5.1(a), and 4-8.4(c) during his representation of the Brookins Estate and Rules 4-1.15(a), 4-1.15(a)(5), 4-1.15(a)(7), 4-1.15(b), 4-1.15(d), 4-1.15(f), and 4-8.4(c) during his representation of twenty-eight other clients. Respondent also violated Rule 4-8.1(a) and/or 4-8.4(c) during this disciplinary process. Respondent had also been practicing law for more than thirteen years at the beginning of the OCDC Investigator's Audit period. *See*, ABA *Standard*, 9.22(i).

As set forth above, Respondent exhibited dishonest and selfish motives. *See*, ABA *Standard*, 9.22(b). By Respondent's own admission, he used client funds to pay his rent, to make a car payment, and on other occasions, for his benefit "in some way." Respondent submitted false statements and testimony during the course of the disciplinary process. ABA *Standard*, 9.22(f).

In the face of all the evidence in this case, the public and the integrity of the profession is best protected by Respondent's disbarment. "The privilege to practice law is only accorded those who demonstrate the requisite mental attainment and moral character." *In re Haggerty*, 661 S.W.2d. 8, 10 (Mo. banc 1983).

CONCLUSION

For the reasons set forth above, the Chief Disciplinary Counsel respectfully requests this Court:

(a) Find that Respondent violated Rules 4-1.1, 4-3.3(a)(1), 4-3.4(c), 4-5.1(a), 4-8.1(a), 4-8.4(c), 4-1.15(a), 4-1.15(a)(5), 4-1.15(a)(7), 4-1.15(b), 4-1.15(d), 4-1.15(f);

(b) Disbar Respondent; and,

(c) Tax all costs in this matter to Respondent, including the $2,000.00 fee for disbarment, pursuant to Rule 5.19(h).

Respectfully submitted,

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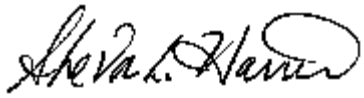
Chief Disciplinary Counsel

By: 

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CERTIFICATE OF SERVICE

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

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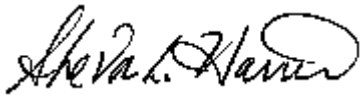
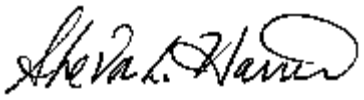


Shevon L. Harris

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);
3. Contains 17,438 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



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