

IN THE SUPREME COURT OF THE
STATE OF MISSOURI

In re

VENUS V. HARRY,

Attorney-Respondent.

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Case No. SC99011

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	3
JURISDICTIONAL STATEMENT.....	4
CASE SUMMARY	5
STATEMENT OF FACTS	6
Background	6
Law Firm Practice	6
Local community and legal community involvement.....	7
Client representations raised in the information	9
1. Representations of Lacey Hartmann and Zachary Self.....	9
2. Representation of Sharon Holt.....	12
3. Representation of Angela Watkins	14
4. Representation of Thomas Weeden	15
5. Representation of Eric Whitfield	17
Trust account matters	19
Remedial measures and improvements to law practice	20
Hearing Panel Recommends Suspension	20
POINT RELIED UPON	22
ARGUMENT	23
Preliminary Statement.....	23
Standard of Review	23
Standard for Imposition of Discipline.....	24
POINT RELIED #1: Ms. Harry’s Conduct and Evidence in Mitigation Support	
Imposition of a Reprimand or Stayed Suspension.	24
The five client representations as bases for imposing sanctions.....	25
Imposition of discipline for Ms. Harry’s admitted trust account violations	27
Mitigating Factors Support Imposing an Indefinite Suspension.....	31

Conclusion	33
CERTIFICATE OF COMPLIANCE	34
CERTIFICATE OF SERVICE	35

TABLE OF AUTHORITIES

CASES

<i>In re Coleman</i> , 295 S.W.3d 857 (Mo. 2009)	22, 24, 28
<i>In re Crawford</i> , Case No. SC96010 (Mo. September 12, 2017).....	29
<i>In re Gerecke</i> , Case No. SC96571 (Mo. November 21, 2017)	29
<i>In re Dorsey</i> , Case No. SC96287 (Mo. October 5, 2017)	29
<i>In re Eisenstein</i> , 485 S.W.3d 759 (Mo. 2016)	23
<i>In re Elliott</i> , 694 S.W.2d 262 (Mo. 1985)	22, 30, 31
<i>In re Griffin</i> , Case No. SC98235 (Mo. March 17, 2020)	29, 30, 31
<i>In re Lander</i> , Case No. SC95263 (Mo. January 26, 2016)	29
<i>In re Madison</i> , 282 S.W.3d 850 (Mo. 2009)	24
<i>In re Miller</i> , 568 S.W.2d 246 (Mo. 1978)	22, 30, 31
<i>In re Pottenger</i> , Case No. SC96561 (Mo. August 15, 2017)	29
<i>In re Sheth</i> , Case No. SC95382 (Mo. March 15, 2016)	29
<i>In re Williams</i> , Case No. SC96752 (Mo. May 22, 2018)	30, 31
<i>In re Yonke</i> , Case No. SC96563 (Mo. August 15, 2017)	29

STATUTES

Missouri Revised Statute § 484.040.....	4
---	---

OTHER AUTHORITIES

ABA Standard for Imposing Lawyer Sanctions 9.1	24, 31
ABA Standard for Imposing Lawyer Sanctions 9.32	31, 32

RULES

Missouri Supreme Court Rule 5	3
Missouri Supreme Court Rule 55.03	34
Missouri Supreme Court Rule 84.06	34

CONSTITUTIONAL PROVISIONS

Article V, Section 5 of the Missouri Constitution.....	3
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JURISDICTIONAL STATEMENT

Ms. Harry 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

Venus Harry is the sole owner of Law Offices of Venus Harry, LLC, which primarily handles family law and criminal defense matters. She appears before this Court as respondent to charges relating to her representation of clients and management of her firm's client trust account. With regard to the trust account violations, Ms. Harry has admitted much of the conduct alleged and accepted responsibility for her actions. Ms. Harry has also ensured that each client has received all funds to which he or she is entitled. The client complaints, however, have generally been disproven, including that one alleged complainant *sua sponte* declared that he "loved" Ms. Harry during the hearing, and two other clients stated they were quite pleased with her representation (the other clients' testimony revealed they were unrealistic regarding the representations or confused about the outcomes).

Based upon her refuting of the complaints by clients, the nature of trust account violations at issue, Ms. Harry's efforts to correct her errors and her service in this community, and the absence of a dishonest motive, this Brief demonstrates why Ms. Harry should receive at most a stayed suspension of her law license. A further explanation of all these points follows.

STATEMENT OF FACTS

Consistent with Missouri Supreme Court 84.04(c) and (f), Ms. Harry offers the following Statement of Facts.

Background. Ms. Harry graduated from Saint Louis University in 1994 and the University of Illinois School of Law in 1997. (App. 541)¹

Ms. Harry is married to Jane Harry. Together they have five children and one grandchild. (App. 545-46, 667) Jane Harry and one of the children also work at Ms. Harry's law practice. (App. 545)

Law Firm Practice. Ms. Harry was admitted to the Missouri Bar in October 1998. (App. 372) Ms. Harry's bar number is 50195. (App. 131) Ms. Harry's license is currently in good standing. (App. 130)

After graduating from the University of Illinois School of Law in 1997, Ms. Harry began her law career in Michigan, primarily representing an automobile company. (App. 541) Ms. Harry was admitted into the Missouri Bar in 1998. She practiced in Springfield, Missouri for approximately three years before moving to St. Louis. (App. 542) Ms. Harry was the first African-American attorney to practice in Greene County (Springfield), Missouri. (App. 670)

