

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

JAMES P. MORONEY,
836 S. Pickwick
Springfield, MO 65802

Missouri Bar No. 23377

Respondent.

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Supreme Court No. SC98739

INFORMANT'S BRIEF

Respectfully submitted,

ALAN D. PRATZEL #29141
Chief Disciplinary Counsel



By:

Patricia J. Shilling #36356
Special Representative
Region XV, Division 1
302 E. Church Street
Ozark, MO 65721
(417) 581-3646 – Telephone
(417) 581-7135 – Fax
Email: pjs@styronlaw.com

ATTORNEYS FOR INFORMANT

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STATEMENT OF JURISDICTION

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 RSMo 2000.

STATEMENT OF FACTS

A. PROCEDURAL HISTORY

| | |
|--------------------|---|
| September 12, 2019 | Information |
| October 8, 2019 | Respondent's Answer to Information |
| October 10, 2019 | Appointment of Disciplinary Hearing Panel |
| October 22, 2019 | Panel member replacement letter |
| November 19, 2019 | DHP Hearing - first day |
| November 21, 2019 | DHP Hearing - second day |
| July 20, 2020 | DHP Decision |
| August 20, 2020 | Rejection of DHP Decision by Respondent |
| September 21, 2020 | Record Submitted |

B. RESPONDENT'S PRIOR DISCIPLINARY HISTORY

Respondent was disbarred pursuant to Rule 5.13 (default) on April 29, 1999, in case numbered SC81585 based on an Information alleging violations of Rules 4-1.3 (diligence), 4-1.4 (communication), 4-1.16 (declining or terminating representation), 4-3.2 (expediting litigation), 4-5.5 (unauthorized practice of law), 4-8.1 (failing to respond to a lawful demand for information from a disciplinary authority), 4-8.4(b) (criminal conduct), 4-8.4(c) (deceit, fraud, misrepresentation), 4-8.4(d) (conduct prejudicial to the administration of justice). Respondent was reinstated on June 15, 2005 in case numbered SC86341. **App. 729-730.**

C. CONDUCT UNDERLYING THE INFORMATION

This matter originated with two complaints being filed with the Office of Chief Disciplinary Counsel against the Respondent. One complaint was filed by attorney Shelly Dreyer and the other was filed by Kevin K. The two complaints allege that Respondent disclosed confidential information regarding his former clients, Kevin K. and Cindy K. The Dreyer complaint also alleges that Respondent threatened to disclose confidential information regarding Kevin K. unless an agreement was reached regarding dismissal of a malpractice suit and the OCDC complaint. **App. 395-407; App. 632-633.**

The allegations of disclosure of confidential information regarding former clients stem from the Respondent's voluntary participation in the taking of his deposition or sworn statement by attorney Bruce Copeland on May 23, 2017. Copeland represented his former client's opposing party. In the sworn statement taken by attorney Copeland, Respondent took the position that he could divulge information related to his clients provided third persons were present during the conversations and actions. The third person normally present during the conversations and actions was Lisa K., wife of Kevin K. and sister-in-law to Cynthia K. **App. 519-565.**

At the beginning of the sworn statement Respondent and attorney Copeland set forth some ground rules. Mr. Copeland asked Respondent, "If I ask you a question that an honest answer would require that you reveal a communication between you and Kevin or a communication between you and Cindy when there wasn't a nonclient present witnessing the conversation, would you agree that you would not answer that question

and tell me point-blank that you can't answer it because it's an attorney-client-privileged communication?" Respondent answered "that is correct." Page 23 of Informant's Exhibit 15. **App. 527.** Thereafter, Respondent answered Mr. Copeland's questions regarding his former clients Cindy K. and Kevin K. He divulged a plethora of confidential information regarding information he received during the representation of Cindy K. and Kevin K. **App. 519-565.**

During his sworn statement before the Region XV Disciplinary Committee taken on March 1, 2018, Respondent continued to argue that he could disclose information regarding his former clients provided a third person was present. When asked by a member of the Region XV committee how he intended to protect his clients' confidences when giving the statement to attorney Copeland, Respondent answered "I don't think I gave any statements on the attorney-client privilege unless those statements were made in the presence of third person, or I considered the attorney-client privilege to have been waived. In addition, certain of those statement, looking back now, I think were covered by the crime/fraud exception to the attorney-client." Beginning at Line 6 Page 39 Informant's Exhibit 26. **App. 691-694.**

Later, during the hearing before the disciplinary hearing panel, Respondent continued to take the position that he had not violated Rule 4-1.6 in giving his statement to attorney Copeland because there was no attorney-client privilege, as it had been waived by the presence of third parties. **App. 307.** At that hearing Respondent relied on the order entered by Federal District Court Judge Stephen Bough in the federal lawsuit,

