**IN THE SUPREME COURT**

**STATE OF MISSOURI**

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| **IN RE:** | ) | |
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| **DANIEL S. CORNACCHIONE, SR.** | ) | **Supreme Court No.: SC99933** |
| P.O. Box 184 | ) | |
| 324 Ward Avenue | ) | |
| Caruthersville, Missouri 63830 | ) | |
| | ) | |
| Missouri Bar No.: 54935 | ) | |
| | ) | |
| **Respondent.** | ) | |

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# RESPONDENT'S BRIEF

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# TABLE OF AUTHORITIES

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## STATEMENT OF JURISDICTION

Respondent agrees with the Informant's Statement of Jurisdiction.

## STATEMENT OF FACTS

### Background and Disciplinary Hearing

Respondent agrees with Informants facts as they pertain to the Background and Disciplinary Hearing.

### Count I – Domestic Assault

Respondent does take issue with how some facts are portrayed relative to Count I. In particular, in its first paragraph, Informant states "Respondent testified at the hearing that he was depressed and was having personal problems in April of 2020." **Inf. Brief at p. 9.** This is not a fair summary of the whole of the situation. By April 10, 2020, everyone was locked down because of COVID, and Respondent discovered that his then wife had been having an affair throughout the entire course of their relationship. **R. at Vol. 1, p. 97 (Tr. 142: 1-16).** The Respondent and his then wife were trying to "work through things." **Id.** Respondent discovered on April 10, 2020, that his then wife was still seeing her paramour and diverting substantial amounts of Respondent's income to her paramour. **Id.** It is important to restate that the only threats that were made, was that the Respondent threatened his own life. **R. at Vol. 1, p. 97 (Tr. 142: 5-16), p. 101 (Tr. 160:20-22).**

**Count II – Mario Lamar Hendrickson**

As it pertains to the factual statement relative to Count II, the Respondent has repeatedly questioned the relevance of his running for elected office. **R. at Vol. 1, pp. 21-22, ¶¶35-37 and ¶¶42-44.**

In its factual portion of the Brief, Informant lists out a number of instances where Mr. Hendrickson claims to have attempted contact with the Respondent. **Inf. Brief at p. 14.** Respondent testified that it was possible that Hendrickson called and messages were not passed along to Respondent. **R. at Vol. 1, p. 77 (Tr. 62: 1 – 16.).** Respondent testified that none of the identified attempts at email communication were received as claimed by Hendrickson **R. at Vol. 1, p. 77 (Tr. 61:13 – 18).**

**Count III – Linda Kay Ricketts, Anita Odom Wall, et al.**

In Count III, Informant indicates that Respondent agreed to represent Dr. Ricketts "*and her family*." **Inf. Brief at p. 14 – 16.** (emphasis added). Respondent agreed only to represent Dr. Ricketts and was also authorized to communicate directly with her nephew as a point of contact. **R. at Vol. 1, pp 81 – 82 (Tr. 80:16 – 81:7)**

In Count III, Informant also references "a local inquiry from an individual interested in purchasing the property at issue." **Inf. Brief at p. 15.** The "individual interested" was one of the other two lawyers in town, Wendell

Hoskins. **R. at Vol 1, pp 84-85 (Tr. 91:23 – 93:15).** There was a conversation regarding availability of information and the struggle that Respondent was having getting information from Ricketts, or more specifically, Mr. Odom, the designated point of contact. **Id.**

In Count III, Informant claims that Respondent failed to file an answer or other responsive pleading to the counterclaim on behalf of Dr. Ricketts. **Inf. Brief at p. 17.** This is not a true statement as the Respondent has filed a Motion for a Declaratory Judgement on behalf of Dr. Ricketts. **R. at Vol. 1, p. 87 (Tr. 102:18-25); R. at Vol. 1 p. 101 (Tr. 160: 3 – 8); R. at Vol. 4, pp. 650 – 654 (Tr. Ex 17, pp. 116 – 120).**