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

When Ms. Harry moved to St. Louis in 2001, she worked for the law firm Diekemper Hammond and then for Law Offices of Susan L. Ward before starting her own firm – The Law Offices of Venus Harry – in 2004. (App. 542)

The Law Offices of Venus Harry primarily represents individuals in family law and criminal law. (App. 542-43) Ms. Harry has also more than ten years working a domestic violence docket on behalf of St. Louis County. (App. 543) Ms. Harry agreed to assume representation of defendants on that domestic violence docket whenever those defendants needed representation, almost as a special, part-time public defender, when the Hon. Michael Burton, Circuit Judge, wanted to create a special court that gave teeth to violations of orders of protection. (App. 667)

Local community and legal community involvement. As a result of beginning her Missouri legal career in Springfield, Ms. Harry continues to give back to Springfield by serving as Springfield’s NAACP liaison. (App. 670) Ms. Harry was included on the *Springfield Business Journal*’s “40-under-40” list in 2000. (App. 676) Ms. Harry has also provided *pro bono* services to members of the Olivette Baptist Church in St. Louis (Ms. Harry’s church), often at the request of the Hon. Gloria Clark Reno, a retired Circuit Court judge. (App. 671-72)

Ms. Harry is also active in bar associations including the Missouri Bar and Mound City Bar. (App. 675-76) Ms. Harry presented a Continuing Legal Education course (“CLE”) on best discovery practices in family law at the Missouri Bar’s 2020 Solo and Small Firm Conference, and has been a frequent presenter at the Missouri Bar’s Family Law conferences. (*Id.*)

In addition to providing legal services to her community, Ms. Harry is also very philanthropic. Each year, Ms. Harry looks forward to participating in charity events on behalf of Kids in the Middle, an organization that helps families transition to a new way of life before, during, and after separation and divorce. (App. 672-73) Ms. Harry is a supporter of Kids in the Middle as a result of her work as a guardian ad litem in the family court, and also her work with the domestic violence docket. (*Id.*) Ms. Harry also regularly donates groceries, toilet paper, disinfectants, and other necessities to Operation Food Search, an organization dedicated to ending hunger in the greater St. Louis metropolitan area. (App. 673)

During the COVID-19 pandemic, Ms. Harry contributed breakfasts and lunches to St. Louis Public School students otherwise at risk of not eating, because the only meals they usually receive were at school. (App. 673-74)

References for good character. Ms. Harry submitted 10 letters related to Ms. Harry's law practice and comments on Ms. Harry's good character. (App. 677) Of the 10 letters submitted by Ms. Harry, two were from individuals directly involved with some of the allegations against Ms. Harry. (App. 677-78) First, Ms. Harry provided a letter from Stanley Leibrock, whose name appears in Ms. Harry's trust account ledger. (*Id.*) Second, Ms. Harry provided a letter from Lacy Wilson a/k/a Lisa Hartmann, whose matter is discussed in detail below in the Hartmann-Self matter. (App. 678) Ms. Harry also provided a letter from a representative from the St. Louis County Children's Division. (App. 678) All letters provided glowing reviews of Ms. Harry's character and fitness to practice law.

Ms. Harry testified at the hearing panel that it felt very good to receive a character reference letter from someone at the Children's Division. (*Id.*)

Prior discipline. Ms. Harry previously received Letters of Admonition pursuant to Rule 5.11 on December 27, 2001; June 28, 2007; February 19, 2008; July 8, 2018; and July 8, 2018. (App. 130-31, 755-768) On January 31, 2012, Ms. Harry's license was suspended for one year, with the stay suspended pending successful completion of one year of probation. (App. 130-31, 767-68) Ms. Harry successfully completed probation and this Court ordered that Ms. Harry's probation be terminated on January 27, 2014. (App. 390)

Ms. Harry also previously received a guidance (cautionary) letter on September 5, 2014, but that does not constitute discipline. (App. 393-94, 766).

Client representations raised in the information. The Information against Ms. Harry identified five client representations where Informant alleged Ms. Harry had violated the Missouri Rules of Professional Conduct. Informant then offered evidence on all these representations, despite clear indications at least several of the matters that the clients did not have serious complaints against or disagreements with Ms. Harry, or were blaming Ms. Harry for events outside her control. The facts regarding the clients' matters, summarized in alphabetical order, are:

(1) **Representations of Lacey Hartmann and Zachary Self.** This matter related to conflicting interests of a current client (Ms. Hartmann) and a former client (Mr. Self) of Ms. Harry, which Informant contended Ms. Harry did not handle appropriately. Neither Ms. Hartmann nor Mr. Self filed or prosecuted a complaint against Ms. Harry, including that neither testified at the Hearing. Instead, Elicia Wilson filed the complaint

giving rise to this matter. Ms. Wilson is the mother of Derrick Wilson, who had fathered a different child with Ms. Hartmann. Neither the complainant Ms. Wilson nor her son Derrick Wilson testified at the Hearing.

