

**IN THE SUPREME COURT OF THE STATE OF MISSOURI  
EN BANC**

**IN RE:**

**JENNIFER FISHER**  
3920 Lindell Boulevard, Suite 200  
Saint Louis, Missouri 63108

Missouri Bar No. 34360

Respondent.

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**Supreme Court No. SC98943**

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**INFORMANT'S BRIEF**

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Respectfully submitted,

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CHIEF DISCIPLINARY COUNSEL



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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

### Disciplinary History

Respondent is Jennifer Fisher, licensed on April 26, 1985, with MO Bar No. 34369. **App. A5; A459**<sup>1</sup> Respondent has prior discipline. Specifically, Respondent accepted admonitions pursuant to Rule 5.11 on (a) February 10, 1993, for violation of Rule 4-1.15(b) and (d), (b) October 22, 1996, for violation of Rule 8.1(b), (c) November 25, 2009, for violation of Rule 4-1.15, and (d) August 16, 2013, for violation of Rule 4-1.15. **App. A5; A65-66 (Tr. 26-27); A215-224 (Exhibit 3); A459.**

### Facts

At all times relevant to this matter, Respondent maintained and used the following client trust account: US Bank Account No. X-XXX-XXXX-0126, in the account name of Missouri Lawyers Trust Jennifer H. Fisher (hereinafter, "Trust Account"), and the following operating account: US Bank Account No. X-XXX-XXXX-0203, in the name of Jennifer H. Fisher, DBA Jennifer H. Fisher Attorney at Law (hereinafter, "Operating

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<sup>1</sup> The facts contained herein are drawn from the testimony elicited and the exhibits admitted into evidence at the Disciplinary Hearing Panel hearing in this matter held on November 6, 2020, (the "DHP Hearing"). Citations to the trial testimony before the Disciplinary Hearing Panel (the "Panel") are denoted by the appropriate Appendix page reference followed by the specific transcript page reference in parentheses, for example "**App. \_\_\_ (Tr. \_\_\_)**". Citations to the pleadings and trial exhibits are denoted by the appropriate Appendix page reference.

Account," together with the Trust Account, the "Bank Accounts"). **App. A395 (Exhibit 21); App. A459.**

In June 2019, US Bank, in compliance with the regulatory requirement set forth in amended Supreme Court Rule 4-1.15 and the related Advisory Committee Regulation effective January 1, 2010, sent an overdraft notification to the Informant in relation to the Trust Account. **App A64-A65 (Tr. 25-26); App. A396 (Exhibit 21); App. A459.** Respondent sent a written response regarding the overdraft of the Trust Account to the Informant on July 9, 2019. **App. A67 (Tr. 28).**

Following receipt of the overdraft notification, Informant performed an audit of Respondent's Trust Account for the period June 8, 2018, through July 8, 2019, (the "Audit"). **App. A396 (Exhibit 21); App. A459.** The Audit was conducted and supervised by Kelly Dillon ("Dillon") who is and was employed by the Office of Chief Disciplinary Counsel as an Investigative Examiner.

Informant's investigator obtained from Respondent, and by subpoena, the bank statements and records from US Bank relating to the Trust Account. Thereafter, the Informant investigator reviewed and analyzed the Trust Account bank statements reflecting checks, withdrawals, and deposits from June 8, 2018, through July 8, 2019. **App. A73-A80 (Tr. 34-41); App. A262-A264 (Exhibit 11).** The Informant's investigator obtained by subpoena the bank statements and records from US Bank relating to the Operating Account. **App. A71-A73 (Tr. A32-34); App. A240-A252 (Exhibits 9 and 10).** Thereafter, the Informant investigator reviewed and analyzed the Operating

Account bank statements reflecting checks, withdrawals, and deposits from June 8, 2018, through July 8, 2019. **App. A80-A81 (Tr. 41-42); App. A265-A326 (Exhibit 12).**

The audit of the Bank Accounts revealed that: (a) The Trust Account balance frequently fell below the amount necessary to pay settlement proceeds to various clients; (b) Respondent deposited her own funds into the Trust Account; (c) some clients did not receive timely payment of the amounts due them; (d) client funds and funds due to third parties were transferred into the Operating Account; (e) client funds were withdrawn from the Trust Account before they were earned **App. A73-A81 (Tr. 34-42); App. A262-A326 (Exhibits 11 and 12);** and (f) on at least one occasion funds transferred into the Operating Account were used to satisfy personal obligations of Respondent. **App. A265 (Exhibit 12).**

In connection with the Audit, Ms. Dillon prepared a Trust Account spreadsheet and an Operating Account spreadsheet which summarized receipts into, and withdrawals from, the Trust Account and Operating Account, along with a list of parties on whose behalf payments were made, the amounts paid to such parties, and amounts due to third party providers (collectively, the “Spreadsheets”). **App. A73-A81 (Tr. 34-42); App. A262-A326 (Exhibits 11 and 12).** Ms. Dillon gave testimony at the DHP Hearing. **App. A62-A132 (Tr. 23-93).** The Spreadsheets were received in evidence at the DHP Hearing. **App. A51 (Tr. 90); App. A262-A326 (Exhibits 11 and 12).**