**Count IV – Trust Account Audit**

In Count IV, Informant claims "Respondent failed to create and maintain individual client ledgers. **Inf. Brief at p. 18.** There was an apparent misunderstanding as what Informant was being requested when Informant requested "individual client ledgers." Respondent maintains what he calls "accounts receivable." When Respondent offered to make those available to Informant, he was told that "It doesn't matter at this point." **R. at Vol. 1, pp 102 – 103 (Tr. 163:22 – 165:3)**[1]

[1] Please note the transcript reads "It doesn't matter. At this point – I just – I just wondered…" The statement was, "It doesn't matter at this point. I just – I just wondered…"

In Count IV, Informant states "Respondent asserts that he hired himself to represent himself in this damage claim, but no legal services were provided and no charges for legal services were billed." **Inf. Brief at p. 19.** In support, Informant cites to "R. at Vol. 1, p. 88 (Tr. 105:1 – 106:18). **Id.** Informant is making a legal conclusion drawn by Informant regarding the issue. Respondent has handled many insurance claims for clients that required less legal work than was required for the damage to his building. Respondent was acting pro-se' representing himself.

In Count IV, Informant states "Respondent testified that he put the money back in there once he identified the erroneous loan payment, but he was unable to identify that transaction for the Panel. **Inf. Brief at p. 20.** In support of this statement, Informant cites R. at Vol. 1, pp. 88 – 89 (Tr. 108:16-17) **Id.** This issue is in reference to a loan payment that was inadvertently made from the Client trust fund. In that same citation it is explained that the money was put back first $300.00 and then $900.00. **R. at Vol. 1, pp. 88"– 89 (Tr. 108:16-17, 109:3-110:17)**

**Disciplinary Hearing Panel's Decision**

Respondent agrees with the facts as they pertain to the Disciplinary Hearing Panel's Decision, except to the point that Informant wishes to add to the Disciplinary Hearing Panel's Decision.

## POINTS RELIED ON

### I.

**RESPONDENT VIOLATED RULES 4-1.15(a), (b), (c), and (f), 4-1.3, 4-1.4, 4-1.6, 4-3.2, 4-8.4(b) 4-8.4(c), and 4-8.4(d) AS LLEGED IN THE INFORMATION**

### II.

**UPON CONSIDERATION OF THIS COURT'S DECISIONS IN PREVIOUS ATTORNEY DISCIPLINE CASES AND THE ABA SANCTION GUIDELINES, RESPONDENT SHOULD BE SUSPENDED INDEFINITELY, WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR TWO YEARS.**

# ARGUMENT

## I.

## RESPONDENT VIOLATED RULES 4-1.15(a), (b), (c), and (f), 4-1.3, 4-1.4, 4-1.6, 4-3.2, 4-8.4(b) 4-8.4(c), and 4-8.4(d) AS ALLEGED IN THE INFORMATION

### Standard of Review

In disciplinary proceedings, the disciplinary hearing panel's recommendation as to the appropriate measure of discipline is merely advisory. *In re Donaho,* 98 S.W.3d 871, 873 (Mo. banc 2003), citing, *In re Snyder*, 35 S.W.3d 382 (Mo. banc 2000). Although this Court gives considerable weight to the panel's suggestion, it must independently review the record and determine the punishment necessary to both "protect the public, and maintain the integrity of the legal profession." *Id., citing In re Littleton*, 719 S.W.2d 772, 777 (Mo. banc 1986).

The Court reviews the evidence *de* novo, independently determining all issues pertaining to the credibility of witnesses and the weight of the evidence and reaches its own conclusions of law. *In re Crews*, 159 S.W.3d 355, 358 (Mo. banc 2005).

### COUNTd

As Respondent has indicated in past proceedings with the Informant, he agrees that entering an *Alford* plea to a misdemeanor domestic assault case *could*

be "prejudicial to the administration of justice" and that *could* "negatively impact the image and perception of lawyers who are officers of the court." Respondent denies that this actually occurred.