With these circumstances in mind, the facts show that in early 2018, Ms. Harry represented Ms. Hartmann in an uncontested dissolution of marriage action against Mr. Self, who at the time of the dissolution was incarcerated. (App. 587-88, 593) Ms. Harry had approximately five years earlier (in 2012 or 2013) represented Mr. Self on a child custody matter where the interests of Ms. Harry's client Mr. Self and of Ms. Hartmann (who had retained other counsel) opposed efforts of Ms. Hartmann's mother to obtain custody. (App. 584, 586)

Ms. Harry believed her representation of Ms. Hartmann in the uncontested divorce was not "substantially related" to her prior representation of Mr. Self. (App. 586) Further, upon seeing Mr. Self in court on a matter unrelated to the dissolution proceeding, Ms. Harry had asked Mr. Self if he would allow Ms. Harry to represent Ms. Hartmann, and Mr. Self had indicated he was fine with Ms. Harry representing Ms. Hartmann in the dissolution as long as Ms. Hartmann did not seek child support from Mr. Self. (App. 590-91) Ms. Harry had previously told Ms. Hartmann that, because Mr. Self was incarcerated, she would not represent Ms. Hartmann if she insisted upon seeking child support from Mr. Self. (App. 589-90) Ms. Harry explained that, as a general principle, she will not seek child support

from incarcerated individuals. (*Id.*) Ms. Hartmann confirmed she did not intend to seek such support. (*Id.*)²

Ms. Harry therefore thought it appropriate to represent Ms. Hartmann in what Ms. Harry considered to be an unrelated, uncontested proceeding against Ms. Harry's former client Mr. Self. Further, Mr. Self did not retain counsel or otherwise contest Ms. Hartmann's request for dissolution. (*Id.*) Further, Ms. Harry testified at the Disciplinary Hearing that she did not think a conflict waiver was necessary because the dissolution was uncontested, and the dissolution proceeding was not substantially related to Ms. Harry's prior representation of Mr. Self. (App. 591)

As stated earlier, Informant did not call or attempt to call Ms. Hartmann, Mr. Self, or even the complainant Ms. Wilson to testify against Ms. Harry. And Ms. Hartmann provided a positive character letter, in which Ms. Hartmann (using the name "Lacey Wilson") described Ms. Harry as "professional, trustworthy, and a go getter." (App. 1498) Ms. Harry emphasized "how much [Ms. Harry] meant" to Ms. Hartmann and her family, that Ms. Harry had "gone above and beyond" to represent Ms. Hartmann, and that Ms.

² There was some confusion at the Hearing because, although Ms. Hartmann did not seek child support, the Family Support Division did seek and obtain support through a separate administrative proceeding. (App. 593-94) This support then accrued, unpaid, during Mr. Self's incarceration. (*Id.*) Neither Ms. Hartmann nor Ms. Harry had any involvement in the Family Support Division proceedings.

Harry treats Ms. Hartmann like a “family member” and “friend” for whom Ms. Harry “want[ed] the best,” not merely a client. (*Id.*)

(2) **Representation of Sharon Holt.** The Holt matter involved Ms. Harry’s representation of a grandmother seeking custody of her two grandsons. Ms. Holt actually engaged Ms. Harry twice, and a subsequent fee dispute in which Ms. Harry had attempted to but was unable to refund part of Ms. Holt’s fee – \$2,500, an amount Ms. Holt later indicated was sufficient – to Ms. Holt until Ms. Harry obtained a proper forwarding address at the Hearing.

Specifically, in February 2018, Ms. Holt paid Ms. Harry \$1,000 or \$1,200 to seek custody of the two grandchildren. (App. 275, 605-06) Later, Ms. Holt discharged Ms. Harry because Ms. Holt felt the case was going well enough that Ms. Holt no longer needed Ms. Harry as her counsel. (App. 605-06) Upon being discharged, Ms. Harry promptly refunded Ms. Holt \$750 as the unused portion from the funds Ms. Holt had advanced. (App. 276, 289-90, 606)

In September 2018, Ms. Holt then engaged Ms. Harry a second time to handle custody proceedings, because Ms. Holt had moved to Poplar Bluff, Missouri, without court approval, resulting in the Department of Family Services taking custody of Ms. Holt’s grandchildren. (App. 276-77, 290, 603)

When re-engaging Ms. Harry, Ms. Holt advanced \$5,000 to cover Ms. Harry’s fees. (App. 277, 607) Everyone agreed that, on this second engagement, Ms. Harry met with Ms. Holt multiple times, appeared in court for Ms. Holt, and made telephone calls and took other actions to represent Ms. Holt’s interests. (App. 278-80, 282-83, 290, 292-95)

Nevertheless, in December 2018, Ms. Holt became frustrated that Ms. Holt had not regained custody of her grandchildren, apparently because Ms. Holt did not understand she needed to move back to St. Louis County. (App. 610-11) Ms. Holt therefore discharged Ms. Harry and demanded a full refund of the \$5,000 previously advanced. (App. 610) Ms. Harry offered to refund Ms. Holt \$2,500, and to go through fee dispute resolution with Ms. Holt, but Ms. Holt did not accept Ms. Harry's offer. (App. 610-11) Ms. Harry then attempted to refund Ms. Holt \$2,500 by using the debit card Ms. Holt had used to pay the retainer, but the debit card was no longer active. (App. 284, 296, 612)

Several months later in early 2019, a woman claiming to be Ms. Holt's daughter contacted Ms. Harry, reported that Ms. Holt had suffered a mental breakdown, and requested that Ms. Harry refund the \$2,500 to the caller (supposedly Ms. Holt's daughter). (App. 286, 611-12) Ms. Harry did not feel comfortable giving a refund of Ms. Holt's money to someone else without Ms. Holt's authorization, so Ms. Harry declined to provide the refund to the caller. (App. 613) (Ms. Holt later denied having a nervous breakdown, supporting that the caller was being less than honest. (App. 296-98, 302-03)) Ms. Harry also believed that she still did not have a good address for Ms. Holt (App. 613-14), so Ms. Harry simply held the funds while awaiting further communication from Ms. Holt. (App. 613)

At the Disciplinary Hearing, Ms. Holt testified that she would not have filed a complaint against Ms. Harry if she would have received the \$2,500 refund earlier. (App. 304) Ms. Holt also provided a good current address for herself and indicated she believed a \$2,500 refund – the amount Ms. Harry initially offered to refund – would be appropriate.