(Respondent's Exhibit 10) **App. 352** for the proposition that there was no attorney-client privilege, either because third parties were present or the crime/fraud exception applied. Judge Bough's order, dated March 23, 2018, was entered in the federal court case in response to Cindy K.'s motion for a protective order. She sought "to exclude from the subject matter of any deposition questions and/or written discovery any communications she had with her former attorney James Moroney, including all communications to Mr. Moroney by Cynthia K. to which Misty O., Lisa K., Kevin K., and Cynthia K. were a party." as attorney-client privileged. The Plaintiffs, represented by Bruce Copeland argued that the attorney-client privilege did not apply as "Cynthia K. and the other Defendants have utilized the legal services and advice of Mr. Moroney to perpetrate and further a criminal fraudulent and tortious scheme" and that "Cynthia and the other Defendants have waived the attorney-client privilege with Mr. Moroney by publishing numerous allegedly confidential communications to third parties.....including a bar association disciplinary committee." Judge Bough denied Cynthia K.'s motion for protective order for failure to properly assert the privilege. (Page 4). However, Judge Bough did issue an Advisory Opinion as part of his order. (Page 8). In the Advisory Opinion portion of his Order, Judge Bough addressed, i. attachment of the privilege and the crime-fraud exception and, ii. waiver of the attorney-client privilege and confidential communications when third persons were present. At page 12 of his Order Judge Bough stated "Cynthia K. waived privilege over any communications with Mr. Moroney that took place in the presence of Lisa K., Kevin K. or Misty, or any combination thereof."

Judge Bough made this statement after reciting, “Mr. Moroney, who represented the aforementioned four individuals in separate matters that Cynthia K. claims had an underlying common legal interest, himself states there is no common interest as to legal or property rights among these parties.”

In addition to disclosing confidential information about his former clients during the deposition/statement, Respondent, on June 19, 2017, emailed a settlement proposal to Shelly Dreyer, counsel for Kevin K., stating that he wanted to avoid having to give written response to the bar complaint and thereby “raise issues troublesome to Kevin in the federal suit or which would present issues as to Kevin’s FAA pilot license.” **App. 422.** In his email, Respondent proposed that Kevin dismiss the malpractice suit and withdraw the OCDC complaint and in turn Respondent would receive a certain amount for his fees and he would sign a release. Informant’s Exhibit 11. **App. 422.**

Count I:

Respondent began representing Kevin K. in the spring of 2013 in a dispute with his four siblings concerning the family farm and farming business. **App. 660.** At the time Respondent began representing Kevin K. and throughout the representation, Kevin K. was married to his wife, Lisa K. Respondent had previously represented Kevin K. in a worker’s compensation case and had represented Kevin K. and Lisa K. in other legal matters. Respondent denies that he ever represented Lisa K. but he sent a letter to attorneys Mynarich and Dreyer indicating he had represented Kevin and Lisa in regard to Kevin’s FAA licensing. (Informant’s Exhibit 16, **App. 566**). In addition, Judge Bough,

in his order dated March 23, 2018, found that Respondent represented Kevin K., Cindy K. and Lisa K. as well as Misty O. (Respondent's Exhibit 10, at page 12 stating "Mr. Moroney, who represented the aforementioned four individuals..."). **App. 899.**

Sometime in 2014, Respondent, on Kevin K.'s behalf, filed a lawsuit in Lawrence County, Missouri, Case No. 14LW-CC00084, against Kevin K.'s four siblings alleging that he was being wrongfully deprived of his interest in the family farm and farming business. **App. 423-439.** Kevin K.'s four siblings were represented by attorney Bruce Copeland. Respondent filed five amended petitions in the case but ultimately the petition was dismissed by Kevin K. and a new suit was filed by Respondent, on Kevin K.'s behalf, in the Circuit Court of Lawrence County, Probate Division in Case Number 15LW-PR00135 which was consolidated into 14LW-CC00084. In the new lawsuit filed in the probate division, Kevin K. sought to have his brothers removed as trustees of the Four K Farms Trust. Bruce Copeland continued to represent the four siblings in this matter. **App. 440-449.**

On December 22, 2016, the lawsuit in the probate division was settled with Kevin K.'s siblings agreeing to buy him out of the family business for \$786,660.00. The settlement agreement did not contain a mutual release. Respondent helped negotiate that settlement. Pursuant to the settlement agreement Kevin K. immediately executed the transfer of his interest in the trust(s) to his siblings but his siblings never paid the \$786,660.00 which was to be paid under the settlement agreement by February 20, 2017. On January 3, 2017, despite Kevin K. having not been paid the settlement funds,

