

**IN THE SUPREME COURT  
STATE OF MISSOURI**

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<b>IN RE:</b>	)	
	)	
<b>THAYER LANCE WEAVER, JR.</b>	)	<b>Supreme Court No. SC99805</b>
	)	
Missouri Bar No. 48128	)	
	)	
Respondent	)	
	)	

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**BRIEF OF RESPONDENT THAYER WEAVER**

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**STATEMENT OF JURISDICTION**

This matter involves the Informant, the Chief Disciplinary Counsel, seeking to discipline an attorney duly licensed in the State of Missouri for alleged violations of the Missouri Rules of Professional Conduct. As such, this Court has jurisdiction pursuant to Article 5, §5 of the *Missouri Constitution*, *Supreme Court Rule 5*, and §484.040, RSMo (2016).

## **STATEMENT OF FACTS**

Respondent commenced practicing law at TLW & Associates, LLC (“Firm”) on March 3, 2003, after leaving Bryan Cave Leighton Paisner LLP (*Informant’s Disciplinary Hearing Panel (hereinafter referred to as, “DHP”), Exhibit 13, pp. 962 (TR:6)*). At the Firm, Respondent focuses his practice on sports, entertainment, probate and civil trial litigation for personal injury, medical malpractice and class actions lawsuits (*Informant’s DHP Exhibit 13, pp. 962 (TR:8)*).

In 2006, although Respondent maintained individual client ledgers in hand-written logs, he was admonished for failure to maintain electronic client ledgers (*Transcript of DHP Hearing held on March 31, 222, pp. 272 (TR 104:15-19)*). As a result of the 2006 admonishment, Respondent obtained QuickBooks, a software accounting system, to maintain individual client ledgers and bookkeeping in an electronic and computer-based format. He continues to use the QuickBooks system for maintaining all client ledgers, bookkeeping for multiple bank accounts, accounting, disbursements and payment of firm expenses (*Informant’s DHP Exhibits 13, pp. 967 (TR: 26-28)*).

OCDC did not commence offering CLEs on Trust Accounting until 2010 (*Transcript of DHP Hearing held on March 31, pp. 289-292 (TR: 121-124)*).

In 2010, Respondent was admonished as result of one overdraft issue in the Firm’s Trust Account (*Informant’s DHP Hearing Exhibit 13, pp. 989 (TR:114-115)*). At the time of the mistake, the Firm maintained four (4) accounts at Busey Bank: 1) an Operating Account; 2) a Petty Cash Account; 3) a money market/savings account and 4) the Firm’s Trust Account (which is also the subject account at issue in these proceedings), as well as

three (3) accounts at Bank of America: 1) a checking account; 2) a Petty Cash/Credit Card/Zelle/CashApp/Venmo merchant account; and 4) another trust account for unearned retainers (*Transcript of DHP Hearing held on April 21, 2022, pp. 643-644 (TR 140:23-141:25)*). Each account had a separate distinct account number. Unfortunately, the accounts were only identified by numbers on the on-line banking systems.

The 2010 overdraft occurred because Respondent inadvertently transferred funds from the Firm's Trust Account number to the firm's operating account, instead of transferring the funds to the operating account from the money market/savings account number. (*Id.*) The transfer was conducted via the Busey Bank on-line banking system. (*Id.*) The mistake occurred because Respondent inadvertently selected the wrong account number in conducting the transfer of the funds. Even though the mistake was immediately corrected on the same day, it triggered the overdraft alert to OCDC. This experience caused him to modify his practice in maintaining and administering the Firm's Trust Account by establishing a new and separate Firm Reserve Bank Account with sufficient funds to secure and protect client assets that may be affected by inadvertent mistakes or errors ("Reserve Account") (*Transcript of DHP Hearing held on April 21, 2022, pp. 646-647 (TR 143:1-144:25)*). Respondent also changed some of the Firm's accounting and bookkeeping practices after attending an OCDC Trust Accounting CLE.<sup>1</sup>

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<sup>1</sup> The 2010 OCDC Trust Accounting CLE did not mention expressed language related to waiting for a reasonable time for funds to become "good" (*Transcript of DHP Hearing held on March 31, 2022, pp. 292-293 (TR:125-126)*).

In 2010, Respondent also began taking partial fees earned at the time contingent fee client's settlement deposits were made (*Transcript of DHP Hearing held on April 21, 2022, pp. 656-657 (TR 153:19-154:4)*). For instance, if a contingent fee client received a settlement check in the amount of \$10,000.00 and Respondent earned \$3,333.00 from the engagement, he would withdraw \$1,000.00 as a partial fee disbursement from the transaction (*Transcript of DHP Hearing held on April 21, 2022 pp. 656-657 (TR 153:11-154:9)*).<sup>2</sup> To document and record the transaction, Respondent would write a counter check from the Trust Account and either make the check payable to himself or, on rare instances, to cash (*Transcript of DHP Hearing held on April 21, 2022 pp. 656 (TR 153:11-15)*). Respondent would also either write the client matter in the remitter section of the check or attach the counter check to the deposit slip for recording in QuickBooks (*Informant's DHP Hearing Exhibit 12, pp. 936-942 and Respondent's DHP Hearing Exhibits: Exhibit F, pp. 1294*). It should be noted that over the life of the Firm's Trust Account, no check had been returned for insufficient funds or for any other reason.

On or about July 23, 2018, *Rule 4-1.15(a)(6)*, effective January 1, 2019, regarding deposited checks in trust accounts and disbursements not "until a reasonable period of time has passed" was changed and a clear explanation of the phrase was adopted as the 10-day rule (*Respondent's DHP Hearing Exhibit B at Vol. 4 and Transcript of DHP Hearing*

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<sup>2</sup> It was determined during the reconciliation process that the partial distributions were the primary reason for the Trust Account to be out-of-balance (*Trust Account Deficit, pg. 29 infra*).