(App. 304) Ms. Harry later sent Ms. Holt the agreed \$2,500 refund at the address provided by Ms. Holt, after inadvertently mailing the payment to Ms. Holt's old address. (App. 614-15, 1599)

(3) **Representation of Angela Watkins.** In September 2019, Angela Watkins engaged Ms. Harry to represent her in obtaining custody of her grandson. (App. 638) After agreeing to represent Ms. Watkins, Ms. Harry began drafting the necessary documents for the Petition for Third-Party Custody and requested additional information from Ms. Watkins prior to filing a Petition for Third-Party Custody. (App. 644-45) Ms. Harry had communications with Ms. Watkins in September, October, and November 2019. (App. 645) Ms. Harry testified at the Disciplinary Hearing that the matter was not progressing as quickly as anticipated, however, because Ms. Harry was having difficulty locating Ms. Watkins' daughter Maxine Wheeler, a necessary party to the proceeding. (*Id.*)

Ms. Watkins filed her bar complaint in December 2019, and Ms. Harry received the complaint on or about January 6, 2019. (App. 642) At approximately the same time, Ms. Harry received a letter from Ms. Watkins dated January 8, 2020, which stated Ms. Watkins no longer required Ms. Harry's services. (*Id.*)

After receiving the bar complaint and termination letter, Ms. Harry contacted Ms. Watkins, confused about Ms. Watkins' termination letter and bar complaint. (App. 643) Ms. Harry offered to provide Ms. Watkins with a refund and itemized bill regarding the services rendered. (App. 646) Ms. Watkins expressed her concerns to Ms. Harry that she was not sure if she was going to be able to afford Ms. Harry's legal services. (App. 643-

44) Ms. Harry and Ms. Watkins ultimately agreed that Ms. Harry would continue to represent Ms. Watkins in the matter.

By the time of the hearing, Ms. Harry had located Ms. Watkins' daughter, and the matter was progressing well. (App. 639-41) Ms. Watkins appeared at the Disciplinary Hearing as a witness for Ms. Harry and expressed her "total satisfaction" with Ms. Harry's representation. (App. 517, 523, 646) Ms. Watkins admitted during her testimony that she filed the complaint against Ms. Harry because there was a brief period when she was frustrated at the slow progress of her case. (App. 515-16, 648-49) Ms. Watkins also testified that Ms. Harry was still counsel for Ms. Watkins, that Ms. Watkins had gained custody of her grandchild, and that she did not want to proceed on her complaint. (App. 640)

(4) **Representation of Thomas Weeden.** Mr. Weeden engaged Ms. Harry in 2017 to represent him in modification of his child support obligations. (App. 467-68) Ms. Harry filed a motion to modify in March 2017 and a consent judgment was entered in December 2017, reducing Mr. Weeden's monthly child support payments from \$1,200 to \$455. (App. 147-48, 468-69, 627-27) Immediately after the judgment was entered, Ms. Harry accompanied Mr. Weeden to the Child Support Desk in the St. Louis County Courthouse and provided them with a copy of the judgment in an effort to expedite the processing of Mr. Weeden's new, reduced monthly payments. (App. 471, 631-32) Ms. Harry also provided Mr. Weeden with a copy of the judgment. (*Id.*)

When Mr. Weeden had engaged Ms. Harry, in or about March 2017, Mr. Weeden also owed more than \$30,000 in unpaid child support. (App. 626-27) Mr. Weeden wanted

Ms. Harry to seek a reduction of this amount. (App. 630) Ms. Harry testified that she sought a reduction, but Mr. Weeden's ex-wife would not agree to reduce it. (App. 630-31) Therefore, when the December 2017 consent judgment reduced Mr. Weeden's future payments, it left the full amount of his arrearages intact. (App. 630-32)

Mr. Weeden expressed frustration with reports regarding the amount he owed and the amount that would be garnished if he obtained employment. Mr. Weeden did not understand why the December 2017 reduction of Mr. Weeden's future child support payments did not take immediate effect. (App. 632-33) Ms. Harry tried several times to explain that the amended wage withholding order would not take effect until Mr. Weeden was regularly employed, which Mr. Weeden was not. (App. 633-34) Mr. Weeden also apparently did not understand that the amount for garnishment would also include a sum for the (approximately \$30,000) past-due child support. (App. 631) Thus, his child support obligations did not immediately fall to \$455 after the December 2017 consent judgment was entered. (*Id.*)