Respondent filed a dismissal with prejudice of the probate action, 15LW-PR00135/14LW-CC00084. **App. 29.**

On January 20, 2017, Bruce Copeland, on behalf of two of Kevin K.'s siblings, Kiman K. and Kaleb K and two of their corporate entities, filed a lawsuit in federal court, Case Number 2017-05007-CV-SRB, against, among others, Kevin K. and his wife, Lisa K. and Cindy K., alleging violation of RICO and numerous other claims. The lawsuit essentially claimed that Kevin K., Lisa K. and Cindy K. had participated in a conspiracy to obtain control and possession of the family farm. **App. 786-849.**

On May 2, 2017, Kevin K., through counsel, Shelly Dreyer, filed a breach of contract case, Case Number 17LW-CC00059 against his four siblings for failing to pay the \$786,660.00 settlement. **App. 411-412.** On that same date, attorney Dreyer, on Kevin K.'s behalf also filed a legal malpractice case against Respondent for filing a dismissal with prejudice prior to receipt of the settlement funds. **App. 413-414.** On May 12, 2017, in the breach of contract collection case 17LW-CC00059, attorney Bruce Copeland filed a notice of deposition of Respondent, to be conducted on May 23, 2017. **App. 420-421.** On May 17, 2017, Shelly Dreyer, new counsel for Kevin K., notified Bruce Copeland and Respondent that she objected to the deposition and that she could not be present at the time scheduled. **App. 403.** Despite Ms. Dreyer's objection, on May 23, 2017, Bruce Copeland proceeded to take the deposition of Respondent, calling it a "statement" rather than a deposition. **App. 519-565.**

During his May 23 deposition/statement Respondent made numerous statements and provided detailed information to attorney Copeland. He also disclosed statements made by Lisa K. and Cindy K and other information he received while representing Kevin K and Cindy K. The Respondent provided detailed information regarding his former clients that Bruce Copeland could use in the RICO case pending against Kevin K., Lisa K. and Cindy K. **App. 519-565.** In his sworn statement to attorney Copeland Respondent agreed with Mr. Copeland's statements that Cindy K. and Lisa K. were using Kevin K's name and status as a beneficial owner of the property to get to the possession and ownership and use of the property and the airport, and that they were using him in that respect and that he (Kevin) was aware of that fact. (Page 75-76 of Informant's Exhibit 15) **App. 540-541.** Respondent continued to agree with Mr. Copeland's statements that his client Kevin didn't do anything to put an end to the suing to reach their goal of taking over the farm and the airport. Respondent stated that he (Kevin) was aware that Lisa wanted to put Kevin's brother, Kiman in jail so they could take over the farm. He agreed with Copeland that Kevin K. was complicit, if not a co-participant, in that endeavor. (Page 81 of Informant's Exhibit 15) **App. 542.**

Count II:

Respondent began representing Cindy K. in the spring of 2013 in regard to a dissolution of her marriage to Kevin K's brother, Kaleb K. in Lawrence County Circuit Court; Case Number 13LW-DR00157. **App. 660.** During the May 23, 2017, deposition/statement, Respondent made numerous statements and provided detailed

information regarding statements made and action taken by Lisa K. and Cindy K. while he represented Cindy K. in her dissolution. That information was then used by Bruce Copeland in the RICO case against Kevin K., Lisa K. and Cindy K. **App. 519-565.** During his sworn statement/deposition, Respondent answered Mr. Copeland's question "And she and Cindy repeatedly told you their goal was to get Kiman put in jail so they could take over the farm and the airport?" "Correct." "And a corollary of that-yeah, a corollary would be that because of the circumstances, adverse circumstances that came upon the, that that would permit Cindy to have custody of her children awarded to her." Respondent then proceeded to answer Mr. Copeland's question, "so part of the goal was that if they could get Kiman arrested, that would taint Kaleb to the point Cindy would get a result in the divorce case different from what the judge ultimately ordered?" Respondent answered, "Correct". (Page 67 of Informant's Exhibit 15) **App. 538.** During his sworn statement/deposition Respondent went on to disclose to attorney Copeland that Cindy K. had told him about meeting someone from the IRS at her class reunion and she had told him about tax evasion on the part of Kevin's brothers. Respondent agreed by responding "Yeah" to Copeland's statement "she threatened, did she not, not just the USDA coming after them, but the IRS and criminal matters in those efforts to extort 500,000 plus custody?" (Page 166 of Informant's Exhibit 15) **App. 563.**