**held on March 31, 2022, pp. 285-293 (TR:117-125)).** Respondent was not aware of the Rule change.

After 2005, the Firm's practice grew substantially. At the time Respondent received the complaint that led to Informant's 2020 audit of the Trust Account, he had served over 200 clients and was actively engaged in over 80 different client matters (***Informant's DHP Hearing Exhibit 13, pp. 962-963 (TR: 9-10).*** Respondent's customer base grew as a result of the quality-of-service he provided to the Firm's clients. Ninety-nine percent (99%) of Respondent's new business is derived from client referrals (***Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 735-769 (TR: 232-266)).***

As a result of the firm's growth, Respondent increased his personnel to help support the increased business. In 2003, he started the Firm as a solo practitioner. (***Transcript of DHP held on March 31, 2022, pp. 336 (TR:168).*** In 2010, Respondent's personnel increased by two, and by the end of 2017, his personnel was at its height with five staff members.

Although the Firm's business continued to thrive, Respondent found it difficult to keep good, dependable and trustworthy staff members. For instance, in 2018, the Firm lost two staff members because one was offered a new job opportunity and the other desired to relocate to a different state. In addition, in 2017, Respondent's most significant staff member, P.H., office administrator and accountant/bookkeeper, was diagnosed with cancer and commenced receiving treatment (***Transcript of DHP Hearing held on March 31, 2022, pp. 378-379 (TR:210:16-211:3)).*** During this same period, P.H. was also the sole caregiver for her husband, C.H., who was suffering from Alzheimer's. (***Id.*** P.H. cared

for her husband at their residence. (*Transcript of DHP Hearing held on March 31, 2022, pp. 339 (TR:171:1-3)*). CH was never hospitalized at any care facility for Alzheimer's.<sup>3</sup>

Prior to P.H.'s employment at the Firm beginning in 2013, P.H. and her husband had been long-term clients of the Firm since its establishment (*Respondent's DHP Exhibits: Exhibit O1 and O2*). In 2010, P.H. retired from Monsanto, where she gained substantial experience in accounting, bookkeeping and human resources. In March 2014, P.H. was hired at the Firm as the office manager and bookkeeper/accountant (*Transcript of DHP Hearing held on March 31, 2022, Vol.1, pg. 350-351 (TR: 182:17-183:14)*). P.H. managed payroll, paid office expenses and reconciled the firm's bank accounts<sup>4</sup>, which included the Trust Account. P.H. was dependable, trustworthy and an excellent staff member. Respondent heavily relied on P.H. to maintain the firm's books, pay its expenses and reconcile the bank accounts (*Transcript of DHP Hearing held on March 31, 2022, Vol.1, pg. 350-351 (TR: 182:17-183:14)*). P.H. performed her duties and responsibilities for the firm for four consecutive years without missing a scheduled day of work. Unfortunately, tragedy struck P.H.'s home in 2017 (as previously mentioned).

P.H. continued to perform her duties in 2017, however in 2018, P.H.'s health challenges began to affect her time in the office<sup>5</sup>, which directly affected her performance. P.H.'s working hours dropped from twenty hours per week to less than five hours per

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<sup>3</sup> Kelly Dillion, OCDC examiner, falsely stated CH was hospitalized at an Institution due to his Alzheimer's disease (*Transcript of DHP Hearing held on March 31, 2022, Vol.1, pg. 210, Lines 9-18*).

<sup>4</sup> *Transcript of DHP Hearing held on March 31, 2022, Vol.1, pg. 350-351 (TR: 182:17-183:14)*.

<sup>5</sup> *Transcript of DHP held on March 31, 2022, pp. 378-379 (TR:210:16-211:3)*.

month (*Transcript of DHP Hearing held on March 31, 2022, Vol.1, pp. 351 (TR: 184:4-12)*). Initially, both Respondent and P.H. believed the drastic decrease in P.H.'s work hours would only be temporary, knowing P.H. was under-going treatment for her health condition while simultaneously caring for her husband (*Transcript of DHP Hearing held on March 31, 2022, Vol.1, pp. 353 (TR:185:2-3)*). Instead of hiring a new staff member, Respondent assumed most of P.H.'s duties (office administration, payroll and the payment of bills) hoping P.H. would return to work. He was committed to P.H. as she had been to the Firm. He was very hopeful that P.H. would resume her duties and catch-up on the workload upon her return. (*Id.*)

Unbeknownst to Respondent, P.H. would not return to employment at the Firm, due to her age, health and the failing condition of her husband. P.H. never resigned from the Firm and Respondent never terminated P.H., however, in October 2019, he realized help was desperately needed in the bookkeeping and accounting area (*Transcript of DHP Hearing held on March 31, 2022, Vol.1, pp. 352-353 (TR: 184:16-185:25)*). (*Id.*) On September 15, 2019, He transferred \$14,000.00 in earned fees from the Firm's Trust Account to the firm's operating account believing these funds were available to be transferred<sup>6</sup> (*Transcript of DHP Hearing held on March 31, 2022, Vol.1, pp. 455-456 (TR: 287:3-288:8)*). However, on October 31, 2019, while paying payroll Respondent noticed the QuickBooks' Trust Account balance exceeded the Bank's Trust Account

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<sup>6</sup> It was later determined that the \$14,000.00 in earned fees were not available because Respondent did not ledger the partial distribution of earned fees at the time of the deposit.

**(Transcript of DHP Hearing held on March 31, 2022, at Vol.1, pp. 454 (TR: 286:8-23)).**

On the same day,<sup>7</sup> Respondent immediately transferred \$25,000.00<sup>8</sup> from the Reserve Account to the Firm's Trust Account to protect the client funds held in the account until a complete reconciliation of the Trust Account could be performed (***Id. and Respondent's DHP Hearing Exhibits: Exhibit H, pp. 1317***).

