

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

DANIEL S. CORNACCHIONE, SR.

P.O. Box 184

324 Ward Avenue

Caruthersville, MO 63830

Missouri Bar No. 54935

Respondent.

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Supreme Court No. SC99933

INFORMANT'S BRIEF

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INFORMANT

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STATEMENT OF JURISDICTION

This action is one in which Informant, the Chief Disciplinary Counsel, is seeking to discipline an attorney licensed in the State of Missouri for violations of the Missouri Rules of Professional Conduct. 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

STATEMENT OF FACTS

Background and Disciplinary Hearing

Respondent, whose bar number is 54935, was licensed as an attorney in Missouri on or about September 17, 2003, and is currently in good standing. **R. at Vol. 1, p. 1 & p. 17.** He is a solo practitioner in Pemiscot County (Caruthersville), whose practice focuses primarily on domestic relations cases and criminal defense matters. **R. at Vol. 1, p. 67-68 (Tr. 24:12-25:24).**

Respondent accepted an admonition in 2005 for failing to include an advertising disclosure in a letter to a prospective client as is required by Rule 4-7.3(a). In 2011, Respondent accepted an admonition for failing to comply with reasonable requests for information regarding a pending case, in violation of Rule 4-1.4, and for failing to adequately supervise a nonlawyer assistant, in violation of Rule 4-5.3. Then, in 2019, Respondent accepted an admonition for violations of Rule 4-1.9(a) (duties to former clients) and Rule 4-1.11 (special conflicts for former and current government officers and employees). These violations arose out of Respondent's representation of a child's mother in a parental rights case, when he had previously represented the County Juvenile Office in a matter involving the same minor child. **R. at Vol. 1, pp. 182-191 (Ex. 3).**

On June 7, 2022, Informant filed an Information determining, pursuant to Rule

5.11,¹ that probable cause exists to believe that Respondent is guilty of professional misconduct and charging Respondent with violations of specific Rules of Professional Conduct. Respondent filed his Amended Answer on August 22, 2022. **R. at Vol. 1, pp. 1-31.** The Disciplinary Hearing Panel conducted a hearing on September 21, 2022. Informant was represented by Laura E. Elsbury, and Respondent represented himself. Informant's Exhibits 1-17 were admitted without objection as was Respondent's Exhibit A. Informant put on one witness and Respondent also testified. **R. at Vol. 1, pp. 61-149.**

Count I – Domestic Assault

On April 10, 2020, at about 11:30 p.m., Respondent's former wife summoned police to the home she shared with Respondent. When police arrived, Respondent was in an upstairs bedroom. The responding officer called to Respondent several times before he came out of the bedroom and came downstairs. **R. at Vol. 3, pp. 315-324 (Ex. 10).** Respondent and his former wife had been arguing that day. **R. at Vol. 1, p. 70 (Tr. 34:19-22).** Respondent testified at the hearing that he was depressed and was having personal problems in April of 2020. **R. at Vol. 1, p. 97 (Tr. 141:25-142:16), p. 101 (Tr. 160:16-22).**

Respondent had been consuming alcohol earlier that evening, and the officer noted in his report that Respondent "had a strong odor of an alcoholic beverage coming from

¹ Rule 5 was recently amended and the applicable provision is now Rule 5.12. However, the previous version of the Rule controls in this case because the Information was filed prior to January 1, 2023. *See* Rule 5.34.

his person.” The officer also noted in his report that he recovered a loaded handgun from the foot of the bed in the room that Respondent emerged from. Respondent’s former wife told police that Respondent had waved the gun around and pointed it at her while making threatening statements. **R. at Vol. 1, pp. 315-324 (Ex. 10)**. Respondent was arrested and charged with:

- Unlawful use of a weapon in violation of Section 571.030, RSMo;
- Unlawful use of a weapon while intoxicated also in violation of Section 571.030, RSMo; and
- Domestic assault in violation of Section 565.076, RSMo.

Circuit Court records show that on May 17, 2021, Respondent pleaded guilty to domestic assault in the fourth degree, a class A misdemeanor. Respondent was given a suspended imposition of sentence² and placed on two years of supervised probation. **R. at Vol. 3, pp. 251-314 (Ex. 8 & Ex. 9)**.

About one year later, Respondent directed a letter to the judge. **R. at Vol. 4, pp. 758-59 (Ex. A)**. Shortly thereafter, on June 16, 2022, the circuit court made the following docket entry:

² See *In re McBride*, 938 S.W.2d 905, 907 (Mo. banc 1997) (holding that “an SIS is a final disposition for purposes of attorney discipline. . . . Whether the attorney successfully completes his probation or he violates its terms and his sentence is imposed, the conduct of which he was found guilty warrants an evaluation as to his fitness to currently practice law.”)