D. THE DISCIPLINARY HEARING PANEL'S DECISION

Count I:

The Disciplinary Hearing Panel found Informant failed to meet its burden of proof in regard to Respondent violating Rule 4-1.1 (competence), for dismissing the probate case before Kevin K. was paid settlement proceeds and failing to get a mutual release from the parties. In addition, the Panel found that Informant failed to meet its burden of proof in regard to Respondent violating Rule 4-1.6 (confidentiality of information) and Rule 4-8.4(d) (engaging in conduct that is prejudicial to the administration of justice), by taking part in the deposition/statement. The panel stated that it believed the communications were not privileged as being confidential and that Respondent's participation in the deposition/statement did not constitute conduct prejudicial to the administration of justice. **App. 1051-1054.**

The Disciplinary Hearing Panel found that Respondent was guilty of professional misconduct under Rule 4-8.4(d) (engaging in conduct prejudicial to the administration of justice) by sending an email to attorney Dreyer in which Respondent conditioned a settlement upon the dismissal of the underlying OCDC Complaint filed by Kevin K. **App. 1053.**

Count II:

The Disciplinary Hearing Panel found Informant failed to meet its burden of proof in regard to Count II as to Respondent violating Rule 4-1.6 (confidentiality of information) and Rule 4-8.4(d) (engaging in conduct that is prejudicial to the

administration of justice), by taking part in the deposition/statement. **App. 1053-1054.** As set forth previously, the panel stated it believed the communications were not privileged as being confidential and that Respondent's participation in the deposition/statement did not constitute conduct prejudicial to the administration of justice. **App. 1051-1054.**

E. THE DISCIPLINARY HEARING PANEL'S RECOMMENDATION

The Disciplinary Hearing Panel recommended that Respondent's license be suspended, indefinitely, with no leave to apply for reinstatement, for a period of six months pursuant to Rule 5.16(d)(2). **App. 1054-1055.**

POINTS RELIED ON

I.

RESPONDENT IS GUILTY OF PROFESSIONAL MISCONDUCT UNDER RULE 4-8.4(a) AS A RESULT OF VIOLATING:

- A. RULE 4-1.1 (COMPETENCE) INFORMANT ELECTS TO NOT PROCEED ON THE RULE 4-1.1 VIOLATION AS CHARGED IN THE INFORMATION.**
- B. RULE 4-1.6 CONFIDENTIALITY OF INFORMATION- BY REVEALING INFORMATION RELATING TO THE REPRESENTATION OF KEVIN K. TO ATTORNEY COPELAND.**
- C. RULE 4-8.4(d) – ENGAGING IN CONDUCT THAT IS PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE, INCLUDING TAKING PART IN A DEPOSITION/STATEMENT AND REVEALING CONFIDENTIAL INFORMATION WHEN HE KNEW OR SHOULD HAVE KNOWN THAT HIS ACTIONS WOULD BE DETRIMENTAL TO HIS CLIENT.**
- D. RULE 4-8.4(d) – ENGAGING IN CONDUCT THAT IS PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE, IN THAT HE THREATENED TO DISCLOSE**

**CONFIDENTIAL INFORMATION CONCERNING
KEVIN K. TO GAIN AN ADVANTAGE IN THE
PENDING MALPRACTICE CASE AND THIS OCDC
COMPLAINT AND CONDITIONED A SETTLEMENT
UPON THE DISMISSAL OF THE OCDC COMPLAINT.**

In re Lim, 210 S.W.3d 199 (Mo banc 2007)

RULE 4-1.1

RULE 4-8.4(d)

RULE 4-1.6

RULE 4-1.6(a)

RULE 4-1.6(b)

II.

**RESPONDENT IS GUILTY OF PROFESSIONAL MISCONDUCT
UNDER RULE 4-8.4(a) AS A RESULT OF VIOLATING:**

- A. RULE 4-1.6 CONFIDENTIALITY OF INFORMATION-
BY REVEALING INFORMATION RELATING TO
THE REPRESENTATION OF CINDY K. TO
ATTORNEY COPELAND.**

- B. RULE 4-8.4(d) – ENGAGING IN CONDUCT THAT IS
PREJUDICIAL TO THE ADMINISTRATION OF
JUSTICE, INCLUDING TAKING PART IN A
DEPOSITION/STATEMENT AND REVEALING
CONFIDENTIAL INFORMATION WHEN HE KNEW
OR SHOULD HAVE KNOWN THAT HIS ACTIONS
WOULD BE DETRIMENTAL TO HIS CLIENT.**

In re Lim, 210 S.W.3d 199 (Mo banc 2007)

RULE 4-1.6

RULE 4-8.4(d)

III.