At the Disciplinary Hearing, Ms. Harry – and also the Chair of the Hearing Panel, Elizabeth McCarter – attempted to explain to Mr. Weeden that Family Support Payment Center calculated wages due by taking the current amount of child support owed and adding one-half that amount until any arrearage was paid in full. (App. 470, 631) Further, if the parent did not make the payment, the Family Support Payment Center added the unpaid amount to the running total of amounts due. (App. 634) Ultimately, the Family Support Payment Center properly took account of the reduction Ms. Harry had obtained for Mr. Weeden and – after Ms. Harry's representation ended – Mr. Weeden's ex-spouse

agreed to waive the \$30,000 in past-due child support. (App. 256-57) At no time, however, did Mr. Weeden pay any excessive amount of child support, as Mr. Weeden repeatedly claimed during the Hearing. (App. 263-69) Rather, that was an erroneous perception that both Ms. Harry and the Hearing Panel Chair Ms. McCarter repeatedly tried to correct. (App. 258-59, 266-69, 634, 636-37)

(5) **Representation of Eric Whitfield.** In or about March 2017, Eric Whitfield retained Ms. Harry to represent Mr. Whitfield in a child custody and support matter. (App. 549) Ms. Harry entered her appearance for Mr. Whitfield in April 2017. (*Id.*) Ms. Harry testified at the Disciplinary Hearing that Mr. Whitfield was “headstrong” with his positions and created friction in many aspects of the matter, particularly regarding the child custody schedule and payment of child support. (App. 550-52)

Ms. Harry represented Mr. Whitfield, including at a trial on December 15, 2017, that Ms. Harry expected would be postponed due to injuries Ms. Harry had sustained approximately one week earlier when Ms. Harry fell on ice and re-injured her knee, which had been surgically repaired in August 2017. (App. 556-59) Opposing counsel had consented to the extension, and Ms. Harry had expected and told Mr. Whitfield to expect the hearing would be continued. (App. 556-57) Mr. Whitfield agreed with this plan. (App. 558)

Unfortunately, on the day of the trial, December 15, 2017, the Family Court Commissioner denied Ms. Harry’s unopposed motion for a continuance. (App. 559) Ms. Harry therefore tried the case, frankly without being well prepared, but obtained a reasonable outcome for Mr. Whitfield including a joint physical custody and a reasonable

financial resolution in January 2018 Judgment. (App. 560, 563, 568) During the Hearing, Ms. Harry admitted certain mistakes in her representation of Mr. Whitfield, including that she did not file a counterpetition on behalf of Mr. Whitfield, as Mr. Whitfield had requested, and Ms. Harry did not file a proposed parenting plan and the required financial statements (referred to during the Hearing as Mr. Whitfield's Form 14) by the deadline prescribed by the Local Rules. (App. 551-53)

Although Ms. Harry admitted her errors, she contended – and the evidence supported – that Mr. Whitfield did not suffer any real prejudice because his own Form 14 had not been filed prior to trial, because the information on Form 14 had not changed materially since previous court appearances in Mr. Whitfield's case and Mr. Whitfield and his opposing party both had similar jobs for the same company, and Ms. Harry obtained Mr. Whitfield's objective of retained joint physical custody. (App. 554-55)

Unfortunately, subsequently Mr. Whitfield suffered a series of setbacks and adverse rulings in the litigation, but these adverse rulings regarding custody and child support were imposed *after* Ms. Harry's representation of had *ended*, and were not caused by any error Ms. Harry made leading up to the (unexpected) December 2017 trial. (App. 568)

Finally, at the end of his testimony at the Disciplinary Hearing, Mr. Whitfield asked if he could say something more and – when told he could do so, with the Hearing Panel and counsel nervously anticipating what he might say – volunteered that he “love[s]” Ms. Harry. (App. 207) Thus, Mr. Whitfield hardly seemed to present an aggrieved client for whom Ms. Harry's law license should be suspended.

Trust account matters. As part of its investigation, the Office of Chief Disciplinary Counsel through its investigator Kelly Dillon conducted an audit of Ms. Harry's trust account and operating account. (App. 316) Ms. Dillon subsequently prepared an examination spreadsheet reflecting checks, withdrawals, and deposits from January 4, 2018 to July 31, 2019. (App. 318; Exhibit 25) Ms. Harry stipulated to the admission of the account transaction spreadsheets that resulted from the OCDC's investigation. (App. 174)

The OCDC investigation found – and Ms. Harry admitted – certain mistakes with regard to the operation of her trust account, including (a) two occasions when Ms. Harry placed firm funds into her trust account without a reasonable basis for doing so; (b) two occasions when Ms. Harry made cash withdrawals from the trust account; (c) that Ms. Harry allowed a “cushion” of approximately \$15,000 of earned fees to remain in the trust account; and (d) several instances where Ms. Harry made improper deposits into and reimbursements from her operating account.