The Audit, Spreadsheets and testimony of Ms. Dillon established that Respondent took the following actions in handling the Trust Account and the law firm's clients' funds:



- (a) Respondent settled a matter for client Cheryl Piolet ("Piolet") in June 2018 and deposited \$5,000.00 into the Trust Account. As a part of that settlement, the client's medical providers were owed \$1,666.75 for outstanding bills. By June 29, 2018, Respondent's trust account balance fell below the amount necessary to pay the client's medical providers. On July 5, 2018, Respondent deposited personal funds to the Trust Account in an effort to bring the Trust Account to the balance necessary to pay the client's medical providers. **App. 82-83 (Tr. 43-44); App. A327-A337 (Exhibit 13); App. A396 (Exhibit 21); App. A459-A460.**
- (b) On June 8, 2018, the beginning of the Audit, the Trust Account balance was \$546.46. **App. A82 (Tr. 43).** Respondent settled a matter for client Cambria Hudson ("Hudson") on May 28, 2018, which predates the timeframe used for the Audit. As part of that settlement, the client had monies due to medical providers, including \$1,500 due to Florissant Medical. **App. A83-84 (Tr. 44-45); App. A338-A346 (Exhibit 14); App. A396-A397 (Exhibit 21); App. A460.** Respondent's Trust Account balance fell below the amount necessary to pay the client's medical provider. **App. A84-A85 (Tr. 45-46); App. A338-A346 (Exhibit 14); App. A396 (Exhibit 21); App. A460.** On July 5, 2018, Respondent deposited personal funds to the Trust Account in an effort to bring the Trust Account to the balance necessary to pay the client's

medical provider. **App. A85 (Tr. 46); App. A355-A360 (Exhibit 16); App. A396 (Exhibit 21); App. A460.** The payment to the medical provider was \$300 less than the amount reflected on the client settlement statement which also reflects an advance of funds to the client prior to the deposit of settlement funds. **App. A85 (Tr. 45-46); App. A338-A346 (Exhibit 14); App. A396 (Exhibit 21); App. A460.** No additional documentation was provided by Respondent demonstrating that the \$300 discount received from the medical provider was paid to the client. **App. A85 (Tr. 46); App. A338-A346 (Exhibit 14); App. A397 (Exhibit 21); App. A460.**

- (c) On June 8, 2018, the beginning of the Audit, the Trust Account balance was \$546.46. **App. A82 (Tr. 43); App. A397 (Exhibit 21); App. A460.** Respondent settled a matter for client Rosalind Collins, but did not produce any records for this client settlement despite Informant's request. **App. A84-A85 (Tr. 45-46); App. A 347-354 (Exhibit 15); App. A397 (Exhibit 21); App. A460.** The settlement deposit predates the timeframe used for the Audit. As part of that settlement, the client had monies due to Florissant Medical in the amount of at least \$2,500. **App. A84-A85 (Tr. 46-47); App. A347-354 (Exhibit 15); App. A397 (Exhibit 21); App. A460.** Respondent's Trust Account balance fell below the amount necessary to pay the client's medical provider. **App. A262-A264 (Exhibit 11); App. A397 (Exhibit 21); App. A461.** On July 5,

2018, Respondent deposited personal funds to the Trust Account in an effort to bring the Trust Account to the balance necessary to pay the client's medical provider. **App. A85 (Tr. 46); App. A355-A360 (Exhibit 16); App. A397 (Exhibit 21); App. A460.**

(d) On July 27, 2018, Respondent deposited funds from her Operating Account into her Trust Account in the form of checks numbered 3216 and 3217 in the amount of \$3,000. **App. A85 (Tr. 46); App. A355-360 (Exhibit 16); App. A397 (Exhibit 21); App. A461.** Respondent received \$500 cash back on this deposit, for a total deposit of personal funds to the Trust Account in an amount of \$2,500. **App. A85 (Tr. 46); App. A355-360 (Exhibit 16); App. A397 (Exhibit 21); App. A461.**

(e) As previously noted, on June 8, 2018, the beginning of the Audit, the Trust Account balance was \$546.46. **App. A82 (Tr. 43); App. A397 (Exhibit 21); App. A460.** On October 29, 2018, Respondent refunded \$300 to client Karlos Mingo ("Mingo"). **App. A85 (Tr. 46); App. A361-364 (Exhibit 17); App. A397 (Exhibit 21); App. A461.** The Trust Account contained no funds belonging to client Mingo at the time of the disbursement.