Respondent's decision to enter an *Alford* plea was not taken lightly. Being a criminal defense attorney himself, Respondent realized that if a jury believed the alleged victim, there could be a felony conviction. On the advice of counsel, this *Alford* plea to a misdemeanor with terms of a suspended imposition of sentence was entered.

Further, and more importantly for this discussion, if there was a jury trial, it would have been scandalous. A spotlight would have been shown on the situation with media coverage that most certainly would "negatively impact the image and perception of lawyers who are officers of the court." Finally, violence has never been a part of the Respondent's history. Never before and never after have the police been called to investigate domestic violence concerns with the Respondent.

**Count II**

"The Panel expressly found that Respondent did not violate Rule 4-8.4(d) in Count II as had been alleged by Informant. The Panel noted there was no evidence of Respondent's delay of nineteen months in closing the estate actually inconvenienced his clients or caused extra work for the Court." **Inf. Brief at p. 21** (internal quotations omitted), **R. at Vol. 1, pp. 33-52.**

Informant cites to Rule 4-1.3 and Rule 4-3.2 being violated as it pertains to diligence and expediting litigation, indicating "unnecessary inconvenience to Mr. Hendrickson. **Inf. Brief at pp. 25 – 26.** Respondent has admitted that this case took longer than the average of ***his*** cases. **R. at Vol. 1, p. 23 (Respondent's Amended Answer, ¶52)** Respondent further agrees with informant that the estate was "modest." **Inf. Brief at p. 25.** However, Respondent has continually denied that the estate was "simple." **R. at Vol. 1, p. 21 (Respondent's Amended Answer ¶29).**

The original personal representative, James Trice, went missing (later to find out he was deployed) and a successor personal representative, Mario Hendrickson had to be appointed. **R. at Vol. 3, pp 384-392 (Tr. Ex 15, pp 18"– 26).** A former spouse made a claim against the estate causing the process to become prolonged and resulted in multiple hearings, orders for the sale of a $10,000.00 house, accounting for publication and sale on the courthouse steps. **R. at Vol. 3, pp. 367–485 (Tr. Ex 15).**

In reference to violation of Rule 4-1.4, Informant states "Respondent has acknowledged that on multiple occasions, Mr. Hendrickson was not able to reach him." **Inf. Brief at p. 26.** That is not what was testified to. **R. at Vol. 1, p. 77 (Tr. 62: 1 – 16.)** Respondent testified that it was possible that Hendrickson called and messages were not passed along to Respondent. **Id.** Further, Respondent

denied that any identified emails were received as claimed by Hendrickson **R. at Vol. 1, p. 77 (Tr. 61:13 – 18).**

In reference to alleged violations of Rule 4-8.4(d), the Hearing Panel specifically found that the Respondent was not guilty of this professional misconduct. **Inf. Brief at p. 21, R. at Vol. 1, pp. 33-52.** Informant cites as comparison, *In re: Spradling*, 952 So.2d 642, 647 (La. 2007). **Inf. Brief at p. 26.** In the opening paragraph of *Spradling*, it notes that Mr. Spradling had over a thirteen year history of severe alcohol abuse and missed multiple court appearances, so much so that the Juvenile Court Judge required him to serve 24 hours in jail for contempt. *Spradling,* 952 So.2d at 644. Informant also cites *In re Rich,* 823 N.E.2d 1191 (Ind. 2005) This case involves an attorney who did not advise his client of a subpoena, did not appear in court, nor did he advise of the resulting treble damages that were awarded against his client and a $20,000 judgement for attorney fees. *In Re Rich*, 823 N.E.2d 1191, 1191 – 1192. The actions of the Respondent are not comparable to the actions of either *Spradling* or *Rich*. As a side note, the penalty in *Rich* was public admonishment.

Again, Respondent has acknowledged that this case took longer to complete than it should have. However, there was no actual harm to the client. He was not inconvenienced. At the time Mr. Hendrickson was notified of a typographical error in the Judgement of Distribution, he was three blocks from Respondent's

office and could have taken care of the matter immediately. As soon as it was brought to Respondent's attention, the matter was corrected so he could get proper titles. Respondent has taken remedial actions in the form of he no longer represents clients relative to decedent's estates, an area that Respondent has very little experience in handling.

