Summary of SC98531, *In re: Eric F. Kayira*
Original disciplinary proceeding
Argued and submitted September 23, 2020; opinion issued January 12, 2021

Attorneys: The chief disciplinary counsel was represented by Shevon L. Harris of The Harris Law Firm in St. Louis, (314) 997-7700, and Alan D. Pratzel and Sam S. Phillips of the chief disciplinary counsel's office in Jefferson City, (573) 635-7400. Kayira was represented by Michael P. Downey and Paige A.E. Tungate of Downey Law Group LLC in St. Louis, (314) 961-6644.

This summary is not part of the opinion of the Court. It has been prepared by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The chief disciplinary counsel seeks to discipline a St. Louis attorney for his mishandling of a decedent's estate, misuse of his trust account, and misappropriation of his clients' funds. In a unanimous decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri disbars the attorney, finding the preponderance of the evidence establishes he violated multiple rules of professional conduct and the mitigating factors do not outweigh the aggravating circumstances so as to warrant suspension.

Facts: In 2012, Eric Kayira was representing a decedent's estate. The estate was under the supervision of the probate division, but Kayira failed to get its authorization before pursuing a lawsuit on the estate's behalf. Kayira subsequently entered into a confidential $12,500 settlement agreement, deposited the settlement proceeds into his operating account and petitioned the probate division to convert the estate into an unsupervised estate. In 2015, Kayira moved to withdraw from representing the estate. At a hearing on his motion, the probate division advised him the settlement was an asset of the estate and ordered him to return the $12,500 to the estate. The chief disciplinary counsel instituted disciplinary proceedings during which Kayira falsely told investigators he was holding the $12,500 in his account. An audit later established he used the settlement proceeds to pay his landlord to avoid eviction. The audit also revealed Kayira had misappropriated the funds of 28 clients over a five-year period in which he would deplete the funds of one client to pay another after using the funds to pay his personal and firm expenses. The disciplinary hearing panel found Kayira's conduct violated multiple rules of professional conduct and recommended disbarment. The chief disciplinary counsel accepts the panel's decision; Kayira rejects it, asking this Court to find his conduct and evidence of mitigation support imposition of an indefinite suspension.

DISBARRED.

Court en banc holds: (1) The preponderance of the evidence proves Kayira violated the rules of professional responsibility and disbarment is the appropriate discipline. Both the ABA standards and this Court's precedent establish misappropriation of client funds typically merits disbarment. Kayira's misconduct was particularly egregious given his pattern of routinely depleting the funds of one client to pay another and his repeated misuse of client funds to pay for his own personal expenses. The evidence further establishes Kayira knowingly engaged in such misconduct.

(2) Kayira's personal and emotional problems do not provide a basis for reducing the baseline sanction from disbarment to indefinite suspension. Before the disciplinary hearing panel and this Court, Kayira alleged he was going through personal and emotional problems, including divorce, depression and alcohol abuse. While this Courts considers these mitigating factors, they must be weighed against the severity of Kayira's offenses and the evidence in aggravation. Again, Kayira engaged in pattern of misconduct with respect to misappropriation of client funds. Furthermore, Kayira was dishonest with the chief disciplinary counsel during the investigation regarding the whereabouts of the settlement funds and, although he ultimately restored the settlement to the decedent's estate, he waited until only days before his disciplinary hearing to do so. Such circumstances outweigh any mitigation evidence Kayira offered.

(3) For good cause shown, Rule 5.285 permits for an extension of time in which an attorney can offer evidence of a mental disorder as a mitigating factor. Kayira made no effort before the disciplinary hearing panel to supplement the record with evidence of his allegedly newly diagnosed bipolar disorder, nor did he allege before this Court that he could have offered any evidence that his bipolar disorder caused his repeated misappropriation and misuse of client funds. Accordingly, Kayira failed to meet the burden required under Rule 5.285 for establishing a mental disorder as a mitigating factor.