

IN THE SUPREME COURT OF THE
STATE OF MISSOURI

In re

JOHN TRESSLAR,

Attorney-Respondent.

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Case No. SC98544

BRIEF OF RESPONDENT

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JURISDICTIONAL STATEMENT

Mr. Tresslar does not contest this Court's jurisdiction. This is a lawyer discipline case. Therefore, as stated in Informant's Brief, this Court has jurisdiction over this case pursuant to Article V, Section 5 of the Missouri Constitution; Missouri Supreme Court Rule 5; Missouri common law; and Missouri Revised Statute § 484.040. In addition, this Court has jurisdiction under its inherent authority to regulate the Missouri Bar.

CASE SUMMARY

John Tresslar is an attorney who has had a solo practice John E. Tresslar, LLC that primarily focuses on personal injury and criminal defense since 2002.

Mr. Tresslar finds himself before this Court primarily due to mistakes he made in handling law firm bank accounts and financial matters. Mr. Tresslar has admitted most of the conduct alleged against him. Mr. Tresslar has also tendered repayment to all clients affected by the mishandling of his firm's accounts, and the clients have accepted reimbursement of the mishandled funds. Nevertheless, a hearing panel has recommended Mr. Tresslar be disbarred.

In this Brief, Mr. Tresslar demonstrates why – when considering the errors at issue and Mr. Tresslar's evidence for mitigation – this Court should impose not more than an indefinite suspension. Mr. Tresslar believes such consequences are appropriate due to the nature of the violation and Mr. Tresslar's strong evidence in mitigation including his respectable legal career, significant community service, absence of a dishonest motive, and medical conditions – specifically cancer and depression.

STATEMENT OF FACTS

Consistent with Missouri Supreme Court Rule 84.04(c) and (f), Mr. Tresslar offers the following Statement of Facts.

Background. Mr. Tresslar obtained his undergraduate degree from Spring Hill College in Mobile, Alabama, in 1981 and his law degree from Saint Louis University School of Law in 1985. (App. 208, 239)¹ He was admitted to the Missouri bar in September 1985. (*Id.*) Mr. Tresslar's bar number is 35364. (App. 40) As of 1986, Mr. Tresslar has also been licensed to practice law in Illinois. (App. 296)

Mr. Tresslar was previously suspended by this Court on February 2, 2009, for violation of Rule 5.245 by failing to pay applicable taxes. Mr. Tresslar was subsequently reinstated on April 8, 2009. (App. 212-13) Mr. Tresslar has also accepted Letters of Admonition issued pursuant to Rule 5.11 on December 23, 1992 and January 25, 1998. (App. 212) Additionally, Mr. Tresslar was previously issued three guidance (cautionary) letters on November 15, 2010; July 19, 2013; and September 24, 2013. (*Id.*)

Law Firm Practice. After his admission to the bar in 1985, Mr. Tresslar worked at Lakin & Herndon in Wood River, Illinois, representing railroad workers injured on the job. (App. 240-41) In 1998, Mr. Tresslar moved to Brown & Crouppen, where he primarily handled personal injury and workers' compensation cases. (App. 241-42)

¹ Citations to the appendix are denoted by the appropriate Appendix page, for example "App. (page number)".

While at Brown & Crouppen, in approximately 1997, Mr. Tresslar became managing attorney in the firm's personal injury department. (App. 242) As a managing attorney in the personal injury department, Mr. Tresslar supervised a staff of about six attorneys and ten legal assistants who handled over 1500 personal injury cases. (*Id.*)

In 2002, Mr. Tresslar left Brown & Crouppen to start his own solo law firm John E. Tresslar, LLC. (App. 244) Mr. Tresslar primarily practices in the areas of personal injury and criminal defense. (App. 209)

Local community and legal community involvement. Mr. Tresslar is an AV rated attorney, and has held an AV rating for twenty years. (App. 247-49) In 2019, Mr. Tresslar received an AV award for Highest Possible Rating in Both Legal Ability & Ethical Standards.