**Count III**

The Informant alleges violations of Rules 4-1.3 and 4-1.4 in that Respondent was not clear in indicating who he was representing and that Respondent failed to file answers or respond to discovery. **Inf. Brief at 26 – 27.** Both of these issues were addressed in the factual portion of Respondent's Brief.

First, Respondent only represents Dr. Ricketts, and continues to this date to represent only Dr. Ricketts in this matter. Further, Respondent only corresponds with Dr. Ricketts at this point. The case is very complex as the Court can see by the very lengthy portion of the Record this case occupies. **R. at Vol. 4, pp. 535 – 757 (Tr. Ex 17).** There was confusion and a misunderstanding when the Respondent received an email from another lawyer addressed to Dr. Ricketts. **R. at Vol. 1, p 86 (Tr. 98:18- 99:10).** When the Respondent realized the misunderstanding, he re-established contact with Dr. Ricketts, and the case continues.

Second, there is an informal agreement with the other attorneys that Answers to the Petition and Answers to the Discovery are held off until the parties can be identified. None of the other lawyers involved have filed Answers to the Petitions or to the Discovery. There was a hearing on November 15, 2022, wherein all of the interested parties have been identified. Some of these parties have been served, others are still being located. Further, the Judge agreed that the style of the case denominating who are Plaintiffs and who are Defendants needs to be adjusted to avoid conflicts and confusion.

Informant cites a violation of Rule 4-1.6(a) regarding an email that Respondent had with another local attorney, Wendell Hoskins, as violating client confidentiality. As addressed in the factual portion of this brief, the only information conveyed was frustration that Respondent could not get a response from Mr. Odom, the person Dr. Ricketts designated for Respondent to communicate with. This is a general type of conversation that Respondent has had with many attorneys both speaking and listening. The email was voluntarily produced to the Informant, together with a letter addressed to Mr. Odom expressing concerns over his not responding to Respondent's requests for information from the client. **R. at Vol. 4, p. 497 (Tr. Ex 16, p. 12).**

## Argument Relative to Counts II and III

In the nearly twenty (20) years that Respondent has been practicing, he has closed over 6,000 files. Please also understand that these 6,000 files are actual files. Short matters such as powers of attorney, quit claim deeds, and wills, have been closed out in combined annual closed files.

At one time, Respondent would carry an average load of 120 cases, but with age has voluntarily slowed down this pace, not taking any probate matters, and steering clear of anything that involves real estate. It is the Respondent's opinion that having a record of two out of 6,000 clients complain about diligence and communication, both cases having misunderstandings or other technical communication problems is a fairly impressive record.

## Count IV

Rule 4-1.5(c) states that an advanced flat fee which does not exceed $2,000.00 is exempted from this requirement and may be deposited into another account. By addressing this issue first, many other issues may be resolved. As indicated, Respondent practices mostly in domestic and criminal defense cases. The average retainer for Respondent to handle a contested domestic case is $2,000.00. The average retainer for Respondent to handle a felony criminal matter is $3,000.00 to $4,000.00. However, in the economically depressed area of Southeast Missouri, the Respondent does not receive this money up front. On

criminal cases, Respondent is usually lucky to obtain $1,000.00 as a down payment, and payments are accepted on the remainder of the balance, usually not being paid off by the time the matter is concluded; usually not being paid off ever.

Informant alleges that Respondent fails to perform a reconciliation "promptly each time an official statement from the financial institution is provided or available." The Respondent does do this, but apparently not in the form or fashion that Informant would have him do. The monthly statements produced to the Informant (not included in the Record) have markings on the statements where money in is matched to money out. **R. at Vol. 1 pp. 95-96 (Tr 136:15"– 137:3).** Further, Respondent does not have to wait for a bank statement as he keeps up with money in and money out on the bank's online banking program.