SUSPENSION OF RESPONDENT’S LICENSE IS THE APPROPRIATE SANCTION IN THIS CASE WHERE RESPONDENT KNOWINGLY VIOLATED DUTIES TO HIS FORMER CLIENTS WHEN HE PARTICIPATED IN THE DEPOSITION/STATEMENT AND DISCLOSED CONFIDENTIAL INFORMATION CONCERNING HIS FORMER CLIENTS AND WHEN HE KNOWINGLY THREATENED TO DISCLOSE CONFIDENTIAL INFORMATION REGARDING HIS FORMER CLIENT TO OBTAIN AN ADVANTAGE IN A LAWSUIT AND THE OCDC COMPLAINT AND CONDITIONED A SETTLEMENT UPON THE DISMISSAL OF THE OCDC COMPLAINT.

In re Lim, 210 S.W.3d 199 (Mo banc 2007)

RULE 4-1.6

RULE 4-1.9

RULE 4-8.4(d)

RULE 4-1.16

ABA Standard for Imposing Lawyer Sanctions, Rule 4.22

LEGAL ARGUMENT

I.

**RESPONDENT IS GUILTY OF PROFESSIONAL MISCONDUCT
UNDER RULE 4-8.4(a) AS A RESULT OF VIOLATING:**

- A. RULE 4-1.1 (COMPETENCE) INFORMANT ELECTS TO NOT PROCEED ON THE RULE 4-1.1 VIOLATION AS CHARGED IN THE INFORMATION.**
- B. RULE 4-1.6 CONFIDENTIALITY OF INFORMATION- BY REVEALING INFORMATION RELATING TO THE REPRESENTATION OF KEVIN K. TO ATTORNEY COPELAND.**
- C. RULE 4-8.4(d) – ENGAGING IN CONDUCT THAT IS PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE, INCLUDING TAKING PART IN A DEPOSITION/STATEMENT AND REVEALING CONFIDENTIAL INFORMATION WHEN HE KNEW OR SHOULD HAVE KNOWN THAT HIS ACTIONS WOULD BE DETRIMENTAL TO HIS CLIENT.**
- D. RULE 4-8.4(d) – ENGAGING IN CONDUCT THAT IS PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE, IN THAT HE THREATENED TO DISCLOSE**

**CONFIDENTIAL INFORMATION CONCERNING
KEVIN K. TO GAIN AN ADVANTAGE IN THE
PENDING MALPRACTICE CASE AND THIS OCDC
COMPLAINT AND CONDITIONED A SETTLEMENT
UPON THE DISMISSAL OF THE OCDC COMPLAINT.**

On March 23, 2017, Respondent had an ethical duty to his former clients Kevin K. and Cindy K. to not reveal information relating to the representation. Rule 4-1.6 and Rule 4-1.9. Respondent did not heed that ethical duty but instead voluntarily took part in a deposition/statement scheduled and arranged by the attorney who represented opposing parties in past and current litigation. Respondent had a duty to not reveal his clients' confidential information. Judge Bough's Order was entered exactly one year after Respondent voluntarily participated in the sworn statement/deposition. Attorney Copeland and his clients used Respondent's statement to further their litigation and bolster their legal arguments.

Respondent's reliance on Judge Bough's Order of March 23, 2018, to relieve him of his ethical duty to not reveal confidential information as set forth in Rule 4-1.6 is misplaced. Judge Bough's order addressed the issue of attorney-client privilege; that evidentiary analysis does not fully address Respondent's duty of confidentiality. In his Advisory Opinion Judge Bough stated the attorney-client privilege did not attach if the communication was made to enable anyone to commit a crime or fraud. In addition, Judge Bough addressed the issue of waiver of the attorney-client privilege by the

presence of third parties. Again, both of these issues were discussed in relation to the attorney-client privilege rather than an ethical obligation. Missouri Rule of Professional Conduct 4-1.6 provides that a lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent. The confidentiality rule applies not only to matters communicated in confidence by the client, but to all information relating to the representation, whatever its source. Rule 4-1.6, Comment 3. A lawyer must preserve his client's confidences. Rule 4-1.6. A confidence is virtually everything the lawyer learns about the client in the course of the representation -- it is much more inclusive than those matters that might be subject to the evidentiary attorney-client privilege. The rule of confidentiality is an ethical rule binding the lawyer; the attorney-client privilege is a rule addressed to courts. G. Hazard & W. Hodes, *The Law of Lawyering* § 1.6:103 (1998 Supp.).