(f) On April 30, 2019, the Trust Account balance was \$262.39. **App. A262-A264 (Exhibit 11); App. A397 (Exhibit 21); App. A461.** On May 3, 2019, Respondent settled a matter for client Andrew Seals ("Seals") and deposited \$6,000 to the Trust Account. **App. A86-A87**

(Tr. 47-48); App. A365-A377 (Exhibit 18); App. A397 (Exhibit 21); App. A461. Respondent made two transfers from her Trust Account to her Operating Account on May 6 and May 10, 2019, consisting of earned fees and funds belonging to client Seals totaling \$4,200. App. A86-A87 (Tr. 47-48); App. A365-A377 (Exhibit 18); App. A398 (Exhibit 21); App. A461. Respondent used a portion of these funds to satisfy personal financial obligations being debited from her Operating Account. App. A262-A326 (Exhibit 11); App. A398 (Exhibit 21); App. A461. On May 13, 2019, Respondent deposited personal funds into her Trust Account in an effort to bring the Trust Account balance to an amount necessary to pay client Seals on May 13, 2019. App. A262-A264 (Exhibit 11); App. A398 (Exhibit 21); App. A461.

(g) On May 13, 2019, the Trust Account balance was \$170.94. A86 (Tr. 47); A262-A264 (Exhibit 11); App. A398 (Exhibit 21); App. A461. On May 15, 2019, Respondent settled a matter for client Hudson and deposited \$9,000 into the Trust Account. App. A87 (Tr. 48); App. A262-A264 (Exhibit 11); App. A398 (Exhibit 21); App. A462. Respondent made a cash withdrawal from the Trust Account in the amount of \$500 on May 16, 2019, representing a portion of her earned fees in the Hudson matter. App. A87 (Tr. 48); App. A262-A264 (Exhibit 11); App. A398 (Exhibit 21); App. A462. Respondent's records reveal an advance of funds to the client in the amount of

\$2,500, prior to the deposit of the Hudson settlement funds. **App. A87 (Tr. 48); App. A262-A264 (Exhibit 11); App. A398 (Exhibit 21); App. A462.**

- (h) As noted above, on May 13, 2019, the Trust Account balance was \$170.94. **A86 (Tr. 47); A262-A264 (Exhibit 11); App. A398 (Exhibit 21); App. A461.** On May 20, 2019, Respondent refunded \$2,000 to client Jefferson. **App. A388-A394 (Exhibit 20); App. A398 (Exhibit 21); App. A462.** The Trust Account contained no funds belonging to client Jefferson at the time of the disbursement. **App. A388-A394 (Exhibit 20); App. A398 (Exhibit 21); App. A462.**
- (i) In the matters of clients Hubert Hinton, Faith Watson, Darryl Mayes, Piolet, Seals, and Hudson, Respondent disbursed funds from the Trust Account prior to the deposited items which they were drawing against becoming "good funds". **App. A398 (Exhibit 21); App. A462.** In the matters of client Piolet, Hudson, Collins, Mingo, Seals, Hudson, and Jefferson, Respondent disbursed funds to herself or other clients in an amount greater than what was owed to Respondent. **App. A398 (Exhibit 21); App. A462.**
- (j) The Audit revealed that Respondent deposited personal funds into the Trust Account on four occasions, thereby commingling her personal funds with those of clients. **App. A37 (Tr. 48); App. A262-A264 (Exhibit 11); App. A396-398 (Exhibit 21); App. A462.**

- (k) The Audit revealed that Respondent made a cash withdrawal from the Trust Account. **App. A262-A264 (Exhibit 11); App. A398 (Exhibit 21); App. A463.**
- (l) In the matters of client Hudson, Respondent advanced funds to the client for two separate settlement cases prior to the receipt and deposit of settlement funds belonging to the client. **App. A89 (Tr. 50); App. A262-A264 (Exhibit 11); App. A399 (Exhibit 21); App. A463.**
- (m) Respondent did not maintain complete records reflecting the complete activity in the Trust Account or the supporting documentation and explanation for all withdrawals or disbursement of funds from the Trust Account. **App. A89 (Tr. 50); App. A262-A264 (Exhibit 11); App. A399 (Exhibit 21); App. A463.**

#### Disciplinary Proceeding and Decision

This attorney disciplinary matter is before this Court following the evidentiary DHP Hearing conducted on November 6, 2020. **App. A40-A199.** Respondent was present for, and participated in, the DHP Hearing. **App. A94-A177; A195-A198.** On December 3, 2020, the Panel issued the Disciplinary Hearing Panel Decision (the “DHP Decision”). **App. A458-A469.**

Informant and Respondent entered into a Joint Stipulation of Facts only, dated October 2, 2020, (the “Stipulation”) wherein Respondent stipulated to the following facts, which were adopted by the Panel as part of the DHP Decision:

- (a) Respondent settled a matter for client Cheryl Piolet (“Piolet”) in June 2018 and deposited \$5,000.00 into the Trust Account. As a part of that settlement, the client’s medical providers were owed \$1,666.75 for outstanding bills. By June 29, 2018, Respondent’s trust account balance fell below the amount necessary to pay the client’s medical providers. On July 5, 2018, Respondent deposited personal funds to the Trust Account to bring the Trust Account to the balance necessary to pay the client’s medical providers;
- (b) On June 8, 2018, the beginning of the Audit, the Trust Account balance was \$546.46. Respondent settled a matter for client Cambria Hudson (“Hudson”) on May 28, 2018, which predates the timeframe used for the Audit. As part of that settlement, the client had monies due to medical providers, including \$1,500 due to Florissant Medical. Respondent’s Trust Account balance fell below the amount necessary to pay the client’s medical provider. On July 5, 2018, Respondent deposited personal funds to the Trust Account to bring the Trust Account to the balance necessary to pay the client’s medical provider. The payment to the medical provider was \$300 less than the amount reflected on the client settlement statement which also reflects an advance of funds to the client prior to the deposit of settlement funds. No additional documentation was provided by Respondent demonstrating that the \$300 discount received from the medical provider was paid to the client;