In addition to being a highly rated attorney, throughout his career Mr. Tresslar has served on various committees in the legal community including serving as Social Committee Chair for the Bar Association of the Metropolitan ("BAMSL") and two years as an American Bar Association ("ABA") Delegate for the BAMSL Young Lawyers' Division. (App. 248, 250) As Social Committee Chair, Mr. Tresslar would organize different activities for BAMSL members. (App. 249-51) From the 1990s to 2005, Mr. Tresslar also participated in BAMSL's Volunteer Lawyers Program. (App. 259-60)

In addition to his contributions to the legal community, Mr. Tresslar also has been an active in his local community and religious organizations. For three years, Mr. Tresslar was Secretary of the Professional Businessmen of the Hill, a neighborhood known as the historic center for the Italian immigrant community in St. Louis. (App. 252) Mr. Tresslar

also served as a volunteer attorney for St. Francis Xavier College Church Legal Clinic and as a parish council member for six years and council president for one year at St. Ambrose Church, a historic church in the Hill neighborhood. (App. 253, 255-56) Mr. Tresslar volunteered for and helped lead the St. Ambrose Parish Athletic Association, coordinating children's sports teams and organizing fundraisers to make children's participation in team sports less expensive. (App. 256-57)

Representation for Dr. Taquir Ahmed. In March 2016, Dr. Taquir Ahmed and his wife Rabya Mian (collectively the "Ahmeds") retained Mr. Tresslar to address legal issues arising from bullying the Ahmeds' daughter was experiencing at school. The Ahmeds agreed to pay Mr. Tresslar an hourly fee of \$250 and advanced to Mr. Tresslar as a \$1,000.00 retainer for Mr. Tresslar's fees. (App. 102, 104) Dr. Ahmed received an invoice in the amount of \$2,975.00 from Mr. Tresslar in May 2016. (App. 118) Dr. Ahmed paid the May 2016 invoice in full. (App. 118-19) Dr. Ahmed reviewed the invoice and believed it looked reasonable. (App. 119) Dr. Ahmed had no issues with Mr. Tresslar regarding Mr. Tresslar's representation in the first matter involving his daughter being bullied. (App. 119-20)

As the first matter of representation was wrapping up, the Ahmeds hired Mr. Tresslar to handle a second matter involving the Ahmeds' daughters after their daughters were expelled from school. (App. 103) For representation of Dr. Ahmed's daughters' expulsion from school, Mr. Tresslar requested and received an additional \$7,500.00 retainer as an advance on fees. (*Id.*) However, despite ultimately accepting representation of this matter for the Ahmeds, Mr. Tresslar encouraged Dr. Ahmed to talk to the law firm

of Carmody MacDonald P.C. about possibly filing the lawsuit. (App. 120) Dr. Ahmed spoke with Carmody MacDonald P.C., but Carmody MacDonald declined to undertake the representation on a contingency fee basis, as the Ahmeds desired. (App. 120, 237)

After Carmody MacDonald P.C. declined to take the case on a contingency fee for the Ahmeds, Mr. Tresslar warned Dr. Ahmed that the case might cost as much as \$20,000.00 to prosecute. (App. 120, 237) The Ahmeds indicated to Mr. Tresslar they did not care what it cost, they wanted to go after their daughters' school. (App. 237, 279)

Mr. Tresslar believes he was justified in keeping a fee of \$4,000 from the \$7,500 retainer based on the amount of work he conducted for the Ahmeds, which included correspondence with counsel for the school as well as Mr. Tresslar conducting research for case law that would assist the Ahmeds' case. (App. 277-78, 282) The Ahmeds disputed whether Mr. Tresslar had earned \$4,000 of the funds advanced, however, and filed an ethics complaint against Mr. Tresslar. (App. 43)

Trust account matters. The investigation surrounding the Ahmeds complaint against Mr. Tresslar included an audit of Mr. Tresslar's law firm trust account and later its operating account. In July 2019, an audit of John E. Tresslar LLC's trust and operating accounts was conducted and involved reviewing account activity from January 2014 to March 2019. (App. 149) Kelly Dillon, a paralegal for the Informant investigated Mr. Tresslar's firm's accounts. (App. 143-44) As part of the investigation, Ms. Dillon created spreadsheets that analyzed John E. Tresslar LLC's trust account and operating account. (App. 149) Mr. Tresslar admitted and admits that those spreadsheets accurately reflect the

bank accounts' records and financial transactions for those accounts from January 2014 through March 2019. (*Id.*)