Ms. Harry acknowledged the errors with regard to her trust account operations in her Answer to the Information (App. 655-56) Ms. Harry also promptly remedied all problems relating to her trust account. (App. 658-60) Since becoming aware of the issues (through the OCDC investigation), Ms. Harry has ensured that her accounts comply with the Missouri Rules, including that Ms. Harry now keeps all appropriate documentation for her trust account, including account and client ledgers, receipt and disbursement journals, and the like. (App. 654-55, 658-59, 661) Ms. Harry now “absolutely” understands trust accounting. (App. 653-54)

There are no allegations or any evidence whatsoever that Ms. Harry ever knowingly misappropriated client or a third-party's funds. (App. 345-46, 354, 655-56) In addition, the OCDC investigator Ms. Dillon admitted, Ms. Harry was generally truthful during communications with the OCDC's investigation of Ms. Harry's trust account. (App. 339-40) In fact, Ms. Harry had – of her own volition – approached Ms. Dillon at a December 2019 continuing legal education program to discuss responding to an OCDC October 2019 request for documents. (App. 336-37, 352) Ms. Harry then thought she was still supposed to provide a response to that October 2019 when the OCDC filed its information against Ms. Harry in late 2019. (App. 337, 657-58)

Remedial measures and improvements to law practice. Throughout this matter, Ms. Harry has made considerable progress in addressing the problems with her law practice, including her trust account. (App. 658-60) Ms. Harry has received additional education regarding trust account management, and has made every reasonable effort to ensure that her trust account is now operating consistent with Missouri law. (App. 661) Further, Ms. Harry has modified her practices in handling client and third-party funds to ensure all her actions comply with all her legal and ethical obligations. (App. 653-55, 658-61)

Hearing Panel Recommends Suspension. Informant and Ms. Harry tried this case before a hearing panel virtually over three days, August 20, 2020, September 10, 2020, and October 7, 2020. (App. 1664) On January 14, 2021, the Hearing Panel issued its opinion, recommending that that Ms. Harry be suspended indefinitely with no leave to apply for reinstatement for two years. (App. 1664-1706) On January 21, 2021, the Informant

accepted the Hearing Panel's recommendation. (App. 1708) On February 16, 2021, Ms. Harry rejected the Hearing Panel's recommendation, resulting in this proceeding. (App. 1709-10)

POINT RELIED UPON

1. MS. HARRY’S CONDUCT AND EVIDENCE OF MITIGATION
SUPPORT IMPOSITION OF A REPRIMAND OR STAYED
SUSPENSION.

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

In re Elliott, 694 S.W.2d 262 (Mo. 1985)

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

ARGUMENT

Preliminary Statement. As set forth in the Statement of Facts, the prosecution in this case relates to two categories of allegations. First, the Informant alleges that Ms. Harry violated the Rules of Professional Conduct with regard to her handling of five client matters. Ms. Harry herself, and at minimum Ms. Hartmann, Ms. Holt, and Ms. Watkins, and possibly even Mr. Whitfield, contest these accusations. Only Mr. Weeden does not praise Ms. Harry and/or her representation, and that appears due to his misunderstanding of how child support garnishments are reported, not because Mr. Weeden has or had a valid complaint against Ms. Harry. If Informant has made the requisite showing on these matters, which appears unlikely, very little harm resulted.

Second, Informant alleges that Ms. Harry made mistakes with regard to her law firm's trust accounting practices. Ms. Harry largely admits these allegations, and has done so from the earliest stages of this litigation. When the matters alleged are seen in this light, and Ms. Harry's mitigating evidence is given due weight, precedent supports this Court should impose no more than a reprimand or stayed suspension. Ms. Harry believes such an outcome would be suitable and will sufficiently ensure that Ms. Harry and other Missouri lawyers follow all ethical obligations in the future. The remainder of this brief provides an explanation of how the law and facts, including mitigating evidence, support imposition of such discipline.

Standard of Review. In matters of professional misconduct, this Court "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). Informant must prove professional misconduct “by a preponderance of the evidence before discipline will be imposed.” *Id.* A Hearing Panel’s “findings of fact, conclusions of law, and recommendations 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). (emphasis added) 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: Ms. Harry’s Conduct and Evidence in
Mitigation Support Imposition of a Reprimand or Stayed
Suspension.**

A reprimand or stayed suspension is an appropriate sanction for two main reasons. First, a reprimand or stayed suspension is appropriate based upon Ms. Harry’s conduct based upon the harm Informant has proven. The clients whom Ms. Harry is alleged to have harmed either (a) do not agree there was harm (Ms. Hartmann, Mr. Self, and Ms. Watkins); (b) suffered at most only a minor injury and still show affection to Ms. Harry (Ms. Holt and Mr. Whitfield); or (c) still claim an injury wrongly, only because they do not understand government-reported data (Mr. Weeden). Also, Ms. Harry’s trust accounting

errors are akin to those that generally result only in a stayed suspension. Second, Ms. Harry's mitigating evidence should also cause this Court to impose a reprimand or stayed suspension and not a more serious penalty.

The five client representations as bases for imposing sanctions. In discussing the appropriate sanction, this Court should be attentive to the evidence presented to the Hearing Panel in four of the client matters, or more specifically a lack of evidence proving Ms. Harry had violated the applicable ethics rules and caused harm to her clients. In four cases, the evidence actually suggested generally happy clients and – except admitted errors in Whitfield – ethical conduct:

(1) **Hartmann/Self.** Neither Ms. Hartmann nor Mr. Self complained against Ms. Harry. Neither allege any injury from Ms. Harry. Neither testified against Ms. Harry at the Hearing. To the contrary, Ms. Hartmann supplied a letter praising Ms. Harry. (App. 1498) Also, Ms. Hartmann and Mr. Self were undergoing an uncontested dissolution while Mr. Self was incarcerated. It is unclear how such an uncontested divorce could be “substantially related” to Ms. Harry's prior representation of Mr. Self in a child custody matter – where Mr. Self and Ms. Hartmann cooperated – five years earlier (App. 583), and the uncontroverted testimony proved Mr. Self authorized Ms. Harry to represent Ms. Hartmann against him in the uncontested divorce (App. 590), with a condition (not seeking child support) Ms. Hartmann averred she found acceptable. (App. 591-92)