Further, Informant alleges that Respondent does not maintain individual client ledgers. Respondent does maintain "accounts receivable" that accounts for individual client accounts. When Respondent offered to make those available to informant, he was told that "It doesn't matter at this point." **R. at Vol. 1, pp 102 – 103 (Tr. 163:22 – 165:3)**[2]

Informant alleges violations of Rule 4-1.5(b) in that Respondent deposited personal funds directly to his client trust account to hide money from his former

[2] Please note the transcript reads "It doesn't matter. At this point"– I just – I just wondered…" The statement was, "It doesn't matter at this point. I just – I just wondered…"

wife. First note that this came by way of an admission of the Respondent. Informant never identified any transaction that would show that this happened other than to identify some $800.00 surplus in the trust account. Respondent knows that this was a wrong thing to do, admitted the violation without being confronted with it, was part of a temporary situation that Respondent found himself in, and is no longer in that situation. Additionally, no client was injured by this money sitting in the trust account, and the Informant was able to obtain a greater monthly interest payment as a result.

## II.

**UPON CONSIDERATION OF THIS COURT'S DECISIONS IN PREVIOUS ATTORNEY DISCIPLINE CASES AND THE ABA SANCTION GUIDELINES, RESPONDENT SHOULD BE SUSPENDED INDEFINITELY, WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR TWO YEARS.**

### Count I

As it pertains to Count I, Respondent agrees that the applicable standard cited by the Informant would be ABA Standard Rule 5.12. Nothing related to Count I would fall under the presumptive disbarment in ABA Standard Rule 5.11; nor does any action in Count I fall within the language of ABA Standard Rule 5.13. However, after considering the Mitigating and Aggravating Circumstances Respondent proposes that discipline involving admonition would be most appropriate for Count I.

Mitigating factors applicable to Count I include ABA Standard 9.32(a), (b), (c), (d), (e), (g), (k), (l) and (m). There was no dishonest or selfish motive. ABA Standard Rule 9.32(b). As discussed above there were severe personal and emotional problems. ABA Standards Rule 9.32(c).

Relative to section (d), timely restitution or rectifying consequences, Respondent would point out that he brought this matter to a conclusion as quickly

as possible. Respondent believes that most would attempt to continue the criminal procedures indefinitely. Respondent wanted this chapter of his life closed and entered his *Alford* plea. As soon as Respondent was free of the marriage that was causing the personal problems, he turned a new leaf and moved on with his life. Consideration of this mitigating factor also dovetails into the Respondent's attempt at mitigating the public perception. By entering the *Alford* plea, the Respondent avoided the spotlight and scandal that would have been associated with a trial. ABA Standard Rule 9.32(d).

The Informant and disciplinary panel both indicated Respondent's cooperative attitude toward the proceedings. ABA Standard Rule 9.32(e); **R. at Vol. 1, p 51 (Panel Decision at p. 19); Inf. Brief at p. 32**. Relative to character or reputation, Respondent does not have any record of being a violent person, and in fact is not a violent person. Respondent was not violent or threatening toward any household member. He has never had any instances of violence in his life. The Respondent wanted this chapter of his life closed with as little conflict and confrontation as possible. ABA Standards Rule 9.32(g). This line of consideration also brings to light ABA Standard Rule 9.32(a) in that there are no other prior instances of any similar situation.

Regarding imposition of other penalties and sanctions, as a result of entering an *Alford* plea, the Respondent received a suspended imposition of sentence, and

was placed on two (2) years of supervised probation. ABA Standards Rule 9.32(k). Relative to remorse, the Respondent is entirely remorseful that the situation resulted in any public confrontation, spotlighting and scandal to the profession. Respondent admitted and was forthright with the bar regarding the facts behind and leading up to April 10, 2020. Respondent has great remorse that the relationship culminated in such a way as to cause fear, shame, or burden to any party involved. ABA Standard Rule 9.32(l).

As it pertains to aggravating circumstances relative to Count I, Respondent could see where ABA Standards Rule 9.22(k) could apply in that he was accused of illegal conduct. Respondent could also see where ABA Standards Rule 9.22(g) could apply in that Respondent entered an *Alford* plea and does not admit that he actually threatened a household member.