The audit found – and Mr. Tresslar admits – that on several occasions during the audit time period, Mr. Tresslar used funds paid from clients, or on behalf of clients, to pay other clients and/or himself. (App. 152-53, 155, 162, 165, 168-69) Mr. Tresslar also generally did not wait the required period (10 days) for deposited funds to become “good” before disbursing those funds. (App. 156-57, 160) Mr. Tresslar did not maintain complete records regarding deposits and disbursements into and out of his lawyer trust account, and he did not regularly maintain settlement statements reflecting all disbursements from client settlements. (App. 147, 222-23) As addressed in detail below, at times Mr. Tresslar also failed to timely pay amounts due to third-parties from client settlements. (App. 165, 183)

Since the audit, however, Mr. Tresslar has been educated on proper account practices and has implemented that education into his firm. (App. 266-67) Mr. Tresslar has also ensured that all clients and third parties have received the funds to which they were entitled. (*Id.*) To Mr. Tresslar's knowledge, every client and third-party involved in the disciplinary proceeding has been paid in full at the time of the hearing. (App. 268)

Representation of Brian Puszkas. Mr. Tresslar had represented a friend Brian Puszkas as a plaintiff in personal injury and workers' compensation cases arising from a motor vehicle accident sustained while on the job. (App. 213) Mr. Tresslar settled Mr. Puszkas's personal injury claim for \$200,000. (App. 216) Before Mr. Tresslar obtained the payment of the \$200,000 settlement, an insurer had placed a \$50,000 lien on the settlement. (*Id.*) Mr. Tresslar retained the \$50,000, as agreed to pay the lien from the settlement on

behalf of Mr. Puszkas. However, Mr. Tresslar did not promptly pay the \$50,000 to the insurance company or otherwise resolves the insurance company's claim, which ultimately resulted in the insurance company filing a lawsuit against both Mr. Tresslar and Mr. Puszkas. (App. 169, 219)

Mr. Tresslar filed an answer to the lawsuit on behalf of both himself and Mr. Puszkas without alerting Mr. Puszkas regarding the pendency of the lawsuit. (App. 219) Mr. Tresslar also settled the case both on his own behalf and on behalf of Mr. Puszkas without receiving authorization from Mr. Puszkas. Mr. Puszkas believed that the \$50,000 withheld from the settlement was then paid to the insurance company, but the funds were not actually paid to the insurer. (App. 170, 172-73, 219)

On March 30, 2017, the insurance company filed a consent judgment against Mr. Tresslar and Mr. Puszkas relating to the funds the insurance company was owed from Mr. Puszkas's 2013 personal injury settlement. (App. 221) Prior to the January 2020 disciplinary hearing, in September 2019, Mr. Tresslar paid the insurance company, and the insurance company filed a Satisfaction of Judgment in the civil case against Mr. Tresslar and Mr. Puszkas. (App. 222) After Mr. Tresslar received the \$50,000 the insurance company claimed, but before Mr. Tresslar had paid the insurance company, Mr. Tresslar's trust account balance fell below \$50,000. (App. 160-62)

Mr. Tresslar testified at the disciplinary hearing that his mishandling of the insurance company's lien during his representation of Mr. Puszkas stemmed from Mr. Tresslar's depression, and him taking advantage of his friendship with Mr. Puszkas. (App. 227).

Health and personal issues. Mr. Tresslar was previously diagnosed with depression in 2009, and since 2009 has been receiving treatment for depression. (App. 260) Mr. Tresslar elected not to pursue the special process required to formally claim mitigation for mental health illness under Missouri Supreme Court Rule 5.285. (*Id.*) In addition to issues with his mental health, during the period when Mr. Tresslar was dealing with the Puszkas insurance company lien, Mr. Tresslar was also dealing with personal issues, including his own health problems, marital strife, and health issues involving his children. (App. 262-64) This includes that in 2016 – during Mr. Tresslar’s representation of Dr. Taquir Ahmed – Mr. Tresslar was diagnosed with Hairy Cell Leukemia. (App. 261-62) Mr. Tresslar was treated for the leukemia through a series of chemotherapy treatments. Mr. Tresslar’s cancer is currently in remission. (App. 262)