- (c) As noted above, on June 8, 2018, the beginning of the Audit, the Trust Account balance was \$546.46. Respondent settled a matter for client Rosalind Collins (“Collins”), but was unable to produce any records for this client settlement. The settlement deposit predates the timeframe used for the Audit. As part of that settlement, the client had monies due to Florissant Medical in the amount of at least \$2,500. Respondent’s Trust Account balance fell below the amount necessary to pay the client’s medical provider. On July 5, 2018, Respondent deposited personal funds to the Trust Account in an effort to bring the Trust Account to the balance necessary to pay the client’s medical provider;
- (d) On July 27, 2018, Respondent deposited funds from her Operating Account into her Trust Account in the form of checks numbered 3216 and 3217 in the amount of \$3,000. Respondent received \$500 cash back on this deposit, for a total deposit of personal funds to the Trust Account in an amount of \$2,500;
- (e) On October 29, 2018, Respondent refunded \$300 to client Karlos Mingo (“Mingo”). The Trust Account contained no funds belonging to client Mingo at the time of the disbursement;
- (f) On April 30, 2019, the Trust Account balance was \$262.39. On May 3, 2019, Respondent settled a matter for client Andrew Seals (“Seals”) and deposited \$6,000 to the Trust Account. Respondent made two transfers from her Trust Account to her Operating Account on May 6 and May 10,



2019, consisting of earned fees and funds belonging to client Seals totaling \$4,200. Respondent used a portion of these funds to satisfy personal financial obligations being debited from her Operating Account. On May 13, 2019, Respondent deposited personal funds into her Trust Account to bring the Trust Account balance to an amount necessary to pay client Seals on May 13, 2019;

(g) On May 13, 2019, the Trust Account balance was \$170.94. On May 15, 2019, Respondent settled a matter for client Hudson and deposited \$9,000 into the Trust Account. Respondent made a cash withdrawal from the Trust Account in the amount of \$500 on May 16, 2019, representing a portion of her earned fees in the Hudson matter. Respondent's records reveal an advance of funds to the client in the amount of \$2,500, prior to the deposit of the Hudson settlement funds;

(h) On May 13, 2019, the Trust Account balance was \$170.94. On May 20, 2019, Respondent refunded \$2,000 to client Jefferson. The Trust Account contained no funds belonging to client Jefferson at the time of the disbursement;

(i) In the matters of clients Hubert Hinton, Faith Watson, Darryl Mayes, Piolet, Seals and Hudson, Respondent disbursed funds from the Trust Account prior to the deposited items which they were drawing against becoming "good funds";

- (j) In the matters of client Piolet, Hudson, Collins, Mingo, Seals, Hudson, and Jefferson, Respondent disbursed funds to herself or other clients in an amount greater than what was owed to Respondent and therefore misappropriated the funds of those clients;
- (k) During the course of the Audit, Respondent deposited personal funds into the Trust Account on four occasions, thereby commingling her personal funds with those of clients;
- (l) During the course of the Audit, Respondent made a cash withdrawal from the Trust Account;
- (m) In the matters of client Hudson, Respondent advanced funds to the client for two separate settlement cases prior to the receipt and deposit of settlement funds belonging to the client;
- (n) Respondent did not maintain complete records reflecting the complete activity in the Trust Account or the supporting documentation and explanation for all withdrawals or disbursement of funds from the Trust Account.

**App. A395-A399 (Exhibit 21); App. A459-463.**

The Panel found that Respondent violated (a) Rule 4-1.15(a) by making a cash withdrawal from the Trust Account; (b) Rule 4-1.15(a) by making a disbursement of funds drawing against a deposit without allowing a reasonable period of time to pass to ensure the funds had been collected; (c) Rule 4-1.15(a) by depositing personal funds to the Trust Account which indicates a commingling of personal and client funds and/or

rectification of the prior misappropriation of client funds; (d) Rule 4-1.15(b) by depositing personal funds to the Trust Account in an amount greater than necessary to pay bank service charges; (e) Rule 4-1.15(c) by allowing the Trust Account balance to fall below the amount owed to clients and known third parties from a settlement; (f) Rule 4-1.15(f) by failing to maintain complete records of the Trust Account and client funds; (g) Rule 4-1.8(e) by advancing funds to clients drawing against their settlements which had yet to be received and/or deposited, and (h) Rule 4-8.4(c) by engaging in acts of misappropriation which constitute conduct involving dishonesty, fraud, deceit or misrepresentation. **App. A463-A465.**

#### Aggravating and Mitigating Factors

The Panel found no aggravating factors. The following mitigating factors were found to exist by the Panel: (a) lack of selfish or dishonest motive; (b) the effort to rectify the consequences of the misconduct; and (c) remorse. **App. A465-A466.**

The Panel recommended that Respondent be suspended with no leave to apply for reinstatement for a year, with the suspension stayed and Respondent placed on probation for one year. **App. A466.** Informant rejected the DHP Decision. **App. A471.** Respondent accepted the DHP Decision. **App. A470.** Informant filed the record in this matter with the Court on February 8, 2021.