Respondent knew that the Trust Account had not been reconciled for a while (hoping P.H. would reconcile all the accounts upon her return). (***Transcript of DHP Hearing held on March 31, 2022, at Vol.1, pp. 353 (TR: 185:1-25)***). However, Respondent managed the Trust Account by comparing the QuickBooks's Trust Account balance to the Bank's Trust Account balance prior to making any disbursement from the account. (***Id.***).

Prior to recognizing the discrepancy between the QuickBooks Trust Account balance and the Bank's Trust Account balance, Respondent did not realize there was a problem. He knew the Firm's Trust Account had not been reconciled since May 10, 2018 (***Informant's DHP Hearing Exhibit 6, pp. 902***). However, Respondent believed so long as the Busey Bank's actual balance exceeded the QuickBooks' balance, clients' funds would be secured, and he could carry on with business. Again, Respondent was hopeful that any problem that existed would be resolved when P.H. returned, then all the accounts

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<sup>7</sup> The transaction was not recorded in the bank's records until November 1, 2019, because the deposit was made after 2:00 p.m. on October 31, 2019 (***Informant's DHP Hearing Exhibit 6, pp. 901***).

<sup>8</sup> As previously mentioned, the Reserve Account was established and maintained for the specific purpose of protecting client assets (***Transcript of DHP held on April 21, 2022, pp. 646-647 (TR 143:1-144:25)***).

would be reconciled. Furthermore, he knew at the time the problem was discovered with the Firm's Trust Account, the Firm's Reserve Account had more than a sufficient amount to cover any errors or mistakes. Although the Firm's Trust Account was out of balance and unreconciled, client funds were protected and secured with the Reserve Account.

After the problem with the Trust Account balance was discovered, which was before the OCDC complaint and audit, Respondent realized he could no longer wait for P.H.'s return; Informant incorrectly states that Respondent did not attempt to reconcile his trust account until its investigation. (*Transcript of DHP Hearing held on March 31, 2022, Vol.1, pp. 362-363 (TR: 194:25-195:13)*). To the contrary, he immediately sought to hire an accountant or bookkeeper to reconcile the accounts. (*Id*). In November 2019, he researched and interviewed accounting firms to help reconcile the Firm's Trust Accounts. (*Id*). Unfortunately, the accounting firms Respondent contacted could not commence engagement until the first quarter of the new year<sup>9</sup> (*Transcript of DHP Hearing held on March 31, 2022, Vol.1, pp. 362-363 (TR: 194:23-195:13)* and *Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 512-515 (TR: 10-12)*).

Respondent, then, sought the services of individuals to hire to reconcile the Trust Account and provide bookkeeping services. (*Id*). In November 2019, he contacted K.K. K.K. was an experienced accountant for the city of Berkeley and had previously worked at banks (*Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 512-515 (TR: 10-12)*). K.K. had recently ventured out as an entrepreneur as a bookkeeper and accountant.

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<sup>9</sup> Darlene Davis & Associates, LLC was unable to perform the reconciliation service due to year-end engagements.

**(Id).** In addition, Respondent had known K.K. since the 1980's. K.K. was also a former client of the Firm and had referred many clients. He knew K.K. was experienced, trustworthy, dependable and capable of reconciling the Trust Account. However, like the other firms researched, K.K. could not commence the engagement until after January 2020 **(Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 515 (TR: 12:13-17)).**

On or about March 1, 2020, Respondent received a Complaint filed with OCDC by a former disgruntled staff member, Lashay Dodd, who did not survive her probation period with the Firm **(Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 343 (TR: 175:5-6))**. Ms. Dodd did not have contact with any of the Firm's Bank Accounts, including the Firm's Trust Account, but utilized limited knowledge with client files and her awareness that Respondent was seeking assistance to reconcile the Firm's Bank Accounts **(Transcript of DHP Hearing held on March 31, 2022, Vol.1, pp. 363 (TR: 195:1-13))**. The OCDC audit originated because Ms. Dodd's complaint referenced funds held in the Firm's Trust Account **(Transcript of DHP Hearing held on March 31, 2022, Vol.1, pp. 363 (TR: 195:7-13))**.

On September 30, 2021, Informant filed an Information alleging in Count I several violations of *Rule* 4-1.15 (safekeeping property) and violations of *Rule* 4-8.4(c) (dishonesty, fraud, deceit, or misrepresentation). **(Information Filed with the Advisory Committee on September 30, 2021, at Vol. 1, pp. 68-90)**. Informant subsequently filed an Amended Information on March 25, 2022, five days prior to the scheduled Disciplinary Hearing with Panel ("DHP") and nearly four months after receipt of Respondent's Answer to its original Information contesting multiple false statements and inaccurate findings.

*(Respondent's Answer to Information Filed with the Advisory Committee on December 1, 2021, at Vol. 1, pp. 27)*. Respondent filed the Answer to the Amended Information on March 30, 2022, five days after receipt of the Informant's Amended Information (*Respondent's Answer to Informant's Amended Information Filed with the AC on March 30, 2022, at Vol. 1, pp. 91-133*). The Amended Information still contained false statements and inaccurate findings that were addressed in the cross examination of Kelly Dillion (*Transcript of DHP Hearing held on March 31, 2022, Vol. 1, pp 117-146*).

I. Allegations of Receipts and Misappropriation of Funds

A. Cleveland Indian's \$1,700.00 Check

On or about July 26, 2018, Respondent errantly deposited a check in the amount of \$1,700.00 from Cleveland Indians Baseball that was payable to Supreme Warehousing (*Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 681-684 (TR: 178:1-181:13) and Respondent's DHP Hearing Exhibits C, pp. 1281-1285*). Respondent had no relationship with either entity, nor were the funds intended for his services. He had previously received multiple similar checks from the Cleveland Indians. (*Transcript of DHP Hearing held on April 21, 2022, at Vol.1, pp. 682 (TR: 179:12-25)*). The previous checks were discovered by Respondent and returned to the Cleveland Indians with a marking on the envelopes "Return to Sender." (*Id*).