Improvements to Mr. Tresslar’s law practice. Mr. Tresslar has sought help for the problems that gave rise to this proceeding, including receiving trust account education. (App. 266-67) Mr. Tresslar has undergone education and training on proper trust accounting practices, including proper methods for maintaining client ledgers, disbursement journals, and maintaining full records recording trust account activities, as well as understanding the importance of promptly responding to client inquiries. (*Id.*)

Mr. Tresslar has also made large strides to improve his law practice since the underlying investigation commenced. These improvements include that Mr. Tresslar now uses the law practice management software Clio to track payment and also an app called “My Register” that alerts Mr. Tresslar to every single payment he receives from a client. (App. 266) Because of these improvements made to his law practice, Mr. Tresslar’s law

firm now operates in compliance with the Missouri Rules relating to trust accounting. (App. 265-66)

Hearing Panel Recommends Disbarment. On January 13, 2020, a Hearing Panel heard the Informant's case against Mr. Tresslar. (App. 91) This Hearing Panel issued its decision, recommending disbarment, on March 23, 2020. (App. 554-77) The Informant accepted the Hearing Panel's recommendation on April 1, 2020. (App. 578) Mr. Tresslar then filed his rejection of the Hearing Panel's recommendation on April 21, 2020. (App. 579-80)

POINT RELIED UPON

1. MR. TRESSLAR’S CONDUCT AND EVIDENCE OF MITIGATION
SUPPORT IMPOSITION OF AN INDEFINITE SUSPENSION, NOT
DISBARMENT.

In re Miller, 568 S.W.2d 246 (Mo. 1978)

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

In re Armano, Case No. SC9601 (Mo. Oct. 4, 2011)

In re Fisher, Case No. SC97694 (June 4, 2019)

ARGUMENT

Preliminary Statement. Mr. Tresslar has largely stipulated to the conduct at issue in this case. Mr. Tresslar admits that he made mistakes with the handling of client property and has taken remedial steps to learn from this incident to ensure it does not happen again. Therefore, the only real question before this Court is what sanction it should impose upon Mr. Tresslar. As set forth below, prior precedent and the mitigating factors in this case support imposition of an indefinite suspension.

Standard of Review. In matters of professional misconduct, the Court reviews the record of the disciplinary hearing and the evidence *de novo*. *In re Wiles*, 107 S.W.3d 228 (Mo. 2003). This Court then “decides the facts *de novo*, independently determining all issues pertaining to credibility of witnesses and the weight of the evidence, and draws its own conclusions of law.” *In re Eisenstein*, 485 S.W.3d 759, 762 (Mo. 2016). “Professional misconduct must be proven by a preponderance of the evidence before discipline will be imposed.” *Eisenstein*, 485 S.W.3d at 762. A Hearing Panel’s “findings of fact, conclusions of law, and recommendation are advisory, and this Court may reject any or all of [the Hearing Panel’s] recommendation.” *Id.*

Standard for Imposition of Discipline. The twin aims of the Missouri lawyer discipline system are to “protect the public and maintain the integrity of the legal profession,” *not to punish the lawyer*. *In re Coleman*, 295 S.W.3d 857, 869 (Mo. 2009). In assessing the proper sanction, this Court has recognized that ABA Standards for Imposing Lawyer Sanctions (the “ABA Standards”) provide useful guidance for appropriate discipline. *In re Madison*, 282 S.W.3d 850, 860 (Mo. 2009). Consideration is

given to the nature of the conduct at issue, as well as any evidence in aggravation or mitigation. ABA Standard for Imposing Lawyer Sanctions 9.1.

**POINT RELIED #1: Mr. Tresslar's Conduct and Evidence
in Mitigation Support Imposition of an Indefinite
Suspension, Not Disbarment.**

An indefinite suspension is an appropriate sanction for two reasons. First, an indefinite suspension is appropriate based upon Mr. Tresslar's conduct. Specifically, Mr. Tresslar's conduct is consistent with prior situations where this Court has previously imposed suspensions. Mr. Tresslar has admitted serious mistakes with regard to his operation of his trust account and handling of third-party funds. But this conduct and Mr. Tresslar's actions concerning Mr. Puszkas. Mr. Tresslar should not be sanctioned based upon his representation of the Ahmeds, because Informant has not proven any misconduct in Ms. Tresslar's representation of the Ahmeds. At most, the Ahmeds' claim is that they should have received a refund larger than \$4,000 from the \$7,500 that they advanced. But such matters would at most be suitable for the Missouri Fee Dispute Resolution Committee; they do not *ipso facto* reflect a violation of Rule 4-1.5 for charging an excessive fee.