**POINTS RELIED ON**

**I.**

**RESPONDENT IS SUBJECT TO DISCIPLINE  
BECAUSE SHE ENGAGED IN PROFESSIONAL  
MISCONDUCT IN VIOLATION OF RULES 4-1.8(e), 4-  
1.15, 4-1.15(a), 4-1.15(b), 4-1.15(c), 4-1.15(f), AND 4-8.4(c).**

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

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

*In re Schaeffer*, 824 S.W.2d 1, 5 (Mo. banc 1992)

*In the Matter of St. Onge*, 958 A.2d 143, 144 (R.I. 2008)

Rule 4-1.8(e)

Rule 4-1.15(a)

Rule 4-1.15(b)

Rule 4-1.15(c)

Rule 4-1.15(f)

Rule 4-8.4(c)

**II.**

**AN ACTUAL SUSPENSION IS THE APPROPRIATE  
SANCTION FOR RESPONDENT’S MISCONDUCT  
BECAUSE MISSOURI CASE LAW AND THE ABA  
STANDARDS FOR IMPOSING LAWYER SANCTIONS  
SUPPORT SUCH A SANCTION.**

*In re Adams*, 737 S.W.2d 714 (Mo. banc 1987)

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

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

*In re Krigel*, 480 S.W.3d 294 (Mo. banc 2016)

Rule 4-1.8(e)

Rule 4-1.15(a)

Rule 4-1.15(b)

Rule 4-1.15(c)

Rule 4-1.15(f)

Rule 4-8.4(c)

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

## ARGUMENT

### I.

**RESPONDENT IS SUBJECT TO DISCIPLINE  
BECAUSE SHE ENGAGED IN PROFESSIONAL  
MISCONDUCT IN VIOLATION OF RULES 4-1.8(e), 4-  
1.15(a), 4-1.15(b), 4-1.15(c), 4-1.15(f), AND 4-8.4(c).**

The Panel found that Respondent violated (a) Rule 4-1.15(a) by making a cash withdrawal from the Trust Account; (b) Rule 4-1.15(a) by making a disbursement of funds drawing against a deposit without allowing a reasonable period of time to pass to ensure the funds had been collected; (c) Rule 4-1.15(a) by depositing personal funds to the Trust Account which indicates a commingling of personal and client funds and/or rectification of the prior misappropriation of client funds; (d) Rule 4-1.15(b) by depositing personal funds to the Trust Account in an amount greater than necessary to pay bank service charges; (e) Rule 4-1.15(c) by allowing the Trust Account balance to fall below the amount owed to clients and known third parties from a settlement; (f) Rule 4-1.15(f) by failing to maintain complete records of the Trust Account and client funds; (g) Rule 4-1.8(e) by advancing funds to clients drawing against their settlements which had yet to be received and/or deposited; and (h) Rule 4-8.4(c) by engaging in acts of misappropriation which constitute conduct involving dishonesty, fraud, deceit or misrepresentation. **App. A463-A465.**

*Rule 4-1.8(e)*

Missouri Supreme Court Rule 4-1.8(e) provides that “a lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation” except in limited circumstances related to court costs, and expenses of litigation. Rule 4-1.8(e). In Sections 7(b) and (g) of the Stipulation, Respondent stipulated to the fact that she advanced funds to Ms. Hudson related to two settlements she negotiated on behalf of Ms. Hudson. **App. A396-A398 (Exhibit 21)**. One was in the amount of \$300 in connection with a May 28, 2018, settlement that predated the Audit. **App. A396-A398 (Exhibit 21)**. And the other was in the amount of \$2,500 in connection with a May 15, 2019, settlement for Ms. Hudson. **App. A398 (Exhibit 21)**.

Respondent’s actions in advancing funds to Ms. Hudson on two separate occasions is a violation of Rule 4-1.8(e) because the funds were advanced against settlements which had yet to be received and/or deposited.

*Rule 4-1.15(a)*

Missouri Supreme Court Rule 4-1.15(a) provides that a lawyer in possession of client funds shall hold those funds in a client trust account, separate from the lawyer’s own property. The mandates of Rule 1.15 are strict and failure to abide by their terms is cause for discipline. *In the Matter of St. Onge*, 958 A.2d 143, 144 (R.I. 2008). The Audit revealed that Respondent frequently transferred client funds and funds due to third parties from the Trust Account to the Operating Account where those funds did not represent fees earned by her. **App. A262-A326 (Exhibits 11 and 12)**. Respondent’s failure to maintain client funds in trust demonstrate her violation of Rule 4-1.15(a).