During the deposition/statement taken by attorney Copeland, Respondent knowingly revealed confidences regarding his clients. He also opined as to their truthfulness and character. He had to know that such disclosure would harm his former clients. Respondent took several different positions in support and defense of his actions. First, he argued there was no attorney-client privilege or confidential information, because a non-client had been present during conversations and meetings with his clients. Next, he took the position that he was protected by the crime/fraud exception to client confidentiality because he was disclosing a fraud that was being committed. Finally, at the hearing before the disciplinary panel Respondent stated he took part in the

deposition/statement in order to defend himself from being made a party to the RICO action.

Rule 4-1.6(b) provides that a lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary: (1) to prevent death or substantial bodily harm that is reasonably certain to occur; (2) to secure legal advice about the lawyer's compliance with these Rules; (3) to establish a claim or defense on behalf of the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involve, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; (4) to comply with other law or a court order; or (5) to detect and resolve conflicts of interest.....[none of which are applicable to the issues at hand]. Comment 14 to Rule 4-1.6 states "If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw as stated in Rule 4-1.16(a)(1). After withdrawal, the lawyer is required to refrain from making disclosure of the client's confidences, except as otherwise permitted in this Rule 4-1.6. The duty of confidentiality continues after the client-lawyer relationship has terminated. Rule 4-1.6 Comment 17 and Rule 4-1.9. Respondent represented Kevin K. and Cindy K. beginning in 2013 and continued to represent both of them into 2017, a period of nearly four years.

Comment 8 to Rule 4-1.6 provides that a lawyer may respond to a legal claim or disciplinary charge that alleges complicity of the lawyer in a client's conduct or other

misconduct of the lawyer involving representation of the client. As of March 23, 2017, Respondent had been sued by his clients for malpractice but he had not otherwise been accused of complicity or other misconduct while representing Kevin K. and Cindy K. Respondent's sworn statement/deposition was taken by attorney Copeland in the collection lawsuit 17LW-CC00059, filed by Kevin K. to collect the \$786,660.00. The disclosures of confidential information made by Respondent were not made in defense of any claim made or threatened against Respondent. Respondent had not yet been made a party to the RICO action and the bar complaints had not yet been filed. Respondent's voluntary participation in the deposition/statement resulted in him being made a party to the RICO action and the filing of the bar complaints. Respondent's sworn statement was then used by the plaintiffs in the RICO action to further their case and bolster their legal arguments, including their response to Cindy K.'s motion for a protective order.

This court may look to its own analysis in 2007. In *In re Lim*, 210 S.W.3d 199 (Mo banc 2007) the Court split on whether Mr. Lim violated Rule 4-1.6 when he sent a letter to the United States Immigration and Naturalization Service (INS) stating that his previous clients lacked good moral character needed to obtain immigration benefits because they had lied and deceived his office and had an outstanding balance of over \$7000.00. The majority found that although Lim's conduct was "vindictive" and "reprehensible" – "casting shame on the entire profession" there was not a preponderance of evidence establishing violation of Rule 4-1.6(a), because Mr. Lim merely expressed his personal opinion regarding his client's character. The majority distinguished Mr.

Lim's conduct from several cases cited by the OCDC. The majority ruled that, unlike Lim, those cases involve "situations where attorneys divulged substantive facts learned in the scope of representation as opposed to subjective opinions formed thereafter." The *Lim* majority also noted that his disclosures about his clients' outstanding debt was a "matter of public record." *In re Lim*, 210 S.W.3d 199, 201 (Mo. 2007).

In her dissent, with a partial concurrence, Judge Stith, joined by Judges Price and Russell, disagreed with the principal opinion. Judge Stith wrote that Mr. Lim's "reprehensible and vindictive" conduct violated Rule 4-1.6 and warranted suspension. Her dissent added that "nothing in Rule 4-1.6 requires that in order for information relating to representation to be confidential it must relate to the "substantive facts" of the representation, as the principal opinion suggests. All information that relates to the representation of the client must be kept confidential under Rule 4-1.6." *Id* at page 204. Judge Stith agreed with the disciplinary hearing panel's recommendation that Mr. Lim's license to practice law should be suspended with leave to reapply after six months.

In Respondent Moroney's deposition, he revealed a lot more than Mr. Lim did when he merely revealed information contained in public records and his post-representation impressions about his client's character. Respondent Moroney disclosed numerous statements his clients made to him about the operation and conduct of the farming business and the family farm. He disclosed information regarding the various family members involved in the farming operation. He disclosed his client's motives, expressions, desires, and conduct. He accepted Copeland's characterizations that they

had been dishonest in regard to matters directly related to the ongoing litigation. He knew their statements and those matters remained key issues in the ongoing litigation including their pending RICO case. Respondent's clients had been sued in federal court, accused of conspiracy. Respondent's statements and disclosures played well in the hands of Mr. Copeland and Kevin K.'s family members and the Plaintiffs in the federal lawsuit. Judge Bough in his Order dated March 23, 2018, noted at page 9, "Plaintiffs also note, "Mr. Moroney's sworn statement implies that many of the communications between these parties involved their expressions of their criminal fraudulent and/or tortuous intent vis-a'-vis Plaintiffs."