Upon receipt of communication from Defense counsel, Jeff McCormack, the Court incorrectly entered a “plea of guilty” to the charge of Class A Misdemeanor Domestic Assault 4th degree. The docket entry should have correctly read and been entered as an Alford Plea. Court orders that the docket entry of 10/04/2021 be corrected to reflect that the Defendant entered an Alford Plea to the charge of Class A Misdemeanor Domestic Assault 4th degree. Clerk to notify all parties accordingly. SO ORDERED.

TDS/slt

R. at Vol. 4, p. 760 (Ex. A).

A person commits the offense of domestic assault in the fourth degree if he purposely places a family member in apprehension of immediate physical injury or recklessly engages in conduct which creates a substantial risk of death or serious physical injury to a family member. Section 575.076.1, RSMo. Respondent admitted that his former wife would qualify as a family member under the applicable statute. Respondent admitted that on April 10, 2020, he and his former wife were arguing and that he was in possession of a loaded firearm while under the influence of alcohol. **R. at Vol. 1, p. 75 (Tr. 55:12-56:12).**

Count II – Mareo Lamar Hendrickson

On or about May 31, 2019, Mr. Mareo Lamar Hendrickson, with reference to his brother Mr. James Trice, filed a complaint with the Office of Chief Disciplinary Counsel (OCDC). The complaint discussed Respondent’s lack of diligence in handling their

father's probate estate and alleged serious problems with communication throughout the process. **R. at Vol. 3, pp. 337-366 (Ex. 14).**

Mr. Hendrickson's father, James Edward Lane, had passed away on February 15, 2016. Respondent filed the necessary paperwork to establish a probate estate for Mr. Lane in Pemiscot County, Missouri, on August 17, 2016. (Case No. 16PE-PR00058). Once the estate's assets were under control and the claims had been adjudicated, an order for distribution of the remaining assets was issued by the probate court on March 22, 2018. This order included a provision that title to Mr. Lane's two vehicles be transferred jointly to Mr. Hendrickson and Mr. Trice. **R. at Vol. 3, pp. 367-485 (Ex. 15).** Respondent drafted the proposed order for the probate court's signature. **R. at Vol. 1, p. 5 & p. 21.**

Respondent then, on behalf of the Personal Representative, filed a motion to close the estate without further process on April 20, 2018. Promptly thereafter, on April 24, 2018, the probate court issued the following order:

The Court will not issue an Order to Close the Estate Without Further Process UNLESS AND UNTIL the Personal Representative provides receipts or cancelled checks for all seven of the payments listed in the March 22, 2018 Order, and receipts for the two vehicles listed in the March 22, 2018 Order.

(emphasis in original). **R. at Vol. 3, pp. 367-485 (Ex. 15).**

For the next 16 months, Respondent filed nothing with the probate court with respect to Mr. Lane's estate. **R. at Vol. 3, pp. 367-485 (Ex. 15).** However, in the

meantime, Respondent did file to run for elected office. On July 1, 2018, Respondent registered a candidate committee with the Missouri Ethics Commission, indicating he was running for Circuit Judge in the 34th Judicial Circuit. Respondent was successful in the August 7, 2018 primary. **R. at Vol. 1, p. 5 & p. 21.**

On August 17, 2018, the probate court sent a letter to Mr. Hendrickson reminding him that his father's estate had been pending for some time, asking him to make every effort to close the estate soon, and suggesting he contact his attorney (Respondent) for assistance. A similar letter was directed to Respondent. **R. at Vol. 3, pp. 367-485 (Ex. 15).** Mr. Hendrickson reached out to Respondent via email on August 28, 2018, and again on September 8, 2018. Respondent wrote back on September 20, 2018:

I have been advised by the court that they need receipts or cancelled checks for everything. That is the only thing that is left for me to do. I am going to have to go back through my trust fund bank statements copy them and provide them to the court. I have just been plowed under lately.

R. at Vol. 1, p. 6 & p. 22, pp. 337-366 (Ex. 14).

Respondent was unsuccessful in the general election on November 6, 2018. **R. at Vol. 1, p. 6 & p. 22.**

On May 7, 2019, Mr. Hendrickson – who lives in Houston, Texas – was visiting Missouri and went to a Department of Revenue office to obtain new titles to his father's vehicles. Mr. Hendrickson was not able to obtain those titles in May of 2019, because the March 2018 order of distribution, which had been drafted by Respondent, contained

incorrect vehicle identification numbers. Mr. Hendrickson made numerous attempts to contact Respondent as follows:

- By email on May 7, 2019;
- By telephone on May 8, 2019;
- By email on May 19, 2019;
- By telephone on May 29, 2019;
- By telephone on May 30, 2019.