After consideration of the mitigating and aggravating circumstances relative to Count I, the Respondent prays the Court admonish the Respondent pursuant to ABA Standard Rule 5.14.

**Counts II and III**

The Informant states that disbarment pursuant to ABA Standard Rule 4.41(b) and (c) apply to Counts II and III. The Respondent adamantly disagrees. Both subsections require that Respondent "***causes*** serious or potentially serious injury to a client." ABA Standard Rule 4.41(b) and (c)(emphasis added). Relative

to Count II, the Hearing Panel specifically found that the client was not inconvenienced, much less suffered serious or potentially serious injury. **R. at Vol 1, p. 41 (Panel Decision at ¶56).** Relative to Count III, the Respondent continues to represent the client. **R. at Vol. 1, p. 51 (Panel Decision at p. 19).**

Suspension pursuant to ABA Standard Rule 4.42 relative to Counts II and III would also be inappropriate as ABA Standard Rule 4.42 also requires *causing* injury or potential injury to the client. ABA Standard Rule 4.42. Further, Rule 4.41 and 4.42 both require either knowledge or a pattern of conduct. Neither of the instances in Counts II and III can be said to be "knowing." Respondent would admit negligence. However, two out of 6,000 files over a period of nearly twenty (20) years do not make a "pattern." Even reprimand pursuant to ABA Standard Rule 4.43 requires "injury or potential injury" to the client.

The more applicable ABA Standard to apply for Counts II and III would be ABA Standard Rule 4.44 when a lawyer is negligent, does not act with reasonable diligence in representing a client, *and causes little or no actual or potential injury to a client*. ABA Standard Rule 4.44 (emphasis added). Respondent asserts this is the proper ABA Standard to apply to Counts II and III.

Relative to mitigating and aggravating circumstances, Respondent suggests that Rule 9.32(b)(d)(e)(f)(l) and (m) apply as mitigating circumstances. There was no selfish motive relative to the delay caused in the action. ABA Standard Rule

9.32(b). As soon as the situations were brought to the attention of the Respondent, they were rectified. ABA Standard Rule 9.32(d). Further, Respondent has stopped taking on probate and real estate matters, both areas that Respondent has very little experience. ABA Standard Rule 9.32(e) and (f). The Respondent cooperated with the OCDC and the Disciplinary Hearing Panel relative to their investigations. ABA Standards Rule 9.32(e); **R. at Vol. 1, p 51 (Panel Decision at p. 19); Inf. Brief at p. 32**.

The Respondent is remorseful, and has always been remorseful. ABA Standard, Rule 9.32(l). When managing a caseload as Respondent was carrying at the time of these complaints, miscommunication and misunderstandings are bound to occur. *Id.* Respondent has taken administrative actions in his practice to avoid such events in the future. *Id.*; ABA Standard Rule 9.32(d).

The only aggravating factor relevant to Counts II and III would be Rule 9.22(a) involving prior disciplinary offenses. The Respondent does have a prior admonition for failure to comply with reasonable requests for information, the same being April 26, 2011. **R. at Vol. 1, p. 34 (Panel Decision at p. 2 ¶8).** However, the Hearing Panel determined that the same was "remote in time." **R. at Vol. 1, p. 51 (Panel Decision at p. 19).**

After considering the language of the ABA Standards and the facts and circumstances of Counts II and III, and further after consideration of the mitigating

and aggravating circumstances, the Respondent Prays for admonition discipline pursuant to ABA Standard Rule 4.44.

**Count IV**

Informant requests this Court impose disbarment discipline relative to Count IV based upon ABA Standard Rule 4.11. **Inf. Brief at p. 31.** This provision requires that Respondent "knowingly convert" and "cause injury or potential injury to a client." ABA Standard Rule 4.11. Except for an instance where there was a $23.00 mathematical error relative to a client who did not even file a complaint, the Informant has failed to show where any client has had their property converted, that the Respondent did so knowingly, or that there was any injury or potential injury to a client.