On one occasion, however, Respondent inadvertently deposited one of the checks from the Cleveland Indians. He was unaware he was depositing a check from the Cleveland Indians because it accompanied two additional checks in the same deposit (*Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 681-684 (TR: 178:1-181:13)*).

Unfortunately, one of the Cleveland Indians' envelopes containing a check was opened by a staff member and placed in a deposit with two other checks (*Respondent's DHP Hearing Exhibit C, pp. 1285*)<sup>10</sup>.

Respondent admits that on the same day of the deposit, he withdrew \$3,000.00 from the Trust Account as was his normal practice when making deposits (as mentioned *supra*) (*Respondent's DHP Hearing Exhibit C, pp. 1285*). He did not notice the errant inclusion of the Cleveland Indians check and proceeded to deposit all the checks listed on one deposit slip (*Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 681-684 (TR: 178:1-181:13)*). This error was not discovered during his reconciliation of the Firm's Trust Account because staff members did not make a copy of this deposit, which was the Firm's general practice, and copies of deposited checks were not included on monthly bank statements.

Although the Firm's Trust Account had been reconciled by dollar amount, Respondent did not discover the exact check causing some of the problems in the Trust Account until the OCDC sworn statement on November 19, 2020<sup>11</sup>, where Busey Bank provided a copy of all the deposited items in the Firm's Trust Account.<sup>12</sup> Once it was determined that Respondent errantly deposited a check from the Cleveland Indians, he immediately sent the Cleveland Indians Baseball organization a check in the amount of

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<sup>10</sup> Note that the endorsement "*Deposit Only*" signifies that a staff member endorsed and completed the deposit slip.

<sup>11</sup> *Informant's DHP Hearing Exhibit 13, pg. 101-103.*

<sup>12</sup> After a conversation, Kelly Dillion, OCDC auditor, informed Respondent that he could request copies of all deposits from the Busey Bank. Respondent was unaware Busey Bank maintained copies of deposited items.



\$1,700.00 from his operating account to correct the error, along with a letter stating that the organization was sending checks to the wrong address, and requested that the organization correct its database (*Respondent's DHP Hearing Exhibit C, Vol 4, pg. 1281-1285*).

**The Cleveland Indians Baseball organization never disputed the deposit, and the Trust Account never received a chargeback. Respondent admits that he violated the rules by depositing the check; however, no client or third-party was affected by the errant deposit.**

**B. May 3, 2018 Transfer from Bank of America Trust Account to Busey Bank Trust Account**

On May 3, 2018, Respondent transferred \$13,674.17 from the Firm's Bank of America Trust Account to the Firm's Trust Account. At the time the deposit was made, the funds consisted of both earned and unearned fees. (*Transcript of DHP Hearing held on March 31, 2022, Vol. 1, pp. 415 (TR: 247:10-22)*). The Firm's earned fees were subsequently withdrawn from the account (*Transcript of DHP Hearing held on March 31, 2022, Vol. 1, pp. 416- (TR: 248:16-249:16)*) However, the final withdrawal on August 22, 2019, was \$325.83 more than the client's retainer. (*Id*). Other client funds were not at risk as a result of the overdraw due to the Firm funds held in the Trust Account and the Firm's Reserve Account (*Transcript of DHP Hearing held on April 21, 2022 at Vol. 1, pp 578 (TR: 75:11-24) and Respondent's DHP Hearing Exhibit L, pp. 1331*).

At the time of the overdraw, Respondent maintained the following balances to protect clients' assets:

08/22/2019 Firm Funds held in Trust Account - \$31,160.97<sup>13</sup>

08/22/2019 Reserve Account Balance - \$464,687.57<sup>14</sup>

**At no point during the withdrawal of these funds were other client or third-party funds at-risk or unprotected.**

C. St. Louis Rams Class Action – Wire Deposit

On January 31, 2020, \$843,923.00 was wired to the Firm’s Trust Account from a Class Action Settlement involving the St. Louis Rams, LLC (*Informant’s DHP Hearing Exhibit 17, pp. 1067*). At the time of the deposit, Respondent believed these funds consisted of client settlement funds for one of the named class members, as well as Respondent’s earned fees (*Informant’s DHP Hearing Exhibit 13, pp. 992 (TR: 127:21-129:25)*). Respondent later determined that the entire deposit represented his earned fees. (*Id.*) Upon learning the client’s settlement funds were mailed directly to the class action named client, on February 10, 2020, Respondent withdrew \$846,000.00, which he believed was the amount of the wire, via mobile banking while traveling for business (*Informant’s DHP Hearing Exhibit 13, pp. 992 (TR: 127:21-129:25) and Transcript of DHP Hearing held on March 31, 2022, Vol. 1, pp. 405- 406 (TR: 237-238)*).

During the reconciliation of the Firm’s Trust Account, it was determined that Respondent errantly overdrew the wire deposit by \$2,077.00. (*Id.*) On March 3, 2020, Respondent deposited \$25,000.00 into the Firm’s Trust Account to cover the overdraw and

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<sup>13</sup> Respondent’s DHP Hearing Exhibit L, Vol. 4, pg. 1331.

<sup>14</sup> Respondent’s DHP Hearing Exhibit H, Vol. 4, pg. 1315.

any other errors that could be revealed during the reconciliation of the Firm's Trust Account. (*Informant's DHP Hearing Exhibits 13*, pp. 992 (TR: 127:21-129:25), *Informant's DHP Hearing Exhibit 6*, pp. 914-915 and *Transcript of DHP Hearing held on April 21, 2022*, at Vol. 1, pp. 544-545 (TR: 41:20-42:12)).