R. at Vol. 1, p. 76-78 (Tr. 60:12-18, 63:23-64:2, 64:8-65:4); Vol. 3, pp. 337-366 (Ex. 14). Mr. Hendrickson drafted his OCDC complaint on May 31, 2019. **R. at Vol. 3, pp. 337-366 (Ex. 14).**

In a July 2019 letter to the OCDC, responding to Mr. Hendrickson's complaint, Respondent stated that he had last spoken with Mr. Hendrickson in September of 2018, when he assured him he "would get the case wrapped up by the end of the year." **R. at Vol. 1, p. 79-80 (Tr. 72:24-73:4); Vol. 3, pp. 337-366 (Ex. 14).** On August 12, 2019, Respondent finally filed an amended motion for distribution of the probate estate assets, which included the corrected vehicle identification numbers. The probate estate was closed in December of 2019. **R. at Vol. 3, pp. 367-485 (Ex. 15).**

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

On or about February 6, 2021, Dr. Linda Kay Ricketts, with reference to other relatives, filed a complaint with the OCDC. Respondent had been engaged by Dr. Ricketts and her family to represent their interests in property dispute. **R. at Vol. 4, pp. 486-534 (Ex. 16).** Dr. Ricketts, and several of her family members, were named as

defendants in a petition for declaratory judgment, quiet title, and partition that was filed in Pemiscot County on September 30, 2019. (Case No. 19PE-CC00325). **R. at Vol. 4, pp. 535-757 (Ex. 17).**

Respondent entered his appearance on behalf of just Dr. Ricketts on December 2, 2019. **R. at Vol. 4, pp. 535-757 (Ex. 17).** Respondent did not prepare a retainer agreement or a letter of engagement detailing the particulars of his representation. **R. at Vol. 1, p. 84 (Tr. 89:18-90:2).** Respondent did not file an answer or other responsive pleading to the petition on behalf of Dr. Ricketts and, for the next 19 months, Respondent filed nothing else in Case No. 19PE-CC00325. **R. at Vol. 4, pp. 535-757 (Ex. 17).**

On January 20, 2020, Respondent received a local inquiry from an individual interested in purchasing the property at issue in the case. Respondent's email reply was as follows:

It is weird. They paid me \$2K to represent them. They have a VERY confusing family tree. I sent an email before Christmas to confirm my understanding of the different relationships. He³ indicated he was dealing with a death in his family and that he would get back with me on the answers. He still hasn't responded. If I can get my staffing problem fixed down here I will chase him down to get a response.

³ The "he" referenced in this email is presumably Dr. Rickett's nephew who was expressly authorized to act as a point of contact for the family.

R. at Vol. 4, pp. 486-534 (Ex. 16). Respondent failed to obtain his client's express written consent to discuss her representation with anyone except for her nephew, who was designated as a point of contact for the family. **R. at Vol. 1, p. 84 (Tr. 91:17-20).**

On or about April 20, 2020, Respondent was served with a discovery request by an attorney representing another defendant. **R. at Vol. 4, pp. 535-757 (Ex. 17).** Respondent failed to produce documents or otherwise object to or respond to the discovery request on behalf of Dr. Ricketts. **R. at Vol. 1, p. 85 (Tr. 95:22-25), p. 101 (Tr. 158:20-23); Vol. 4, pp. 535-757 (Ex. 17).** On September 1, 2020, Dr. Ricketts sent an email to the attorney who had propounded the discovery request: "My delay in responding to your inquiry is due to our inability to receive any kind of guidance or communication from our attorney, Daniel Cornacchione." The attorney wrote back the same day and copied Respondent on the email, saying, "I will visit with Attorney Daniel Cornacchione about his representation of family and we [will] get back in touch with all." **R. at Vol. 4, pp. 486-534 (Ex. 16).** Respondent did not take any action to follow up on this email. **R. at Vol. 1, p. 86 (Tr. 98:17-99:10).**

On September 22, 2020, that attorney sent a follow up email to Dr. Ricketts's family and included the following:

I am not advised who among these family members are represented by Attorney Daniel Cornacchione, Sr. of Caruthersville, Missouri. I am asking Daniel Cornacchione, Sr. to review and give me a call.

(emphasis in original). **R. at Vol. 4, pp. 486-534 (Ex. 16).** Respondent did not take any action to follow up on this email. **R. at Vol. 1, pp. 86-87 (Tr. 100:18-101:17).**

Respondent testified he had assumed that Dr. Ricketts had hired a new attorney, but he did not confirm that with her, nor did he withdraw from the case or refund any unearned fees to her. **R. at Vol. 1, p. 87 (Tr. 101:11-25), p. 96 (Tr. 138:6-14)**. On April 1, 2021, in correspondence sent to the OCDC, Dr. Ricketts stated: “OUR ATTORNEY HAS NOT COMMUNICATED WITH US IN OVER YEAR.” (emphasis in original). **R. at Vol. 4, pp. 486-534 (Ex. 16)**.