(2) **Holt.** The uncontroverted testimony proves Ms. Holt engaged Ms. Harry, then discharged Ms. Harry and received a prompt refund of more than half the fees advanced. (App. 276, 289-90, 606) Six months later, Ms. Holt then engaged Ms. Harry a

second time and, when terminating Ms. Harry, demanded a refund. Ms. Harry then thwarted an apparent effort by someone to abscond with Ms. Holt's funds (App. 613), and – during the Hearing – provided a refund that Ms. Holt found acceptable within a reasonable time of learning how to get funds to Ms. Holt. (App. 614-15, 1599)

(3) **Watkins.** Frustrated with the progress of her case, and ignoring the delay was that Ms. Harry could not find a necessary party, Ms. Watkins filed a complaint against Ms. Harry. (App. 644-45) But at the Hearing, Ms. Watkins testified *as a witness for and supporting Ms. Harry*, and expressed her “total satisfaction” with Ms. Harry's representation. (App. 517, 523, 646)

(4) **Whitfield.** Ms. Harry admitted she made mistakes when representing Mr. Whitfield. (App. 551-53) But Ms. Harry had a good explanation for most of her errors, that she expected a Family Court commissioner would allow an unopposed continuance when Ms. Harry had suffered obvious injury. (App. 556-59) And Mr. Whitfield suffered little or no injury from Ms. Harry's mistakes (App. 560, 563, 568), and even interrupting the hearing to exclaim that he “love[s]” Ms. Harry. (App. 207)

None of these four situations offer a preponderance of evidence this Court needs to suspend Ms. Harry.

The only other client representation Informant cited was Weeden, where the uncontroverted evidence proved Ms. Harry had obtained a good result (reducing Mr. Weeden's child support from \$1,200 to \$455 per month), and that Mr. Weeden's only remaining complaint seemed to be an incorrect claim he had been overcharged due to late entry of the order, a misperception even the Hearing Panel Chair attempted (apparently unsuccessfully) to dispel. (App. 263-64, 266-69, 631-32, 635-37) Thus, even the Weeden matter does not support serious discipline against Ms. Harry, or a serious increase in sanction over what Ms. Harry might deserve for her admitted trust account errors.

Imposition of discipline for Ms. Harry's admitted trust account violations. This leaves the Court to consider the discipline it should impose for Ms. Harry's trust account violations. As summarized in the Statement of Facts, throughout these proceedings, Ms. Harry has admitted to certain mistakes with regard to the operation of her trust account, including (a) two occasions when Ms. Harry placed firm funds into her trust account without a reasonable basis for doing so; (b) two occasions when Ms. Harry made cash withdrawals from the trust account; (c) that Ms. Harry allowed a "cushion" of approximately \$15,000 of earned fees to remain in the trust account; and (d) several instances where Ms. Harry made improper deposits into and reimbursements from her operating account. (App. 655-56) Ms. Harry also does not wish to dismiss that such trust account violations constitute real misconduct, particularly when a lawyer (like Ms. Harry) has had several warnings through prior discipline.

However, there are and were no allegations or any evidence, whatsoever, that Ms. Harry ever knowingly misappropriated client or a third-party's funds. (App. 345-46, 354, 655-56)

Also, this Court's precedent supports that, even when a lawyer has engaged in worse prior conduct and worse trust account violations, appropriate sanctions allow the lawyer to continue to practice. Ms. Harry's misconduct was unintentional and without malice or selfish motive, but Ms. Harry admits she made errors with managing her trust account. In similar and sometimes worse situations, this Court has not interrupted a lawyer's practice with a real (as opposed to a stayed) suspension. In *In re Coleman*, 295 S.W.3d 857 (Mo. 2009), for example, 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. The lawyer in *Coleman* had engaged in misconduct that included:

- (a) Having a client execute a retainer agreement that gave the lawyer the exclusive right to settle a client's case, thereby violating Rules 4-1.2 and 4-1.7;
- (b) Failing to notify the client at the time the lawyer withdrew from the client's case, a Rule 4-1.6 violation; and
- (c) Regularly paying personal obligations out of the lawyer's portion of settlement proceeds, which were still in the lawyer's trust account, commingled with client funds.

In light of these facts, *Coleman* supports a similar punishment for Ms. Harry, a stayed suspension with probation.