At the time of this overdraft, Respondent maintained the following balance in the Firm's Reserve Account to protect clients' assets from errors or mistakes:

02/10/2020 Reserve Account Balance - \$1,219,191.67<sup>15</sup>

**Respondent contends that full restitution was made to the Trust Account, and no client or third-party was affected by the error.**

## II. Isolated Errant Transactions in Trust Account

### A. American Express Payment

During the course of its investigation, Informant reviewed and analyzed over 500 hundred transactions in the Firm's Trust Account from January 1, 2018, to June 30, 2020 (*Informant's DHP Hearing Exhibits: Exhibit 6*, pp. 901-918). Out of the 500+ transactions, Informant revealed several errors directly attributed to Respondent not reconciling, as well as a few isolated mistakes involving the Firm's Trust Account. For instance, on June 24, 2019, Respondent made a \$10,000.00 on-line payment to the Firm's American Express credit card. (*Transcript of DHP Hearing held on March 31, 2022*, at Vol. 1, pp. 393-94 (Tr. 225:17-226:18) and *Respondent's DHP Hearing Exhibits: Exhibit L*, pp. 1331 (Transaction on 06/24/2019)). The payment of the American Express

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<sup>15</sup> *Respondent's DHP Hearing Exhibit H*, Vol. 4, pg. 1320.

credit card was an isolated transaction that occurred only because Respondent inadvertently selected the wrong account number in the bank's on-line payment system (*Respondent's Answer to the Amended Information* filed with AC on March 30, 2022, at Vol. 1, pp. 102).

At the time the American Express transaction was made, Respondent maintained the following balances:

06/29/2019 TLW Funds held in Trust Account - \$33,182.97<sup>16</sup>

06/29/2019 Reserve Account Balance - \$477,547.24<sup>17</sup>

**Respondent admits that he violated the *Missouri Rules of Professional Conduct* by paying Respondent's credit card from the Firm's Trust Account, albeit in error; however, he held personal funds in the account that were used to offset the error and no client or third-party funds were at risk (*Respondent's DHP Hearing Exhibit L*, Vol. 4, pg. 1331).**

**B. Wire Payment for Purchase of a Dog**

Another transaction involved a wire transfer on September 11, 2019, in the amount of \$1,000.00 from the Firm's Trust Account to an individual to pay for the purchase of a dog (*Respondent's Answer to the Amended Information* filed with AC on March 30, 2022, at Vol. 1, pp. 103). This transaction was originated at the bank by the bank's

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<sup>16</sup> *Respondent's DHP Hearing Exhibit L*, Vol. 4, pg. 1331.

<sup>17</sup> *Respondent's DHP Hearing Exhibit H*, Vol. 4, pg. 1315.

personnel, and the bank's personnel selected the wrong account number to consummate the transaction. (*Id.*).

At the time the wire transaction was made, Respondent maintained the following balances:

09/11/2019 TLW Funds held in Trust Account	-	\$9,165.00 <sup>18</sup>
09/11/2019 Reserve Account Balance	-	\$464,687.57 <sup>19</sup>

**Respondent admits that he violated the *Missouri Rules of Professional Conduct* by allowing Firm's Trust Account to be used to pay a personal expense, albeit in error; however, Respondent held personal funds in the account that were used to offset the error and no client or third-party funds were at risk (*Respondent's DHP Hearing Exhibit L, Vol. 4, pg. 1330*).**

### III. Partial Withdrawal of Earned Fees

As previously mentioned, Respondent would often withdraw a portion of his earned fee at the time he would make settlement check deposits via bank counter checks (viewed as cash by the Informant). This was a common practice of Respondent that began years prior to the rule change or clarification in 2019 (**See Pg. 3 *supra* and Rule 4-1.15(a)(6), adopted July 23, 2018, effective January 1, 2019**).

### IV. Allegations of Dishonesty, Fraud and/or Deceit:

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<sup>18</sup> *Respondent's DHP Hearing Exhibit L, Vol. 4, pg. 1330.*

<sup>19</sup> *Respondent's DHP Hearing Exhibit H, Vol. 4, pg. 1315.*

Informant contends that Respondent committed dishonesty, fraud and/or deceit in the collection of C.H.'s life insurance proceeds of which C.H. was the beneficiary of C.H.'s mother's estate and in depositing the funds into the Firm's Trust Account (***Transcript of DHP held on March 31, 2022, pp. 378-379 (TR:210:16-211:3) and Transcript of DHP held on April 21, 2022, pp. 687 (TR:184)***). Informant appears to now concede that P.H. and C.H. were clients of the Respondent (***Informant's Brief pg. 10***). Informant's allegations of dishonesty, fraud and/or deceit are not supported by law or fact. Respondent was engaged by P.H. to collect the inheritance for C.H. from his mother's estate (***Transcript of DHP held on April 21, 2022, pp. 686-688 (TR:183-185) and Informant's DHP Exhibits: Exhibit 16, pp. 1052-1053***). C.H.'s inheritance included not only proceeds from a life insurance policy, but also assets from retirement and investment accounts (***Informant's DHP Exhibits: Exhibit 16, pp. 1052-1053***). Respondent collected the inheritance then disbursed the assets collected as instructed by the client. (***Id.***).

Respondent did not have any direct knowledge as to what type of government benefits C.H. was receiving. (***Transcript of DHP held on March 31, 2022, pp. 379-380 (TR:211:18-212:18)***). Respondent was engaged to collect and disburse assets, as instructed by the client. (***Id.***). Respondent is not an elderly care attorney, nor was he hired, retained or engaged to provide elderly law services. (***Transcript of DHP held on March 31, 2022, pp. 380 (TR:212:1-6)***). It is Respondent's belief that C.H. and P.H. engaged other consultation for elderly law services and assistance with their application for and administration of government benefits. (***Transcript of DHP held on March 31, 2022, pp.***

**380 (TR: 212:1-6)).** Informant's allegation as to Respondent's knowledge of what government benefits C.H. was receiving is pure conjecture.