On October 14, 2021, one of the other defendants filed a counterclaim against all plaintiffs and all defendants. Respondent received service of the counterclaim via case.net. **R. at Vol. 4, pp. 535-757 (Ex. 17)**. Respondent failed to file an answer or other responsive pleading to the counterclaim on behalf of Dr. Ricketts. **R. at Vol. 1, p. 80 (Tr. 76:2-8)**.

At the time of the hearing, Respondent continued to represent Dr. Ricketts in the litigation, but without any type of retainer or fee agreement. **R. at Vol. 1, p. 84 (Tr. 89:90-90:2)**.

Count IV – Trust Account Audit

Respondent maintains a client trust account with Focus Bank. The account number is XX9366. In November of 2019, the OCDC undertook an audit and investigation of the transaction activity in Respondent’s client trust account. On November 19, 2019, OCDC sent a letter to Respondent, notifying him of the audit and asking him to produce:

- Copies of the monthly client trust account statements beginning February 1, 2016 to present;

- Copies of all items presented against the client trust account and appearing on those statements;
- Copies of all deposit slips and all items deposited to the client trust account and appearing on those statements;
- A copy of the client ledger relating to the James Edward Lane estate.⁴

R. at Vol. 1, p. 11 & p. 26-27. Respondent failed to timely respond to this request and failed to provide all of the records. Accordingly, the Chief Disciplinary Counsel obtained some of the bank records for Respondent's client trust account directly from the bank by subpoena to the bank. **R. at Vol. 1, p. 64 (Tr. 10:2-12); Vol. 2 at p. 249 (Ex. 6).**

On April 29, 2022, Respondent provided Informant with sworn testimony regarding the review of his client trust account. **R. at Vol. 1, p. 12 & p. 27, pp. 192-219 (Ex. 4).** In conjunction with that event, Respondent was asked to produce a number of documents including a copy of his 2022 general ledger and copies of his monthly reconciliation sheets for 2022. Respondent produced most of the requested documents, but he failed to provide a general ledger and monthly reconciliation sheets. **R. at Vol. 1, p. 12 & p. 27.**

During the audit period, starting in February 2016 and continuing through the first quarter of 2022, Respondent failed to create and maintain a general ledger for his client trust account. During the audit period, starting in February 2016 and continuing through the first quarter of 2022, Respondent failed to create and maintain individual client ledgers. Respondent's level of cooperation with the review and investigation was

⁴ See Count II.

inconsistent, although it improved over time. **R. at Vol. 1, p. 64-65 (Tr. 12:14-16, 13:3-10), p. 95 (Tr. 136:15-24).**

The review of the client trust account revealed that in 2015, Respondent filed an insurance claim due to storm damage on his own office building. Respondent deposited the insurance settlement proceeds for that claim into his client trust account. Respondent paid for labor and materials to effect needed repairs out of his client trust account. **R. at Vol. 1, p. 13 & p. 28; Vol. 2, pp. 220-248 (Ex. 5).** Respondent asserts that he hired himself to represent him in this damage claim, but no legal services were provided and no charges for legal services were billed. **R. at Vol. 1, p. 88 (Tr. 105:1-106:18).**

Respondent made a payment of \$1,020.22 on a personal loan out of the client trust account on or about February 7, 2018. Respondent made another payment of \$1,000 on a personal loan from his client trust account on or about July 19, 2019. **R. at Vol. 1, p. 13 & p. 28; Vol. 2, pp. 220-248 (Ex. 5).**

On July 17, 2019, Respondent deposited settlement proceeds of \$4,500 related to his representation of Vickie Ward.

- Respondent promptly disbursed \$1,763 of the proceeds to Ms. Ward.
- Respondent promptly paid himself \$1,500.
- Respondent held on to \$1,237 in order to satisfy a medical lien.
- On July 19, 2019, after Respondent made a \$1,000 personal loan payment out of the client trust, the balance in the trust account fell below \$1,237. At that time, Respondent's client trust account should have held at least \$1,237 for the benefit of Ms. Ward.

R. at Vol. 1, p. 13 & p. 28, pp. 65-66 (Tr. 15:16-18:14). Respondent negotiated a reduction of Ms. Ward's medial lien from \$1,237 to \$223.22. In October of 2019, Respondent issued a payment to Ms. Ward for \$990.78, leaving a balance of \$23.00 due to Ms. Ward. **R. at Vol. 1, pp. 90-90 (Tr. 112:24-113:18), pp. 220-248 (Ex. 5), p. 250 (Ex. 7).** Respondent closed that client trust account in 2022 and withdrew all of the funds without remitting the \$23.00 to Ms. Ward. **R. at Vol. 1, p. 90 (Tr. 113:19-114:16).**