Second, although Mr. Tresslar admits that a serious sanction is warranted, Mr. Tresslar's conduct does not merit more severe penalty than suspension. Mr. Tresslar's substantial mitigating evidence should cause this Court to impose an indefinite suspension and not a more serious penalty.

Background for Imposition of Penalty. In discussing the appropriate sanction, this Court should be attentive to the evidence presented to the Hearing Panel of the following:

- (a) Mr. Tresslar has admitted using client funds – including from Mr. Puszkas’s settlement – to pay other clients and expenses, including for his law practice (App. 152-53, 155, 162, 165, 168-69);
- (b) Mr. Tresslar responded to a lawsuit brought against himself and Mr. Puszkas due to Mr. Tresslar’s failure to promptly resolve an insurance company lien, and settled that lawsuit, without receiving proper authorization from Mr. Puszkas (170, 172-73, 219-22, 227);
- (c) Mr. Tresslar has made restitution before the proceedings to all injured parties and shown appropriate remorse (App. 230-33, 268, 273);
- (d) Mr. Tresslar was generally cooperative, candid, and forthcoming with the Office of Chief Disciplinary counsel (OCDC) investigation (App. 268-70);
- (e) Mr. Tresslar has shown appropriate remorse throughout the investigation and proceedings (App. 270); and
- (f) Mr. Tresslar and his law practice suffered immensely due to Mr. Tresslar’s significant health issues, including cancer and depression (App. 227, 262-264)

With these uncontested facts in mind, we turn now to legal support that an indefinite suspension should be sufficient in this case, as well as the two reasons that an indefinite suspension – and not disbarment – is appropriate.

Available Formal Sanctions for Misconduct. As this Court is well aware, the Rules governing Missouri Lawyer discipline proceedings – Missouri Supreme Court Rule 5 –

establish six different types of discipline a lawyer might receive. Two are informal: an admonition (a largely private letter identifying the error) and diversion (an agreed course of rehabilitative and practice-improvement actions, which technically are not actually considered discipline). Four forms of sanction are formal discipline: public reprimand, probation, suspension, and disbarment. Any formal discipline is a serious matter, imposed only by order of this Court.

Mr. Tresslar's Conduct Warrants an Indefinite Suspension. Even though Mr. Tresslar's misconduct lacked a dishonest motive, Mr. Tresslar used and failed to preserve funds belonging to multiple clients. Misappropriation of client property is a serious violation, often – but not always – resulting in the most serious penalty of disbarment. Prior precedent from this Court supports imposition of an indefinite suspension in this case. This Court has previously asserted that “misappropriation of client property always is a disbarable offense.” See *In re Shaeffer*, 824 S.W.2d 1, 5 (Mo. 1992); *In re Williams*, 711 S.W.2d 518, 521 (Mo. 1986). However, there is extensive precedence from this Court that suggests that is not *always true* – including at least twelve cases within the last six years that all involved violations of Rule 4-1.15 but ended with suspensions. Previous cases support imposition of an indefinite suspension against Mr. Tresslar.

For example, in *In re Miller*, 568 S.W.2d 246 (Mo. 1978), this Court imposed a reprimand despite concluding the lawyer Miller had misappropriated \$30,000 in client funds purportedly held in trust for a client, and also caused the client to transfer an interest in real estate to the client's wife. Additionally, in *In re Elliott*, 694 S.W.2d 262 (Mo. 1985), this Court only reprimanded a lawyer where the lawyer – in addition to maintaining poor

records and having insufficient funds in the account – mishandled deposits, failed to forward payments to a client promptly, and failed to respond to client inquiries.