Missouri law establishes that an attorney's failure to preserve the client's funds undiminished in an escrow account constitutes a serious violation of the disciplinary rules. *In re Schaeffer*, 824 S.W.2d 1, 5 (Mo. banc 1992). The Audit and the Stipulation establish that during the period of the Audit during which Respondent was to be holding money for her clients, the balance for Respondent's account fell below what was to be held in trust for her clients on at least three different occasions. Specifically, with respect to (a) client Piolet, by June 29, 2018, Respondent's Trust Account balance fell below the amount necessary to pay Ms. Piolet's medical providers; (b) client Hudson, Respondent's Trust Account balance fell below the amount necessary to pay Ms. Hudson's medical provider; and (c) client Collins, Respondent's Trust Account balance fell below the amount necessary to pay Ms. Collin's medical provider. **App. A396-A397**. In addition, the Audit and the Stipulation, reveal that in the matters of clients Mingo, Seals, Hudson, and Jefferson, Respondent disbursed funds to herself in an amount greater than what was owed to her. **App. A398**.

These facts above illustrate that Respondent misappropriated client funds. In fact, Respondent admitted that she misappropriated client funds in Section 7(j) of the Stipulation. **App. A398 (Exhibit 21)**. "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 conduct violated Missouri Supreme Court Rule 4-1.15(a) and therefore, Respondent's license to practice law should be disciplined.



*Rule 4-1.15(b)*

On four occasions, Respondent deposited her personal funds into her Trust Account. **App. A37 (Tr. 48); App. A262-A264 (Exhibit 11); App. A396-398 (Exhibit 21); App. A462.** It is clear that Respondent made the transfers so that she could pay clients the amounts owed to them since the Trust Account balance fell below the amount due to her clients. Thus, it is clear that such deposits were made to replenish client settlement funds that Respondent misappropriated. Respondent's actions in this regard are not disputed as evidenced by the stipulations included in Sections 7(a), (b), (c), (d) and (k) of the Stipulation. **App. A396-A398 (Exhibit 21).** Respondent's conduct violates Rule 4-1.15(b) since the funds were not deposited for the sole purpose of paying financial institution service charges on that account.

*Rule 4-1.15(c)*

Missouri Supreme Court Rule 4-1.15(c) provides that a lawyer shall withdraw fees only as they are earned. In the present action, Respondent withdrew client funds from her Trust Account on multiple occasions and deposited those client funds into her Operating Account in amounts that were in excess of what she was owed. **App. A73-A81 (Tr. 34-42); App. A460-A462; App. A262-A326 (Exhibits 11 and 12).** Respondent's actions in this regard are acknowledged in the cases of clients Piolet, Hudson, Collins, Mingo, and Seales as set forth in Sections 7(a), (b), (c), (e), (f) and (g) of the Stipulation. **App. A396-A398 (Exhibit 21).** Therefore, the facts are not disputed.

*Rule 4-1.15(f)*

Missouri Supreme Court Rule 4-1.15(f) provides that complete records of client trust accounts shall be maintained by a lawyer. According to the Rule, complete records are to include receipt and disbursement journals, ledgers for all client trust accounts, fee agreements, accountings to clients of disbursements, bills for legal fees, bank statements and records, identifying information pertaining to all electronic transfers, reconciliations and records of credit card transactions. Rule 4-1.15(f).

In the instant case, Respondent produced very little documentation for the Trust Account, and as a result, Informant had to subpoena US Bank in order to obtain bank statement documentation. **App. A71-A73 (Tr. A32-34); App. A240-A252 (Exhibits 9 and 10)**. Rule 4-1.15(f) requires each attorney to keep detailed records showing, among other things, the source of every deposit to - and the purpose of every disbursement from - that attorney's trust account. *In re Farris*, 472 S.W.3d at 560<sup>2</sup>. An attorney must be held accountable and is inferred to have knowledge of trust account records and cannot claim ignorance of client funds as a defense. *Id.* at 561. In fact, the *Farris* Court found that:

“[t]he Court abandons the purpose of Rule 4-1.15([f]) if it allows a lawyer's failure to maintain the required records to work to that attorney's benefit. To avoid this result, the failure to comply with Rule 4-1.15([f]) must give rise to an inference of knowledge, particularly when the attorney tries to defend a charge of misappropriating trust funds on grounds that the

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<sup>2</sup>Note that what is now Rule 4-1.15(f) was Rule 4-1.15(d) at the time of the *Farris* decision.

required documents plainly would support or refute had the attorney kept them.” *Id.*

Respondent had a duty to maintain records pursuant to Rule 4-1.15(f) and she failed to do so. Respondent was not even reconciling her Trust Account, a point which she conceded. **App. 168 (Tr. 129)**. Respondent does not dispute that she failed to maintain proper records as evidenced by Respondent’s stipulation to the statement included in Section 7(n) of the Stipulation. **App. A399 (Exhibit 21)**.