The balance in Respondent's client trust account prior to the \$4,500 deposit for Vickie Ward was \$895.71. **R. at Vol. 2, pp. 220-248 (Ex. 5).** Respondent admitted to commingling personal funds with client funds in the client trust account. **R. at Vol. 1, p. 90 (Tr. 113:23-114:2).** But, even if the entire \$895.71 was Respondent's own money, there was not enough of his money in the client trust account on July 19, 2019, to make the \$1,000 loan payment. **R. at Vol. 2, pp. 220-248 (Ex. 5).** Respondent admitted that he used client funds to pay the \$1,000.00 personal loan payment. 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. **R. at Vol. 1, pp. 88-89 (Tr. 108:16-17, 109:3-110:17).**

In a letter to the OCDC dated February 4, 2020, Respondent admitted to maintaining as much as \$3,000 to \$4,000 of his own money in his client trust account over the years. In that same letter, Respondent acknowledged that \$857.51 of his own funds were currently in the client trust account, and he expressed his intent to leave those funds there. Respondent also admitted to using his client trust account to hide money

from a former wife. **R. at Vol. 1, pp. 13-14 & p. 28, p. 91 (Tr. 119:12-23), pp. 192-219 (Ex. 4 Tr. 48:4-6).**

During his sworn statement, on April 29, 2022, Respondent admitted that he was still retaining some personal funds (approximately \$300) in the client trust account, but he did not have an exact figure. Respondent admitted he typically deposits client funds (unearned fees) directly into his operating account. **R. at Vol. 1, p. 14 & p. 29, p. 98 (Tr. 145:18-146:8); pp. 192-219 (Ex. 4 Tr. 52:17-20, 57:23-58:3).**

Disciplinary Hearing Panel's Decision

On November 15, 2022, the Hearing Panel issued its decision, concluding that Respondent had violated the following Rules of Professional Conduct:

- Count I – Rule 4-8.4(b) and Rule 4-8.4(d);
- Count II – Rule 4-1.3, Rule 4-1.4, and Rule 4-3.2;
- Count III – Rule 4-1.3, Rule 4-1.4, and Rule 4-1.6; and
- Count IV – Rule 4-1.15(a), Rule 4-1.15(a)(7), Rule 4-1.15(b), Rule 4-1.15(c), and Rule 4-1.15(f).

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 Respondent’s delay of nineteen months in closing the estate actually inconvenienced his clients or caused extra work for the Court.” **R. at Vol. 1, pp. 33-52.**

The Panel made no finding regarding the alleged violation of Rule 4-8.4(c) in Count IV. This omission appears to be an oversight, because the Panel made a factual finding regarding the conduct related to that allegation; specifically, that “Respondent

knowingly, multiple times, deposited unearned funds directly into his operating account, made personal loan payments out of his client trust account and transferred money from his operating account to the client trust account to hide it from a former wife.” **R. at Vol. 1, pp. 33-52.**

The Panel determined that the presumptive discipline was disbarment but found that the mitigating factors outweighed the aggravating factors.⁵ Accordingly, the Panel recommended that Respondent be suspended indefinitely with no leave to apply for reinstatement for two years. **R. at Vol. 1, pp. 33-52.**

Respondent rejected the Panel’s decision on December 13, 2022. **R. at Vol. 1, pp. 53-59.** Informant tendered a letter of acceptance on December 21, 2022. **R. at Vol. 1, p. 61.**

⁵ These factors will be discussed in more detail in Point II.

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 ALLEGED IN THE INFORMATION.

In re Shelhorse, 147 S.W.3d 79 (Mo. banc 2004)

Watkins v. State Bd. of Registration for the Healing Arts, 651 S.W. 582 (Mo. App. 1983)

Rule 4-1.15, Rule 4-1.3, Rule 4-1.4, Rule 4-1.6, Rule 4-3.2, and Rule 4-8.4

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.

In re Crews, 159 S.W.3d 355 (Mo. banc 2005)

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

ABA Standards for Imposing Lawyer Sanctions (1992)

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

Professional misconduct is established by a preponderance of the evidence. *In re Crews*, 159 S.W. 3d 355, 358 (Mo. banc 2005). This 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. *Id.* In matters of attorney discipline, the disciplinary panel’s decision is advisory. *In re Farris*, 472 S.W.3d 549, 557 (Mo. banc 2015).

An attorney must comply with the Rules of Professional Conduct as set forth in Supreme Court Rule 4 as a condition of retaining his license. *In re Shelhorse*, 147 S.W.3d 79, 80 (Mo. banc 2004). Violations of the Rules of Professional Conduct by an attorney are grounds for discipline. *Id.*

Count I

It is professional misconduct for a lawyer to “commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects[.]” **Rule 4-8.4(b)**. Respondent is guilty of professional misconduct in that he has committed the crime of misdemeanor domestic assault as defined in § 565.076, RSMo. Although the trial court records indicate that Respondent plead guilty, Respondent claims

that he intended to tender an Alford plea. However, “[a]n ‘Alford’ plea is still a guilty plea, even though it is coupled with a protestation of innocence.” *Watkins v. State Board of Registration for the Healing Arts*, 651 S.W. 582, 583 (Mo. App. 1983). This crime reflects adversely on Respondent’s fitness as a lawyer. Notably, his practice is focused on domestic relations and criminal defense.