Recently, this Court in *In re Armano*, Case No. SC9601 (Mo. Oct. 4, 2011), this Court only reprimanded Armano for violations of Rule 4-1.15(c) and 4-1.15(d) for – in the words of the Office of Chief Disciplinary Counsel – “routinely using his trust account for personal banking.” Likewise, this Court in *In re Cox*, Case No. SC86837 (Dec. 20, 2017) imposed a reprimand against attorney Cox despite Cox repeatedly placing advanced fees (of as much as \$17,000 and \$20,000) into his operating account, and also paying personal expenses from his trust account. Cox also failed to maintain a balance on his trust account sufficient to pay trust account checks issued to third parties.

Here, Mr. Tresslar fully and continually cooperated with Disciplinary Counsel including properly maintaining communication with OCDC. Additionally, although he has a small history of prior discipline, Mr. Tresslar has been practicing as an attorney in the state of Missouri since 1985 without serious incident.

Other cases decided by this Court similarly suggest that a suspension is warranted for Mr. Tresslar’s conduct. In *In re Coleman*, 295 S.W.3d 857 (Mo. 2009), this Court imposed a stayed suspension despite conduct that includes misappropriation of client funds – including specifically paying personal obligations out of settlement proceeds – by a lawyer who had previously been admonished twice and reprimanded once.

Moreover, throughout the past six years there have been numerous cases where a lawyer was found to have violated Rule 4-1.15 – often coupled with other provisions in the Missouri Rules of Professional Conduct – and received sanctions of indefinite suspension

or less. These cases include *In re Sanchez*, Case No. SC98064 (June 2, 2020) (violation of Rules 4-1.15(c) and 4-8.4(a)); *In re Hollon*, Case No. SC98297 (March 17, 2020) (default suspension for violations of Rule 4-1.15(a), (c), (d), (f), and 4-8.4(c)); *In re Cartier*, Case No. SC98141 (February 4, 2020) (reciprocal suspension for violation of Rules 4-1.6, 4-1.15(a), (f), (h), 4-1.2(a), 4-1.4, 4-3.3, 4-3.4(c), 4-7.1, 4-8.1(b), 4-8.4(c), and (d)); *In re Sheehan*, Case No. SC98027 (November 19, 2019) (violation of Rules 4-1.1, 4-1.3, and 4-1.15); *In re Bluebaum*, Case No. SC97919 (October 15, 2019) (violation of Rules 4-1.3, 4-1.4, 4-1.15, 4-8.1, 4-8.4(a), 4-8.4(c), and 4-8.4(d)); *In re Deines*, Case No. SC97874 (July 22, 2019) (reciprocal suspension for violation of Rules 4-1.1, 4-1.3, 4-1.4, 4-1.15, 4-1.16(d), 4-3.2, 4-8.1(c), and 4-8.4(d)); *In re Schiffman*, Case No. SC97770 (June 4, 2019) (reciprocal suspension for violation of Rules 4-1.1, 4-1.2, 4-1.3, 4-1.4, 4-1.15, and 4-8.1(b)); *In re Fisher*, Case No. SC97694 (June 4, 2019) (violation of Rules 4-1.3, 4-1.4, 4-1.15, 4-8.4(c), and (d)); *In re Salus*, Case No. SC97549 (December 27, 2018) (reciprocal suspension for violation of Rules 4-1.4(a), 4-1.15(a), (c), 4-1.16(d), 4-8.1(c), and 4-8.4(c)); *In re Davis*, Case No. SC97446 (October 30, 2018) (violations of Rules 4-1.3, 4-1.15(a), (f), (d), 4-1.16(d), and 4-8.4(c)); *In re Netterville*, Case No. SC97066 (May 22, 2018) (violations of Rules 4-1.1, 4-1.3, 4-1.4, 4-1.15, and 4-8.4(a)); *In re Gerecke*, Case No. SC96571 (November 21, 2017) (violation of Rules 4-1.15 and 4-8.4(c)); *In re Dorsey*, Case No. SC96287 (October 5, 2017) (reciprocal suspension for violation of Rules 4-1.15(a), (d) and (f)); *In re Crawford*, Case No. SC96010 (September 12, 2017) (violation of Rule 4-1.15(a), (b) and (f)); *In re Yonke*, Case No. SC96563 (August 15, 2017) (violation of Rule 4-1.15); *In re Pottenger*, Case No. SC96561 (August 15, 2017) (violation of Rule 4-1.15);