*Rule 4-8.4(c)*

Respondent violated Rule 4-8.4(c) by misappropriating funds belonging to clients and third parties from the Trust Account, **App. A465**, and which is evidenced by the fact that the Trust Account balance frequently fell below the amounts that should have been there to pay clients on three occasions. **App. A262-A264 (Exhibit 11); App. A396-A398 (Exhibit 21); App. A460-A462**. In addition, the Audit revealed that on at least one occasion, Respondent used a portion of the misappropriated funds to satisfy personal financial obligations being debited from her Operating Account. **App. A399-A398 (Exhibit 21); App. A461**. The fact that misappropriation occurred is not in dispute because Respondent stipulated to the fact that misappropriation occurred with respect to clients Piolet, Hudson, Collins, Mingo, Seals, and Jefferson in Section 7(j) of the Stipulation. **App. A398 (Exhibit 21)**.

Further, this Court has found that where an attorney transfers funds from a trust account to his or her operating account, and those funds are used for personal expenditures, that attorney has misappropriated client funds. See *In re Farris*, 472 S.W.3d at 560. Such

actions are particularly deemed indicative of misappropriation “when the disbursement reduces the balance of the account to an amount less than the amount of funds being held by the attorney for the client.” *Id.* at 558. See also, *In re Ehler*, 319 S.W.3d at 450 (conversion of client funds necessarily involves an act of deceit and misrepresentation). In Section 7(f) of the Stipulation, Respondent stipulates to the fact that on at least one occasion, she used a portion of the misappropriated funds to satisfy personal financial obligations being debited from her Operating Account. Respondent’s misappropriation of client funds is direct evidence of conduct involving dishonesty, fraud, and deceit in violation of Rule 4-8.4(c).

## II.

### SUSPENSION IS THE APPROPRIATE SANCTION FOR RESPONDENT'S MISCONDUCT BECAUSE MISSOURI CASE LAW AND THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS SUPPORT SUCH A SANCTION.

When determining the appropriate sanction for attorney misconduct, this Court relies on several sources, including its own decisions, disciplinary rules and the American Bar Association Standards for Imposing Lawyer Sanctions (“*ABA Standards*”). *In re Krigel*, 480 S.W.3d 294, 301 (Mo. banc 2016). In addition, this Court considers aggravating and mitigating factors relevant to the Respondent’s actions. *Id.*

The Panel found that Respondent violated Rules 4-1.15(a), 4-1.15(b), 4-1.15(c), 4-1.15(f), 4-1.8(e), and 4-8.4(c). **App. A463-A465.** The Panel found no aggravating factors, but found the following mitigating factors: (a) lack of selfish or dishonest motive; (b) the effort to rectify the consequences of the misconduct; and (c) remorse. **App. A465-A466.**

Where, like here, there are multiple violations, “the ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among the violations.” Theoretical Framework of *ABA Standards*. See also, *In re Krigel*, 480 S.W.3d at 301; *In re McMillin*, 521 S.W.3d 604, 610 (Mo. banc 2017).

In this case, misappropriation of client funds is the most serious violation. Misappropriation is evidenced by the fact that on at least seven occasions, Respondent deposited funds into her Trust Account and did not pay them to the clients to whom they

were owed. Where, as here, a lawyer fails to turn over funds due to a client, misappropriation is deemed to exist. *In re Farris*, 472 S.W.3d at 562. In addition, this Court wrote in *In re Farris* that:

“When an attorney deposits the client’s funds into an account used by the attorney for his own purposes, any disbursement from the account for purposes other than those of the client’s interests has all the characteristics of misappropriation, particularly when the disbursement reduces the balance of the account to an amount less than the amount of funds being held by the attorney for the client.”

*In re Farris*, 472 S.W.3d at 557-58.

Furthermore, in the instant case, Respondent admitted that she misappropriated client funds in Section 7(j) of the Stipulation. **App. A398 (Exhibit 21)**. Consequently, there is no dispute as to whether misappropriation occurred.

Once it has been determined that misappropriation has occurred, the Missouri Supreme Court has noted that disbarment is the baseline sanction. See *In re McMillin*, 521 S.W.3d 604, 610 (Mo. banc 2017); *In re Farris*, 472 S.W.3d at 562. See also, *In re Griffey*, 873 S.W.2d at 603 (“[w]here conversion of a client's money is involved, disbarment is the appropriate remedy”). Such a conclusion is reasonable because the most important ethical duties an attorney has are those that are owed to clients. See *In re Ehler*, 319 S.W.3d, 442, 451 (Mo. banc 2010).

Respondent cannot avoid responsibility by claiming that she failed to keep accurate records. Rule 4-1.15(f) requires each attorney to keep detailed records showing, among

other things, the source of every deposit to – and the purpose of every disbursement from – that attorney’s trust account. *In re Farris*, 472 S.W.3d at 760. An attorney must be held accountable and is inferred to have knowledge of trust account records and cannot claim ignorance of client funds as a defense. *In re Farris*, 472 S.W.3d at 561.

The evidence showed that many people were injured by Respondent’s behavior by not receiving the funds due them when they were due. It does not matter that those clients may not even know they have suffered injury.