**Informant has failed to provide any evidence of any law or rule violation. Informant produced no evidence to support what type of government benefits C.H. was receiving, or whether C.H. was receiving any government benefits. Informant has failed to provide any evidence of any law or rule violation. Informant produced no evidence to support what type of government benefits C.H. was receiving, or whether C.H. was receiving any government benefits.**

V. Allegations of Commingling: Improper Deposits to the Client Trust Account

The following represents Respondent's response to each of Informant's allegations:

A. March 9, 2018, Deposit of \$110.00 Gift

Respondent admits that on March 9, 2018, he deposited three (3) checks in the amounts of \$35.00 (birthday gift from Mother-in-law), \$75.00 (birthday gift from Aunt) and \$3,000.00 (client settlement check). Respondent further states that on the same day, immediately after depositing the checks, he withdrew \$1,100.00 from the same account representing his earned fee and the gift amount (*Informant's DHP Hearing Exhibit 6, pages 901-902*).

**Respondent admits that the deposit of the gift amounts into the Trust Account was a violation of the *Missouri Rules of Professional Conduct*; however, no client or third-party funds were at risk.**

B. June 29, 2018, Deposit of \$8,000.00 from Firm's Bank of America Petty Cash/Credit Card/Zelle/CashApp/Venmo merchant account

Respondent admits that on June 29, 2018, he deposited \$8,000.00 from the Firm's petty cash/merchant account at Bank of America that receives credit card and mobile payments (Zelle, CashApp and Venmo) mainly for legal services rendered (*Transcript of DHP Hearing held on April 21, 2022, at Vol. 1, pp. 645 (TR: 142:6-14)*). He deposited all the funds from the petty cash/merchant account to the Firm's Trust Account because he had to determine the unearned fee amount (*Respondent's DHP Hearing Exhibit A, pp. 1237 and Transcript of DHP Hearing held on April 21, 2022, at Vol. 1, pp. 645 (TR: 142:6-25)*)).

**Respondent believes his actions were within that allowed by the *Missouri Rules of Professional Conduct*. His earned fees were subsequently withdrawn from the Trust Account, and no client or third-party funds were at risk.**

C. August 14, 2018, Deposit of \$32,000.00 from a client's trust account from Morgan Stanley into the Firm's Trust Account

Respondent obtained a check in the amount of \$32,000.00 from a trust account at Morgan Stanley (*Transcript of DHP Hearing held on April 21, 2022, at Vol. 1, pp. 691-692 (TR: 188:2-189:5)*). Respondent serves as trustee for the account held at Morgan Stanley.<sup>20</sup> He had to deposit the check into the Firm's Trust Account to obtain a cashier's check for the same amount. (*Id.*). The cashier's check was to be delivered to a third-party

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<sup>20</sup> It should be noted that OCDC reviewed all transactions pertaining to the trust account at Morgan Stanley, and cited no problems or issues, particularly with the \$32,000.00 purchase of the special vehicle (See Informant's DHP Hearing Exhibits: Exhibit 13, pp. (TR: 176:7-23)).



for payment for an automobile for the beneficiary of the Morgan Stanley trust (Morgan Stanley does not provide cashier's checks). (*Id.*).

**Respondent contends that there was no wrongdoing resulting from this transaction. (*Id.*) Kelly Dillion, OCDC's Certified Fraud Examiner, agreed that this transaction was handled properly, and no violation of the *Missouri Rules of Professional Conduct* occurred (*Transcript of DHP Hearing on March 31, 2022*, at Vol. 1, pp. 299-300 (*TR: 131:10-132:5*)). The funds were client funds, and the funds were properly maintained and distributed for the client's purpose.**

D. September 19, 2018, Deposit of \$108.91 from Ameren and \$1,418.97 Payable to Respondent and His Wife from Bank of America

On September 19, 2018, Respondent deposited a check from Ameren for \$108.91 and another check from Bank of America payable to him and his wife for \$1,418.97 into the Trust Account. At the time of the deposit, Respondent did not know the nature of the checks, so as precautionary measure, he deposited the funds into the Firm's Trust Account (*Informant's DHP Hearing Exhibit 13*, pp. 987 (*Tr: 109:6-11*) and *Respondent's DHP Hearing Exhibit A*, pp. 1238). Respondent later determined that the Ameren check represented a refund for an estate he was administrating, and the Bank of America check was for a legal matter Respondent had handled for his wife (*Respondent's DHP Hearing Exhibit L*, pp. 1331).

Respondent contends that the deposits were proper because at the time the deposits were made, he believed the deposits may have been client-related; it was later determined that both checks were client-related, and the funds were properly disbursed.

**Respondent contends that there was no violation of the *Missouri Rules of Professional Conduct*.**

E. February 21, 2019, Deposit of \$3,400.00 from sale of Mother's Estate Assets

On February 21, 2019, Respondent deposited \$3,400.00 from the sale of kitchen equipment from an estate sale into the Firm's Trust Account (***Respondent's DHP Hearing Exhibit A, pp. 1238***).

Respondent contends that the estate's funds were properly maintained and distributed because he was handling an estate matter for a family member.

**Therefore, Respondent contends that there was no violation of the *Missouri Rules of Professional Conduct*.**

F. February 28, 2019, Deposit of \$27,153.44 from an Estate Account at Busey Bank to the Firm's Trust Account

Respondent consolidated funds from various estate accounts to the Firm's Trust Account for the distribution of the estate's assets to the heirs and the ultimate closing of the estate. (***Respondent's DHP Hearing Exhibit I, pp. 1325***).<sup>21</sup>

Respondent contends that the estate funds were properly maintained and distributed. Clients' assets were properly safeguarded, protected and distributed.