Rule 4-8.4(d) states that it is professional misconduct to engage in conduct that is prejudicial to the administration of justice. Respondent has engaged in conduct that is prejudicial to the administration of justice in that his actions – related to the criminal act – negatively impact the image and perception of lawyers who are officers of the court. *See Attorney Grievance Comm’n of Maryland v. Painter*, 739 A.2d 24, 32 (Md. 1999) (observing that conduct “that engenders disrespect for the courts and for the legal profession may be prejudicial to the administration of justice. Lawyers are officers of the court and their conduct must be assessed in that light.”) (internal citations omitted)).

Count II

Rule 4-1.3 requires lawyers to “act with reasonable diligence and promptness in representing a client.” Similarly, **Rule 4-3.2** requires lawyers to “make reasonable efforts to expedite litigation consistent with the interests of the client.” Respondent violated Rule 4-1.3 and Rule 4-3.2 when he failed to handle Mr. James Edward Lane’s probate estate in a reasonably timely manner. It took more than three years to settle a modest estate, and there were long stretches and many months where Respondent took no action despite inquiries from the client and prompting from the probate court. Additionally, there were

unreasonable delays associated with producing an order of distribution, resulting in unnecessary inconvenience to Mr. Hendrickson, the Estate's Personal Representative.

Rule 4-1.4 requires a lawyer to (1) keep the client reasonably informed about the status of the matter and (2) promptly comply with reasonable requests for information. Respondent failed to stay in touch with Mr. Hendrickson regarding the progress of his father's probate estate. Respondent has acknowledged that, on multiple occasions, Mr. Hendrickson was not able to reach him.

Rule 4-8.4(d) makes it a violation to engage in conduct that is prejudicial to the administration of justice. Respondent violated Rule 4-8.4(d) with his negligent handling of the Lane Estate that resulted in inconvenience and unnecessary delays to his client and inconvenience and extra work for the probate court. *See In re Spradling*, 952 So. 2d 642, 647 (La. 2007) (finding a violation of Rule 8.4(d) when a lawyer inconvenienced litigants, attorneys, and court staff); *In re Rich*, 823 N.E.2d 1191 (Ind. 2005) (finding a violation of Rule 8.4(d) when a lawyer caused inconvenience to the court and the sheriff's office).

Count III

Respondent violated **Rule 4-1.3** when dealing with Dr. Linda Ricketts and her family after they were named as defendants in a property dispute in September of 2019. Respondent was not diligent with respect to identifying and communicating clearly which family members he was representing, even though one of the other attorneys in the case tried to discuss the subject with him on more than one occasion. Additionally, with respect to his representation of Dr. Ricketts in the litigation, Respondent failed to file

answers to the petition and cross-claim petition and failed to respond to discovery requests.

Rule 4-1.4 requires a lawyer to (1) keep the client reasonably informed about the status of the matter and (2) promptly comply with reasonable requests for information. Dr. Ricketts has complained, and the evidence establishes, that Respondent failed to communicate with them regarding the status of the litigation – notably, the pending discovery, and he failed to respond to their many inquiries.

Rule 4-1.6(a) prohibits lawyers from revealing “information relating to the representation of a client” in the absence of informed consent. Respondent violated this prohibition by discussing details pertaining to his representation of Dr. Ricketts and her family in an email with an individual interested in buying the property that was the subject of pending litigation.

Count IV

Rule 4-1.15 addresses trust accounts and the safekeeping of the property of others. **Subsection (a)** requires lawyers to hold client property separate from the lawyer’s own property. Respondent has violated Rule 4-1.15(a) by commingling personal funds with client funds. Specifically, Respondent (1) deposited personal funds into his client trust account (2) retained earned fees in the client trust account, and (3) deposited unearned client funds into his operating account.

Rule 4-1.15(a)(7) requires lawyers to perform a reconciliation “promptly each time an official statement from the financial institution is provided or available.”

Respondent failed to perform proper reconciliations of the client trust account, because he was not creating and maintaining a general ledger or individual client ledgers.

Rule 4-1.15(b) prohibits lawyers from depositing their own funds into the client trust account, except as needed to pay service charges imposed by the financial institution. Respondent violated Rule 4-1.15(b) by depositing personal funds directly into his client trust account on multiple occasions to hide money from his former wife.

Except for flat fees that do not exceed \$2,000.00, lawyers must deposit advance fees and expenses into the client trust account “to be withdrawn by the lawyer only as fees are earned or expenses incurred[.]” **Rule 4-1.15(c)**. Respondent violated Rule 4-1.15(c) by depositing unearned fees exceeding \$2,000 directly into his operating account.