Without being confronted with any instance of inappropriate use of the client trust fund, Respondent admitted that he had deposited personal funds to the client trust account to hide the same from a former spouse. Respondent will admit that this is a "knowing" violation. However, by doing so, no client was injured or potentially injured, and by the very facts of the admission, no client property was converted. In fact, Informant was benefited by recouping additional interest income as a result of the extra money in the trust account.

Similar to the discussions relative to Counts II and III, ABA Standard Rules 4.12 and 4.13 do not apply, as both require injury or potential injury to a client.

ABA Standard Rules 4.12 and 4.13. The appropriate ABA Standard rule that would apply to Count IV is ABA Standard Rule 4.14 that involves "negligence" and "little or no actual or potential injury." ABA Standard Rule 4.14.

The mitigating circumstances that would apply to Count IV are 9.32(a)(c)(e)(g) and (l). Respondent does not have any prior relevant disciplinary record. ABA Standard Rule 9.32(a). Respondent did have personal and emotional problems going on as previously described. ABA Standard Rule 9.32(c).

It is important to reiterate again that after a very exhaustive trust account audit, neither the Informant, nor the Disciplinary Hearing Panel discovered, proved, or pointed out where Respondent used his client trust account to hide money other than to inquire regarding the some $800.00 in the account. This is a violation that Respondent has voluntarily made full and free disclosure of to the Informant and the Disciplinary Hearing Panel. ABA Standard Rule 9.32(e). Further, as admitted by the Informant, Respondent had a cooperative attitude toward the proceedings. ABA Standard Rule 9.32(e); **R. at Vol. 1, p 51 (Panel Decision at p. 19); App Brief at p. 32.**

In his rejection of the Decision of the Hearing Panel, Respondent states "One rule that I can without a doubt state that I have followed as a lawyer is "Thou shalt not steal." Exodus 20:15. **R. at Vol. 1, p. 55 (Respondent's Rejection Letter at p. 3).** Respondent has been practicing in the same location for nearly

twenty (20) years and has not had any complaints about money being stolen or missing. ABA Standard Rule 9.32(g).

The very fact that Respondent voluntarily made this admission to the Informant and then to the Hearing Panel shows Respondent to have been individually convicted of his actions, is remorseful, is of good moral character, and made full and free disclosures. ABA Standard Rules 9.32(e), (g), and (l).

As far as aggravating circumstances, ABA Standard Rule 9.22(b) regarding selfish motives *could* apply. However, that selfish motive so affected the Respondent that he voluntarily confessed his actions to the Informant and Hearing Panel without being confronted with the same.

After considering the language of the ABA Standard and the facts and circumstances of the investigation relative to Count IV, Respondent prays for admonition pursuant to ABA Standard Rule 4.14.

**Relevant Caselaw**

Informant cites two cases as being persuasive on this Court's penalty decision in the case at bar, namely *In re Crews*, 159 S.W.3d 355 (Mo. banc 2005); and *In Re Donoho*, 98 S.W.3d 871 (Mo. banc 2003). Neither of these cases are comparable to the facts in the case at bar.

In *Crews*, the attorney waited to file a personal injury law suit until days before the statute of limitations ran. *In re Crews*, 159 S.W.3d at 357. The

opposing party filed a Motion for Summary Judgement that Crews failed to respond to resulting in dismissal of the Petition. *Id.* at 358. Crews *lied* to the clients about the case being dismissed. *Id.* Further Crews gave differing explanations to the client, the court, and the Disciplinary Hearing Panel. *Id.* at 360.

Respondent presumes that Informant is comparing *Crews* to Counts II and III relative to Hendrickson and Rickets. As described, no injury has come to either Hendrickson or Ricketts. Neither of Hendrickson nor Ricketts alleged any dishonesty. Hendrickson obtained the relief that he desired and his case is closed. Ricketts' case continues and Respondent continues to represent Ricketts.