In addition to *Coleman*, in the past five years there have been numerous cases where a lawyer was found to have violated 4-1.15 – and often other provisions in the Missouri Rules of Professional Conduct – but was allowed to practice, generally with a stayed suspension and probation. Such cases include: *In re Griffin*, Case No. SC98235 (Mo. March 17, 2020) (violation of Rules 4-1.15(a) and (d), Rule 4-4.1(a) and (b), and Rule 4-8.4(a), (c), and (d)); *In re Wampler*, Case No. SC98004 (Mo. July 30, 2019) (violation of Rules 4-1.4 and 4-1.15(a), (c), and (f)); *In re Capelovitch*, Case No. SC97505 (Mo. November 21, 2018) (violation of Rules 4-1.4, 4-1.15(c), 4-8.1(c), and 4-8.4(c), and 4-8.4(d)); *In re Williams*, Case No. SC96752 (Mo. May 22, 2018) (violation of Rule 4-1.15(d), 4-5.3(b) and 4-8.4(b), (c), and (d)); *In re Risler*, Case No. SC96742 (Mo. November 21, 2017) (violation of Rules 4-1.15(a), (b), (c), and (f), Rule 4-8.1(c), and Rule 4-8.4(c)); *In re Gerecke*, Case No. SC96571 (Mo. November 21, 2017) (violation of Rules 4-1.15 and 4-8.4(c)); *In re Dorsey*, Case No. SC96287 (Mo. October 5, 2017) (reciprocal suspension for violation of Rules 4-1.15(a), (d) and (f)); *In re Crawford*, Case No. SC96010 (Mo. September 12, 2017) (violation of Rule 4-1.15(a), (b) and (f)); *In re Yonke*, Case No. SC96563 (Mo. August 15, 2017) (violation of Rule 4-1.15); *In re Pottenger*, Case No. SC96561 (Mo. August 15, 2017) (violation of Rule 4-1.15); *In re Sheth*, Case No. SC95382 (Mo. March 15, 2016) (violation of Rule 4-1.15 and 4-8.4); *In re Lander*, Case No. SC95263 (Mo. January 26, 2016) (violation of Rules 4-1.15 and 4-8.1).

To focus on a few of these cases, in May 2018, this Court issued a stayed suspension with probation in *In re Williams*, Case No. SC96752 (Mo. May 22, 2018), against an attorney who failed to notify clients regarding settlements or promptly deliver settlement funds to clients. The attorney in *Williams* avoided a more serious penalty despite having prior discipline relating to for failing to act with reasonable diligence and promptness under Rule 4-1.3 and for failure to adequately communicate with his client under Rule 4-1.4.

Also, in March 2020, this Court issued a stayed suspension in *In re Griffin*, Case No. SC98235 (Mo. March 17, 2020), against a lawyer who mishandled money while serving as an escrow agent, where – like in Ms. Harry’s case – no client ultimately suffered harm as a result of the lawyer’s actions.

Longer-standing precedent also import imposition of a sanction that would allow Ms. Harry to continue her practice uninterrupted. In *In re Miller*, 568 S.W.2d 246 (Mo. 1978), for example, this Court imposed only 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. Similarly, in *In re Elliott*, 694 S.W.2d 262 (1985), this Court imposed only a reprimand where the lawyer – in addition to maintaining poor records and having insufficient funds in the account – mishandled deposits and failed to pay a client promptly.

The misconduct at issue in *Miller* and *Elliott* is far more serious than the misconduct alleged against Ms. Harry and the misconduct Ms. Harry admits. Misappropriation of client funds is perhaps the most egregious misuse of client property. There are *no* allegations that Ms. Harry misappropriated client or third-party funds. In fact, although Ms. Harry

concedes she comingled her funds with client or third-party funds, no client or third-parties were harmed by the comingling.

Thus, both recent precedent like *Williams* and *Griffin* and long-standing precedent like *Miller* and *Elliott* support imposing a reprimand or stayed suspension on Ms. Harry. Uncontroverted facts show that although Ms. Harry admits she made mistakes with her trust account, she did not knowingly violate the Missouri Rules. (App. 655, 664-66) Thus, only a reprimand or stayed suspension should be imposed.

Mitigating Factors Support Imposing an Indefinite Suspension. Finally, the mitigating factors here should cause the Court to impose no penalty greater than a stayed suspension with probation on Ms. Harry.

ABA Standard 9.1 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 or 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.

Mitigation is appropriate under ABA Standard 9.32 because Ms. Harry has a respected legal career, as attested by her character references, appointment by Judge Burton to the domestic violence docket and referrals from Judge Reno (App. 543,671-73); Ms. Harry's activities with the Missouri and Mound City Bars, including presenting at recent conferences; and her community and volunteer work and philanthropy through Kids in the Middle, Operation Food Search, and to help students at St. Louis City Public Schools (App. 673-74)

Moreover, the evidence demonstrates that Ms. Harry acted without a dishonest or selfish motive. (App. 345, 670-76) She was candid, forthcoming, remorseful, and otherwise cooperative throughout the disciplinary process. (*See, e.g.*, App. 339-40 (OCDC investigator Ms. Dillon testified that Ms. Harry was generally truthful)) Ms. Harry's cooperative attitude toward the proceedings, including that she sought out Ms. Dillon to discuss the information sought for OCDC's investigation (App. 352), full disclosure to the disciplinary board, and character reputation are all mitigating factors that should be

considered under Rule 9.1, and all reasons this Court should enter only a reprimand or stayed suspension against Ms. Harry. Finally, any discipline Ms. Harry may face should be reduced or mitigated because (a) Ms. Harry has gained additional education and now better understands trust account operations; and (b) Ms. Harry has modified her practices in handling client and third-party funds to ensure all her actions comply with her obligations under Missouri law. (App. 653-55, 658-61)

Conclusion. Ms. Harry asks that this Court issue an order imposing a reprimand or a stayed suspension with probation.

Respectfully submitted,

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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 6,961 words.

/s/ Michael P. Downey

CERTIFICATE OF SERVICE

The undersigned certifies that copy of the foregoing was filed on this 10th day of June, 2021 to the following counsel of record:

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