**Respondent contends that there was no violation of the *Missouri Rules of Professional Conduct*.**

G. March 6, 2019, Deposit of \$83,609.00

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<sup>21</sup> The difference of \$18 (\$27,153.44 – 27,171.44) represents bank service charges for 9 months at \$2/month.

On March 6, 2019, Respondent deposited a \$83,609.00 check from State Farm into the Firm's Trust Account. At the time the deposit was made, he did not know the nature of the check, and as a precautionary measure deposited the check into the Firm's Trust Account (***Transcript of DHP Hearing held on April 21, 2022, at Vol. 1, pp. 695 (TR: 192:3-12)***). Respondent handles multiple litigation matters against State Farm Insurance Company annually and was not sure whether the check pertained to a client matter. Respondent later determined the funds were related to the Firm's insurance claim regarding a collapsed roof. (***Id.***). The funds were later withdrawn from the Firm's Trust Account (***Respondent's DHP Hearing Exhibit L, pp. 1331***).

**Although Respondent was not aware of the nature of the check at the time of the deposit, he admits that this deposit from State Farm into the Trust Account was a violation of the *Missouri Rules of Professional Conduct*; however, the funds were subsequently withdrawn and no client or third-party funds were affected or at risk.**

H. July 30, 2019, Deposit of \$343.00 from the Bar Plan Surety & Fidelity

On July 30, 2019, Respondent deposited a check for \$343.00 from the Bar Plan Surety & Fidelity into the Firm's Trust Account. At the time of the deposit, he did not know the nature of the check (***Transcript of DHP Hearing held on March 31, 2022, at Vol. 1, pp. 395-397 (TR: 227:13-229:3)***). The Bar Plan Surety & Fidelity is Respondent's professional liability insurance carrier, as well as his surety bond insurer for his administration of estates. (***Id.***). Respondent later determined that this check was for a refund related to his professional liability coverage. (***Id.***). The funds were later withdrawn from the Firm's Trust Account (***Respondent's DHP Hearing Exhibit L, pp. 1331***).

Although Respondent was not aware of the nature of the check at the time of the deposit, he admits that this deposit from the Bar Plan into the Trust Account was a violation of the *Missouri Rules of Professional Conduct*; however, the funds were subsequently withdrawn and no client or third-party funds were affected or at risk.

I. September 20, 2019, Deposit of \$113.43 from Xcellence, Inc.

On September 20, 2019, Respondent deposited \$113.43 from Xcellence, Inc., a document copy service company, into the Firm's Trust Account. At the time of the deposit, he did not know the nature of the check. It was later determined that the refund related a client matter (*Respondent's DHP Hearing Exhibit A, pp. 1240*). Respondent contends that these funds were properly handled.

**Respondent contends that there was no wrongdoing resulting from this transaction. The funds were client funds, and the funds were properly deposited and credited to the client's ledger account. Therefore, he contends that there was no violation of the *Missouri Rules of Professional Conduct*.**

J. December 20, 2019, Deposit Wire of \$71,446.66 re: NCAA Medical Monitoring Class Action

On December 20, 2019, Respondent received a wire in the amount of \$71,446.66 for a class action lawsuit settlement into the Firm's Trust Account (*Transcript of DHP Hearing held on March 31, 2022, at Vol. 1, pp. 403-405 (TR: 235:16-237:13)*). At the time of the deposit, he believed these funds consisted of both client settlement funds, as well as his earned fees. (*Id*). He later determined that the deposit solely represented his

earned fees. (*Id*). As such, Respondent withdrew \$70,000.00 on December 24, 2019, four days after the initial deposit. (*Id*).

Respondent did not withdraw the entire amount of the deposit because, during this period, he had discovered a problem with the Firm's Trust Account. Respondent made the decision to keep some of his earnings in the Firm's Trust Account until the Firm's Trust Account could be reconciled. (*Id*). The Firm's Trust Account was later reconciled, and the remaining balance was withdrawn from the account.

**Respondent admits that leaving \$1,446.66 in the Trust Account was a violation of the *Missouri Rules of Professional Conduct*; however, the funds were subsequently withdrawn and no client or third-party funds were affected or at risk.**

#### VI. Bulk Sweep of Attorney Fees

During the period of non-reconciliation, Respondent would withdraw earned fees in whole dollar amounts, leaving a portion of the earned fees in the Firm's Trust Account in order to protect the other clients' assets from errors made in the account (*Respondent's DHP Hearing Exhibit L, Vol. 4, pg. 1329-1332 and Respondent's DHP Hearing Exhibit M, pp. 1333*). Again, Respondent discovered a problem with the Firm's Trust Account in November 2019 when he realized the QuickBooks Balance of the Firm's Trust Account was greater than the bank's balance. To remediate the problem, he would leave some of his earned fees and personal funds in the Firm's Trust Account until a reconciliation could be performed. (*Id*).

#### VII. Payroll Paid Directly from Firm's Trust Account

In May 2020, Respondent made two (2) payroll payments out of the Firm's Trust Account in the amount of \$500 and \$1,200.00. He meant to use the operating account checks but inadvertently used the Firm's Trust Account checks instead. (*Transcript of DHP Hearing on March 31, 2022, at Vol. 1, pp. 408 (Tr. 240:1-17)*). The funds were deducted from Respondent's earned fees and personal funds held in the Firm's Trust Account (*Respondent's DHP Hearing Exhibit L, Vol. 4, pg. 1329*).

At the time the error occurred, Respondent maintained the following balances:

05/20/2020 TLW Funds held in Trust Account	-	\$7,739.26 <sup>22</sup>
05/20/2020 Reserve Account Balance	-	\$955,746.05 <sup>23</sup>

There were no client or third-party funds affected by the mistake, and Respondent accounted for the transaction in the ledger for the Firm's Fund held in Trust Account (*Respondent's DHP Hearing Exhibit L, Vol. 4, pg. 1329*).