Subsection (f) of Rule 4-1.15 requires lawyers to create and maintain complete client trust records, and establishes minimum standards for what “complete records shall include[.]” Respondent has violated Rule 4-1.15(f) by failing to create and maintain a general ledger, by failing to create and maintain client ledgers, and by failing to create and maintain fee agreements for all clients.

It is professional misconduct to “engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.” **Rule 4-8.4(c)**. Respondent is guilty of such professional misconduct in that he has misappropriated client funds by making personal loan payments with client funds and out of the client trust account. Additionally, Respondent has admitted to using his client trust account to hide personal funds from his former wife.

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.

Sanction Analysis

The purpose of attorney disciplinary proceedings is “to protect the public and maintain the integrity of the legal profession.” *In re Ehler* 319 S.W. 3d 442, 451 (Mo. banc 2010). When determining an appropriate sanction for violations of the Rules of Professional Conduct, this Court assesses the gravity of the misconduct, as well as mitigating or aggravating factors that tend to shed light on Respondent’s moral and intellectual fitness as an attorney. *In re Wiles*, 107 S.W.3d 228, 229 (Mo. banc 2003).

This Court has consistently turned to the ABA Standards for Imposing Lawyer Sanctions (ABA Standards) for guidance in deciding what discipline to impose. *In re Storment*, 873 S.W.2d 227 (Mo. banc 1994). Per ABA Standard 3.0, when imposing a sanction, a court should consider the: (1) duty violated, (2) lawyer’s mental state, (3) potential or actual injury caused by the lawyer’s misconduct, and (4) the existence of aggravating and mitigating factors.

With respect to mental states, the ABA Standards define “intent” as “the conscious objective or purpose to accomplish a particular result.” “Knowledge” is “the conscious

awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.” Similarly, Rule 4-1.0 defines “knowingly,” “known,” or “knows” as “actual knowledge of the fact in question.” The rule goes on to clarify that “a person’s knowledge may be inferred from the circumstances.”

When an attorney has committed multiple acts of misconduct, the ultimate sanction imposed should be at least consistent with the sanction for the most serious instance of misconduct. *In re Ehler*, 319 S.W.3d at 451.

Applicable ABA Standards

As relates to the violations in Count I, ABA Standard 5.12 provides that “Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct . . . that seriously adversely reflects on the lawyer’s fitness to practice.” Respondent pleaded guilty to a domestic assault charge. Considering that his solo practice focuses on domestic matters and criminal law, this criminal conduct is a direct reflection on his fitness to practice.

With respect to Count II and Count III, the Panel noted that ABA Standard 4.41(b) and (c) state that disbarment is generally appropriate where, “Absent aggravating or mitigating circumstances . . . a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or. . . a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.” Respondent demonstrated a knowing pattern of neglect when he failed to timely respond to orders from the court, pleadings, discovery requests, inquiries from other

counsel, and questions from his clients. The clients in those cases faced serious injury as a result of that neglect and could have been subjected to sanctions by the court or default judgments.

Regarding the allegations in Count IV, ABA Standard 4.11 provides, “Absent aggravating or mitigating circumstances . . . disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client. Here, Respondent has knowingly misappropriated client funds by depositing unearned funds directly into his operating account, and by using client funds to make a personal loan payment out of the client trust account. Even though Respondent admitted to keeping personal funds in the client trust account, there were insufficient personal funds to cover the loan payment.

Also relevant is ABA Standard 5.11(b), which states “Disbarment is generally appropriate when a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer’s fitness to practice.” In this case, Respondent has admitted to using his client trust account to hide money from his former wife.

Mitigating and Aggravating Factors

Mitigating factors do not serve as a defense to a finding of misconduct, but they may justify a downward departure from the presumptively proper discipline. *In re Farris*, 472 S.W.3d 549, 562 (Mo. banc 2015). Mitigating factors are set forth in ABA Standard 9.32. The applicable mitigating factors in this case are as follows:

- ABA Standard 9.32(a) - Respondent does not have a prior disciplinary record from this Court (though he has had several prior admonitions, which are discussed in more detail below);
- ABA Standard 9.32(c) – Respondent testified at the hearing that he was experiencing personal or emotional problems in April of 2020;
- ABA Standard 9.32(e) – Except for his delayed responses to requests for records, Respondent generally cooperated with the OCDC’s investigation and displayed a cooperative attitude toward the Disciplinary Hearing Panel;
- ABA Standard 9.32(l) – Respondent is remorseful with respect to his conduct and the events leading to this discipline;
- ABA Standard 9.32(m) – Respondent has previously accepted three admonitions for various violations of the Rules of Professional Conduct, but some of those admonitions are generally remote in time and subject to the matter at hand.