In re Sheth, Case No. SC95382 (March 15, 2016) (violation of Rule 4-1.15 and 4-8.4); *In re Lander*, Case No. SC95263 (January 26, 2016) (violation of Rules 4-1.15 and 4-8.1); *In re Harsley*, Case No. SC94909 (September 22, 2015) (violation of Rules 4-1.3 and 4-1.15); *In re Laverentz*, Case No. SC95028 (June 18, 2015) (violation of Rules 4-1.15 and 4-5.3); *In re McNabb*, Case No. SC94671 (February 3, 2015) (violation of Rules 4-1.3, 4-1.4, 4-1.15 and 4-8.1); *In re Mandelbaum*, Case No. SC93964 (October 28, 2014) (violation of Rules 4-1.8(e) and 4-1.15); *In re DeVoto*, Case No. SC94017 (September 30, 2014) (violation of Rules 4-1.3, 4-1.5, 4-1.15, 4-8.1 and 4-8.4).

Of the more recent cases invoking Rule 4-1.15 and an indefinite suspension is the case of *In re Fisher*, Case No. SC97694 (June 4, 2019). In *Fisher*, this Court imposed an indefinite suspension with no leave to apply for reinstatement for a period of six months. Attorney Fisher's conduct was at least comparable if not worse than Mr. Tresslar's. Attorney Fisher practiced law without a trust account, did not maintain trust account records, withdrew cash from her trust account, kept earned fees in her trust account, commingled funds, failed to reconcile trust account did not repay owed funds at the time of the Disciplinary Panel Hearing, failed to pay a lien from a settlement fund, and finally misappropriated client funds. The most egregious misconduct by attorney Fisher was that she failed to pay a third-party money owed from settlement proceeds and then spent those funds after leaving the funds in her trust account. Here, like in *Fisher*, Mr. Tresslar should be suspended, and not disbarred.

Additionally, in October 2019 in *In re Bluebaum*, Case No. SC97919 (October 15, 2019), this Court imposed an indefinite suspension with no leave to apply for reinstatement

for a period of six months for commingling personal funds with client funds, failing to communicate with clients, withdrawing funds as fees that had not been earned, and not being cooperative with the Office of Chief Disciplinary Counsel by not responding to complaints or requests for trust account information. Mr. Bluebaum also had a prior stayed suspension for violating the Rule against in-person solicitations and failing to return a client's file after termination, as well as for conduct prejudicial to the administration of justice. Like Mr. Tresslar, attorney Bluebaum suffered from significant health issues, which included issues with mental health. However, Mr. Tresslar never became unresponsive or failed to complete representation of his clients – even when he was going through immense health and personal hardships – as attorney Bluebaum had. Thus, *Bluebaum* supports imposition of an indefinite suspension.

Finally, in May 2018 *In re Netterville*, Case No. SC97066 (May 22, 2018), attorney Netterville was suspended indefinitely by this Court despite commingling personal funds and client funds in the trust account; using client settlement funds to pay his own law firm and personal expenses, which resulted in delaying payment to clients until Netterville received settlement funds from other clients; failing to keep accurate trust account records including but not limited to client ledgers, billing statements, and receipts; and forging a notary from a former colleague without her consent. Despite being charged and admitting in his Answer, attorney Netterville was not found to have misappropriated money in violation of Rule 4-8.4(c) because the Disciplinary Hearing found – and this Court apparently agreed – that he truly had no idea what he was doing with his trust account.

Mr. Tresslar admits that this is a case for serious sanction under the ABA Standards including ABA Standard for Imposing Lawyer Sanctions 4.1, because he should have known he was mishandling client funds, and this caused potential injury to his clients. Mr. Tresslar argues that ABA Standard for Imposing Lawyer Sanctions 4.12 provides guidance on why he should only be indefinitely suspended. ABA Standard 4.12 states:

“Suspension is generally appropriate when a lawyer knows or should know that she is dealing improperly with client property and causes injury or potential injury to a client.”