The deposition testimony of Mr. Moroney taken by attorney Bruce Copeland on May 23, 2017, is replete with instances of Mr. Moroney disclosing confidential information regarding his former clients, Kevin K., Lisa K. and Cindy K. Respondent's disclosures involved information Respondent obtained while representing Kevin K. and Cindy K. and were directly related to the substantive facts of the representation involving the family's farm, farming operation and the parties' conduct in regard to the farming operation. Respondent has shown no recognition of his misconduct.

On June 19, 2017, after the OCDC initiated an investigation into Kevin K's complaints, Respondent sent an email to Shelly Dreyer, counsel for Kevin K. Respondent's email message indicated he would have to disclose issues that would be troublesome to Kevin if the OCDC complaint and malpractice action filed against him were not dismissed. In the email Respondent proposed that Kevin dismiss the

malpractice suit and withdraw the OCDC complaint, and in turn Respondent would receive a certain amount for his fees and he would sign a release as to remaining issues between the parties. (Informant's Exhibit 11, **App. 422**). This action constitutes engaging in conduct that is prejudicial to the administration of justice. "An attorney who enters into, or attempts to enter into, a settlement that includes a term that a party to the agreement will withdraw, refrain from filing, or decline to cooperate regarding, a complaint under Supreme Court Rule 5 violates Rule 4-8.4(d) by engaging in conduct prejudicial to the administration of justice." Missouri Supreme Court Advisory Committee, Formal Opinion 122. March 8, 2006. The Advisory Committee has supported Formal Opinion 122 with extensive research and analysis from many other jurisdictions' decisions. That analysis remains a key part of the opinion.

II.**RESPONDENT IS GUILTY OF PROFESSIONAL MISCONDUCT
UNDER RULE 4-8.4(a) AS A RESULT OF VIOLATING:**

- A. RULE 4-1.6 CONFIDENTIALITY OF INFORMATION-
BY REVEALING INFORMATION RELATING TO
THE REPRESENTATION OF CINDY K. TO
ATTORNEY COPELAND.**
- B. RULE 4-8.4(d) – ENGAGING IN CONDUCT THAT IS
PREJUDICIAL TO THE ADMINISTRATION OF
JUSTICE, INCLUDING TAKING PART IN A
DEPOSITION/STATEMENT AND REVEALING
CONFIDENTIAL INFORMATION WHEN HE KNEW
OR SHOULD HAVE KNOWN THAT HIS ACTIONS
WOULD BE DETRIMENTAL TO HIS CLIENT.**

Respondent violated Rules 4-1.6 and 4-8.4(d) in regard to his client Cindy K. when he answered questions and volunteered information during his sworn statement/ deposition taken by attorney Copeland. Respondent disclosed confidential information he obtained while representing Cindy K. in the dissolution of her marriage. The information Respondent disclosed to attorney Copeland was directly related to Respondent's representation of Cindy in the dissolution. Respondent had to know that disclosing such information would be detrimental to Cindy K. as the information

included her most personal secrets, her thoughts, her feelings, her shortcomings, her motives and her desires, many of which directly related to the issues in his representation. Respondent represented Cindy K. over a four-year period. In his sworn statement/deposition Respondent disclosed everything he knew about his former client Cindy K. He disclosed all of her confidences. On page 126 of his sworn statement Respondent agreed with Mr. Copeland when discussing Lisa and Cindy, and Copeland asked “Did it ever seem to end, that they had some story to tell about the horrible conduct of Kiman K?”, when he answered “Never.” And then continuing on page 149 when Copeland asked, “Is it a fair conclusion on my part that Cindy and Lisa would tell you multiple instances of third parties who would verify their accounts of egregious conduct and then upon your investigation and inquiry of those people, never once did those people verify what Cindy and Lisa told you?” And Respondent answered, “That’s exactly correct.” On page 161 of the sworn statement Respondent answered “Correct” when Copeland asked Respondent if he was familiar with the fact that Cindy failed a court-ordered drug test in her divorce case and tested positive for both methamphetamines and amphetamines. He handed Mr. Copeland’s RICO case to him on a platter. Respondent was not defending himself from the RICO action, if anything he was implicating himself with the information he was disclosing to Mr. Copeland. Respondent had four years to withdraw from his representation of Cindy K. and Kevin K. and he never once sought to do so. Instead he decided to distance himself from his

clients and disclose every detail he knew about them, the litigation and his representation of them, to attorney Copeland.