In *Donaho*, the attorney accepted a retainer from his client, but never filed the Motion to Modify Child Support for which he was retained. *In re Donaho* 98 S.W.3d 871, 872. Shortly thereafter, he closed his office and moved to another state. *Id.* Donaho did not respond to certified mail sent to his new office. *Id.* The OCDC recommended that if restitution were made it would lead to a favorable result. *Donaho* 98 S.W.3d at 872. Donaho then purchased money orders and faxed copies of them to the OCDC as evidence that restitution had been made. *Donaho*, 98 S.W.3d at 873. However, Respondent never mailed the money orders, cashing them in for his own benefit as he had "debts of a higher priority." *Id.*

While Respondent is remorseful of his actions, the Respondent must respectfully disagree that *Donaho* bares any resemblance to the case at bar. In

*Donaho*, the Court particularly found it disdainful that Donaho misled the Disciplinary Hearing Panel, and then refused at oral arguments to even acknowledge that "his obvious fabrication could be characterized as 'dishonest.'" *Donaho*, 98 S.W.3d at 874 – 875.

The fact pattern of *Donaho* is exactly opposite of the case at bar. The Respondent voluntarily advised the Informant and the Disciplinary Hearing Panel of this violation without it even being discovered by either. Respondent has not lied about anything either to a client, the court, or the Disciplinary Hearing Panel. Further, there is no injury or potential injury shown to any client. Further, despite the severity of the facts in both *Crews* and *Donaho*, the penalty imposed is not commensurate with what the Informant is seeking in this case.

**Conclusion**

Relative to each of the individual counts, Informant cites that the Respondent should be disbarred as a baseline. However, Informant believes that based upon the mitigating circumstances that Respondent should be indefinitely suspended with no leave to reapply for two (2) years.

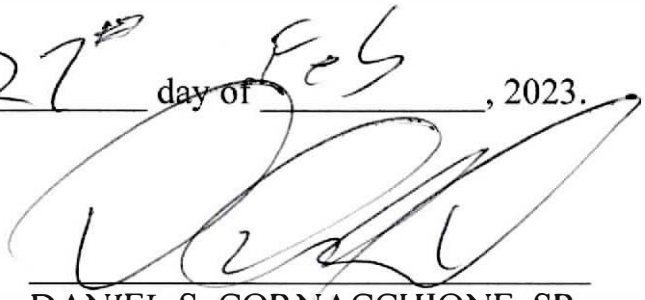
Relative to each of the four counts Respondent has shown that the language set forth in the ABA Standards show that admonishment and/or reprimand is the appropriate baseline even before considering mitigating and aggravating circumstances. After considering the overwhelming mitigating circumstances, the

Respondent respectfully prays for admonishment and/or reprimand discipline relative to all four counts.

## CONCLUSION

Respondent has been practicing in the same location for nearly twenty (20) years. He has been a sole practitioner for nearly eighteen (18) of those years providing legal services to an economically depressed corner of this State. Respondent admits that he went through a rough time with some personal problems, but denies that any client has experienced any actual or potentially serious injury. Respondent has entered a new chapter of his life and has made a full personal recovery from the situation he had once found himself in. Respondent respectfully prays for admonishment and/or reprimand as the penalty to be imposed, and will gladly meet with the panel assigned to hear this case for questioning.

Respectfully Submitted, this the 27th day of Feb, 2023.



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## CERTIFICATE OF SERVICE

I hereby certify that on this date, a copy of Respondent's Brief is being served upon Informant through the Missouri Supreme Court electronic filing system pursuant to Rule 103.08.

This the 27th day of Feb 2023.

DANIEL S. CORNACCHIONE, SR.

## CERTIFICATE OF COMPLIANCE

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

1. Includes the information required by Rule 55.03 of the Missouri Rules of Civil Procedure;

2. Was served on Informant through the Missouri electronic filing system pursuant to Rule 103.08 of the Missouri Rules of Civil Procedure;

3. Complies with the limitations contained in Rule 84.06(b) of the Missouri Rules of Civil Procedure; and

4. Contains 5,772 words, according to Microsoft Word, which is the word processing system used to prepare this brief.

This the 27th day of Feb, 2023.

DANIEL S. CORNACCHIONE, SR.