This should be the applicable standard in this case. Uncontroverted facts show that Mr. Mr. Tresslar *should* have known that he was dealing with client property improperly. However, due to Mr. Tresslar’s history of depression and cancer battle, which spilled over and affected his practice of law, Mr. Tresslar did not realize his errors until it was too late. Mr. Tresslar’s testimony and interactions with OCDC support this.

Mitigating Factors Support Imposing an Indefinite Suspension. Finally, even if Mr. Tresslar engaged in misconduct that would normally merit disbarment under the applicable precedent (***which they do not***) the mitigating factors here should cause the Court to impose no penalty greater than an indefinite suspension.

ABA Standard for Imposing Lawyer Sanctions 9.1 (quoted above) specifically directs consideration of mitigating factors when assessing the appropriate sanction for mishandling client property. ABA Standard for Imposing Lawyer Sanctions 9.32 lists numerous mitigating factors that support imposition of a lighter sanction than facts, circumstances, and precedent might otherwise indicate:

- (a) absence of a prior disciplinary record;
- (b) absence of a dishonest or selfish motive;
- (c) personal or emotional problems;
- (d) timely good faith effort to make restitution or to rectify consequences of misconduct;
- (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
- (f) inexperience in the practice of law;
- (g) character or reputation;
- (h) physical disability;
- (i) mental disability or chemical dependency including alcoholism or drug abuse [];
- (j) delay in disciplinary proceedings;
- (k) imposition of other penalties or sanctions;
- (l) remorse; and
- (m) remoteness of prior offenses.

Mr. Tresslar's evidence on the factors listed in ABA Standard 9.32 includes his respectable legal career; his significant community service; absence of a dishonest motive; and medical conditions, specifically cancer and depression. Further, Mr. Tresslar has been candid, forthcoming, and otherwise cooperative throughout the disciplinary process, as even the Informant has admitted. Mr. Tresslar has also made restitution before the proceedings to all injured parties and shown appropriate remorse.

Any discipline Mr. Tresslar may face should be reduced or mitigated because (a) Mr. Tresslar has gained additional education and now better understands trust account operations, and the importance of client communication; (b) Mr. Tresslar has modified his practices in handling client and third-party funds to ensure all his actions comply with his obligations under Missouri law; and (c) Mr. Tresslar's cancer is currently in remission and Mr. Tresslar continues to seek treatment for his mental health. Further, this Court should keep in mind that the purpose of the Court in sanctioning attorneys should not be for punishment but for protecting the public from dishonest attorneys. *See In re Mentrup*, 665 S.W.2d 324, 325 (Mo. 1984).

Finally, the record reflects that Mr. Tresslar has a strong reputation as a practicing lawyer and was an active volunteer in the legal profession and in his community. Mr. Tresslar has held an AV rating for twenty years, including in 2019. (App. 247-49) Mr. Tresslar also served as Social Committee Chair for the Bar Association of the Metropolitan ("BAMSL") and two years as an ABA Delegate for the BAMSL Young Lawyers' Division. (App. 248, 250) From the 1990s to 2005, Mr. Tresslar also participated in BAMSL's Volunteer Lawyers Program. (App. 259-60) In addition, Mr. Tresslar served for three years as Secretary of the Professional Businessmen of the Hill (App. 252), and that Mr. Tresslar has served as a volunteer attorney for St. Francis Xavier College Church Legal Clinic and as a council member for six years and as council president for one year at St. Ambrose Church, a historic church in the Hill neighborhood. (App. 253, 255-56) Finally, Mr. Tresslar has volunteered for and helped lead the St. Ambrose Parish Athletic Association, coordinating children's sports teams and organizing fundraisers to make children's

participation in team sports less expensive. (App. 256-57) This evidence of strong reputation and service to the legal and local community support imposition of a lesser sanction than what the Hearing Panel recommended.

Conclusion. Mr. Tresslar asks that the Court issue an order suspending his license for an indefinite period with Mr. Tresslar able to apply for reinstatement of his law license after completion of a period established by this Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served via email, this 11th day of September, 2020, to the following:

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief includes the information required by Missouri Supreme Court Rule 55.03. It was drafted using Microsoft Word. The font is Times New Roman, proportional 13-point font, which includes serifs. The brief complies with Missouri Supreme Court Rule 84.06(b) in that it contains 5,607 words.

/s/ Michael P. Downey