III.

SUSPENSION OF RESPONDENT'S LICENSE IS THE APPROPRIATE SANCTION IN THIS CASE WHERE RESPONDENT KNOWINGLY VIOLATED DUTIES TO HIS FORMER CLIENTS WHEN HE PARTICIPATED IN THE DEPOSITION/STATEMENT AND DISCLOSED CONFIDENTIAL INFORMATION CONCERNING HIS FORMER CLIENTS AND WHEN HE KNOWINGLY THREATENED TO DISCLOSE CONFIDENTIAL INFORMATION REGARDING HIS FORMER CLIENT TO OBTAIN AN ADVANTAGE IN A LAWSUIT AND THE OCDC COMPLAINT AND CONDITIONED A SETTLEMENT UPON THE DISMISSAL OF THE OCDC COMPLAINT.

The disciplinary hearing panel recommended that Respondent's license be suspended indefinitely with no leave to apply for readmission for a period of six months.

Suspension is appropriate because Respondent violated Rule 4-8.4(d) by engaging in conduct prejudicial to the administration of justice when he sent the email to attorney Dreyer conditioning his settlement upon dismissal of the OCDC complaint Formal Opinion 122. March 8, 2006.

The disciplinary hearing panel's recommendation of suspension is appropriate not only because Respondent violated Rule 4-8.4(d) when he conditioned his settlement on dismissal of the OCDC complaint but also because he knowingly violated his duties to

his former clients in that he voluntarily participated in giving a deposition or sworn statement to opposing counsel and disclosed confidential information about the clients that caused them harm.

ABA Standard Rule 4.22 provides that “Suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client. ABA Standards for Imposing Lawyer Sanctions, Rule 4.22 (1992 amendments). An appropriate case for a suspension would involve a lawyer who knowingly reveals confidential information to the opposing party in litigation, with the result that the client’s position is weakened. ABA Standards for Imposing Lawyer Sanctions, Rule 4.22 Commentary.

Respondent’s conduct in participating in the deposition was directed against his former clients, Kevin K., Lisa K. and Cindy K. A lawyer’s ethical obligations to clients are the most important of his ethical duties. See ABA Standards, Theoretical Framework. Former clients are afforded continued protection by the Rules in several areas, including the duty to maintain client confidentiality and to avoid conflicts of interest. See Rule 4-1.6 and Comments and Rule 4-1.9 and Comments.

The majority decision in the 2007 *Lim* case found no violation of Rule 4-1.6, but did find a violation of Rule 4-1.16 because that respondent (Lim) engaged in a “bald effort to coerce payment” by withholding documents belonging to his client. Significantly for this sanction analysis, the *Lim* majority noted that he had no previous discipline. By

contrast, Respondent Moroney was previously disbarred for multiple violations of several rules of professional conduct.

The factors to be considered in imposing a sanction include, the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct and the existence of aggravating or mitigating factors. In the case of Mr. Moroney, aggravating factors include his significant prior disciplinary history, his extensive experience in the law, and his failure to acknowledge the wrongfulness of his conduct. In addition, Mr. Moroney caused great damage to his clients as their position was greatly weakened in their pending RICO case and in their breach of contract collection case. Mr. Moroney knowingly violated one of the most important ethical duties; to keep his client's secrets confidential. In addition, thereafter he used the threat of disclosure to gain an advantage in the malpractice suit and conditioned a settlement upon a client's withdrawal of this disciplinary complaint. An actual suspension is necessary to protect the public and to maintain the integrity of the profession.

Respectfully submitted,

ALAN D. PRATZEL #29141
Chief Disciplinary Counsel



By: _____
Patricia J. Shilling #36356
Special Representative
Region XV, Division 1
302 E. Church Street
Ozark, MO 65721
(417) 581-3646 – Telephone
(417) 581-7135 – Fax
Email: pjs@styronlaw.com

ATTORNEYS FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of November, 2020, the Informant’s Brief was served via the Missouri Supreme Court e-filing system to:

James P. Moroney
836 S. Pickwick
Springfield, MO 65802

Respondent



Patricia J. Shilling

CERTIFICATION OF COMPLIANCE: RULE 84.06(c)

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;
2. The brief was served on Respondent through the Missouri electronic filing system pursuant to Rule 103.08;
3. Complies with the limitations contained in Rule 84.06(b);
4. Contains 6,286 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



Patricia J. Shilling