Once a baseline sanction has been established (in this case disbarment) the Supreme Court has stated it is appropriate to consider both mitigating and aggravating factors. According to the Supreme Court, mitigating factors are not a defense to a finding of misconduct, but may justify a downward departure from the presumptively proper discipline.” *In re Farris*, 472 S.W.3d at 563. Mitigating and aggravating factors are set forth in the *ABA Standards* at sanction standards 9.22 (aggravation) and 9.32 (mitigation).

The Panel erred in finding no aggravating factors as there were many. The aggravating factors present in this case are prior disciplinary offenses, pattern of misconduct (having been admonished 3 times before for her trust account practices<sup>3</sup>), multiple offenses, and Respondent’s substantial experience in the practice of law, having been licensed in 1985. *ABA Standard 9.22(a), (c), (d) and (i)*. However, there are also mitigating factors and they are absence of a dishonest or selfish motive, attempts to rectify

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<sup>3</sup> Two of the admonitions specifically instructed Respondent to review Rule 4-1.15 and directed her to create systems to protect client funds.

the consequences of her actions, and remorse. *ABA Standard 9.32(b), (d) and (l)*. Such mitigating evidence, however, must be weighed against the seriousness of the offenses and the evidence in aggravation. *In re Kayira*, 614 S.W.3d 530, 539 (Mo. 2021). After reviewing the aggravating factors and the mitigating factors and evaluating them as this Court directs, Informant believes there is reason to deviate from the baseline sanction of disbarment, and that an actual suspension with no leave to apply for reinstatement for two years is the appropriate sanction for Respondent, Jennifer Fisher's, conduct.

This conclusion is appropriate when analyzed in light of decisions of the Missouri Supreme Court in that this Court has stated that disbarment is "reserved for clear cases of gross misconduct, those in which the attorney is demonstrably unfit to continue in the profession." *In re Krigel*, 480 S.W.3d at 301. That is not the case with respect to Respondent. Though she participated in repeated misconduct, she has shown remorse and did make attempts to rectify the consequences of her misconduct.

The Panel ruled that probation was the appropriate sanction. In doing so, the Panel erred as such a ruling is not consistent with Missouri case law. This Court has previously ruled that lawyers do not qualify for probation when they misappropriate client funds. *In re Adams*, 737 S.W.2d 714 (Mo. banc 1987). Clients seek the advice of attorneys and rely on their expertise. A lawyer who misappropriates client funds not only injures the client and breaches one of the fundamental duties of the legal profession, but also injures the Bar as a whole. *In re Farris*, 472 S.W.3d at 566-567 (citing *In re Belz*, 258 S.W.3d 38, 46-47 (Mo. banc 2008) ("Misappropriation of client funds presents a paramount risk to the integrity of the legal profession. Our profession relies intrinsically on the trust that clients



are willing to place in their lawyers, and few acts of misconduct have the capacity to erode that trust more quickly and thoroughly than the conversion of a client's funds to one's own use.”).

The purpose of imposing discipline is not to punish the attorney but to protect the public and maintain the integrity of the legal profession. *In re Stewart*, 342 S.W.3d 307, 308 (Mo. banc 2011). "Those twin purposes may be achieved both directly, by removing a person from the practice of law, and indirectly, by imposing a sanction which serves to deter other members of the Bar from engaging in similar conduct." *In re Kazanas*, 96 S.W.3d 803, 807-08 (Mo. banc 2003). In the present case, both purposes of attorney discipline will be served if Respondent is suspended indefinitely with no leave to apply for reinstatement for two years.

## CONCLUSION

Respondent committed professional misconduct in violation of Rules 4-1.15(a), 4-1.15(b), 4-1.15(c), 4-1.15(f), 4-1.8(e) and 4-8.4(c). Specifically, Respondent violated (a) Rule 4-1.15(a) by making a cash withdrawal from the Trust Account; (b) Rule 4-1.15(a) by making a disbursement of funds drawing against a deposit without allowing a reasonable period of time to pass to ensure the funds had been collected; (c) Rule 4-1.15(a) by depositing personal funds to the Trust Account which indicates a commingling of personal and client funds and/or rectification of the prior misappropriation of client funds; (d) Rule 4-1.15(b) by depositing personal funds to the Trust Account in an amount greater than necessary to pay bank service charges; (e) Rule 4-1.15(c) by allowing the Trust Account balance to fall below the amount owed to clients and known third parties from a settlement; (f) Rule 4-1.15(f) by failing to maintain complete records of the Trust Account and client funds; (g) Rule 4-1.8(e) by advancing funds to clients drawing against their settlements which had yet to be received and/or deposited; and (h) Rule 4-8.4(c) by engaging in acts of misappropriation which constitute conduct involving dishonesty, fraud, deceit or misrepresentation.

Therefore, Informant respectfully requests that this Court indefinitely suspend Respondent from the practice of law, with no leave to apply for reinstatement for two years.

Respectfully submitted,

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**ATTORNEYS FOR INFORMANT**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2<sup>nd</sup> day of March, 2021, a copy of Informant's Brief is being served upon Respondent's Counsel through the electronic filing system pursuant to Rule 103.08:

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Cheryl D.S. Walker

**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. 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 6,988 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



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Cheryl D.S. Walker