When the court finds mitigators, “they must be weighed against the seriousness of the offenses and the evidence in aggravation.” *In re Kayira*, 614 S.W.3d 530, 539 (Mo. banc 2021). Aggravating factors are set forth in ABA Standard 9.22, and the following aggravating factors apply in this case:

- ABA Standard 9.22(a) – While Respondent has no disciplinary record, the Court may consider prior admonitions when determining the

- appropriate discipline. See Rule 5.17(b)(7) (2022). It should be noted that one of the admonitions was for violation of Rule 4-1.4 (communication);
- ABA Standard 9.22(b) – Respondent displayed a dishonest or selfish motive when he used his client trust account to hide money from his former wife;
 - ABA Standard 9.22(d) – This case includes multiple offenses;
 - ABA Standard 9.22(i) – Respondent has substantial experience in the practice of law – nearly 20 years.

Relevant Caselaw

There is no published precedent that mirrors the varied violations presented by this case. However, the multiple violations in *In re Crews* have a lot of similarities. 159 S.W.3d 355 (Mo. banc 2005). Specifically, the respondent was charged with violations of Rule 4-1.3 (diligence), Rule 4-1.4 (communication), and Rule 4-8.4(c) (misconduct involving dishonesty). *Id.* at 358. These violations arose out of his failure to pursue litigation actions on behalf of his client, including the failure to respond to a motion for summary judgment. *Id.* at 357-58. Additionally, he was uncommunicative with the clients and then engaged in dishonesty by lying to them – and the court - about his handling of their case. *Id.* at 360. This Court noted that “Respondent’s actions demonstrate a pattern of neglect with prosecuting Plaintiff’s case that resulted in potential injury to his clients and the legal profession.” *Id.* at 361. He was suspended indefinitely with no leave to apply for reinstatement for a period of one year. *Id.*

A similar situation is presented in the case of *In re Donoho*, 98 S.W.3d 871 (Mo. banc 2003). That respondent was also charged with violating the following rules: 4-1.3 (diligence), 4-1.4 (communication), 4-3.2 (expediting litigation), and 4-8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation). *Id.* at 873. He was engaged to handle a post-dissolution proceeding and drafted the motion for his client’s signature, but “took no further action and failed to file the completed motion in a court of law.” *Id.* at 872. He also neglected to return numerous telephone calls from the client. *Id.* He misrepresented to the disciplinary committee that he had refunded the client’s fees. *Id.* at 872-73. This Court observed that “Respondent’s actions call into question both his honesty and his dedication to the interests of his client. . . . [H]e failed to perform even the most basic duties owed to his client . . . and repeatedly refused to inform [her] of the status of her case.” *Id.* at 873-74. He was suspended indefinitely with no leave to apply for reinstatement for a period of one year.

Conclusion

Based on the ABA Sanction Standards, disbarment is the appropriate baseline sanction in this case. However, in light of this Court’s precedents, as well as the mitigating and aggravating circumstances identified by the Disciplinary Hearing Panel, an indefinite suspension with no leave to apply for reinstatement for two years would also be an appropriate sanction in this case.

CONCLUSION

For the reasons set forth above, Informant respectfully requests this Court:

- (a) Find that Respondent is guilty of professional misconduct and find that Respondent has violated Missouri Supreme Court Rules 4.15(a) Rule 4-1.15(a)(7) Rule 4-1.15(b), Rule 4-1.15(c), Rule 4-1.15(f), Rule 4-1.3, Rule 4-1.4, Rule 4-1.6, Rule 4-3.2, Rule 4-8.4(b), Rule 4-8.4(c) and Rule 4-8.4(d);
- (b) Order that Respondent be suspended indefinitely with no leave to apply for reinstatement for two years;
- (c) Tax all costs in this matter to Respondent, including the \$1,000.00 fee pursuant to Rule 5.19(k) (2022); and
- (d) Require Respondent to comply with Rule 5.27.

Respectfully submitted,

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Chief Disciplinary Counsel



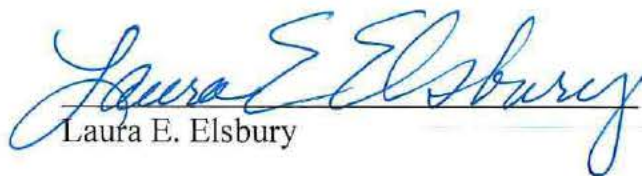
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INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February, 2023, a copy of Informant’s Brief is being served upon Respondent through the Missouri Supreme Court electronic filing system pursuant to Rule 103.08.

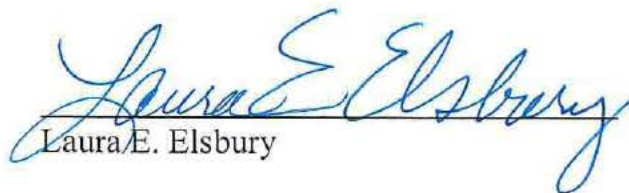
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Respondent


Laura E. Elsbury

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. 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 7,283 words, according to Microsoft Word, which is the word processing system used to prepare this brief.


Laura E. Elsbury