**Respondent admits that accidentally drafting two payroll checks from the Trust Account was a violation of the *Missouri Rules of Professional Conduct*; however, Respondent held personal funds in the account that were used to offset the error and no client or third-party funds were affected or at risk.**

#### VIII. Client K.H.

On December 10, 2018, Respondent received and deposited two settlement checks on behalf of Client K.H. and her son, for \$10,348.60 and \$3,200.00, respectively

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<sup>22</sup> *Respondent's DHP Hearing Exhibit L, Vol. 4, pg. 1329.*

<sup>23</sup> *Respondent's DHP Hearing Exhibit H, Vol. 4, pg. 1315.*

*(Informant's DHP Hearing Exhibit 13, pp. 993-994 (TR: 132:10-137:7), Exhibit 20, pp. 1077-1083, and Respondent's DHP Hearing Exhibit A, pp. 1243).* On December 13, 2018, Respondent disbursed \$5,026.36 for K.H.'s portion of the settlement and \$857.38 for her son's portion. *(Id.)* On December 17, 2018, Respondent withdrew his fees in the amount of \$3,814.24 and \$1,312.23, respectively. *(Id. at pp. 1244).* He negotiated and satisfied the chiropractor liens in the amount of \$1,600.00 (\$800 for each client). *(Id.)* At the request of the chiropractor, Respondent paid the negotiated lien amounts in cash *(Id., Respondent's DHP Hearing Exhibit P, pp. 1340, Transcript of DHP Hearing Held on March 31, 2022, at Vol. 1, pp. 697-698) and Transcript of DHP Hearing held on April 21, 2022, pp. 697-698 (TR: 194:2-195:7)).*

In addition to the chiropractor lien, Respondent satisfied a Medicaid lien in the amount of \$44.00 *(Transcript of DHP Hearing Held on March 31, 2022, at Vol. 1, pp. 421-426 and Informant's DHP Exhibit 34, pp. 1198-1206).* Contrary to the Informant's contention that "*Respondent testified that he was not aware of the outstanding lien until it was brought to his attention by the OCDC,*" Respondent sent multiple lien requests for C.H. to Medicaid during the COVID period *(Informant's DHP Exhibit 34, pp. 1204-1205).* He never received a response from the original request. *(Id.)* Respondent sent a subsequent lien request. *(Id.)* The Medicaid lien holder responded and requested \$44.00 to satisfy the lien. *(Id.)* Respondent then promptly paid Medicaid lien holder from the Firm's Trust Account, and then sent the client two checks for the remaining balance in the amount of \$258.00 and \$230.39 for K.H. and her son, respectively *(Informant's DHP Exhibit 20, pp. 1081).*

**Respondent contends that this matter was handled properly and there was no violation of the *Missouri Rules of Professional Conduct*.**

**IX. Client C.L.**

Respondent testified in error at the sworn statement that on October 5, 2018, he deposited a settlement check for C.L. in the amount of \$7,001.28 (***Respondent's DHP Hearing Exhibit A, pp. 1245***), and that consistent with his normal practice at that time, he withdrew \$1,000.00 in cash at the time of the deposit from the Firm's Trust Account in a cash withdrawal or counter check. (***Transcript of DHP Hearing held on April 21, 2022, pp. 656-657 (TR 153:19-154:9)***).

However, during the reconciliation of the Firm's Trust Account, Respondent was able to determine that the information previously conveyed was incorrect. (***Respondent's DHP Hearing Exhibit K, pp. 1326-1328 and Exhibit M, pp. 1333***). The actual amount of the settlement for C.L. was \$7,637.28 (***Respondent's DHP Hearing Exhibit K, pp. 1327-1328***). On October 9, 2018, Respondent remitted \$5,264.94 to the client for his distribution of the settlement funds. (***Respondent's DHP Hearing Exhibit A, pp. 1246***). His fee was calculated at \$2,352.32; however, he only withdrew \$1,034.32 for attorney fees and expenses from the Firm's Trust Account. (***Respondent's DHP Hearing Exhibit K, pp. 1326***). In this instance, he properly deducted the \$1,000.00 earlier withdrawal (***Respondent's DHP Hearing Exhibit M, pp. 1333***). However, Respondent left \$318.00 in the account to satisfy an attorney's lien for the prior retained attorney. The attorney's lien was paid out of the Firm's operating account and Respondent recovered the amount during the reconciliation of the Firm's Trust Account. (***Id.***).



In this instance, Informant falsely accuses Respondent of failing to ledger or document the \$1,000.00 early withdrawal. However, the Respondent's only mistake was paying the prior attorney's lien out of the Firm's operating account, and this mistake was corrected during the reconciliation of the Firm's Trust Account (*Respondent's DHP Hearing Exhibit M*, pp. 1333).

**Respondent contends that this matter was handled properly and there was no violation of the *Missouri Rules of Professional Conduct*.**

X. Client D.F.

Respondent testified in error at the sworn statement (and erred in his Answer to the Amended Information) that on October 18, 2018, he withdrew \$1,000.00 as a partial distribution of earned fees for Client D.F. (*Transcript of DHP Hearing held on April 21, 2022, at Vol. 1, pp. 725-727 (TR: 222:6-25) and Informant's DHP Hearing Exhibit 6, pp. 905*). Respondent did deposit a settlement check for Client D.F. in the amount of \$23,000.00 into the Trust Account on October 18, 2018. However, he also deposited a settlement check in the amount of \$9,750.00 for Client J.K. on the same day. (*Id.*) He mistakenly labeled a \$1,000.00 partial withdrawal of earned fees associated with Client D.F. (*Informant's DHP Hearing Exhibit 6, pp. 905*). However, after reconciling the Firm's Trust Account, Respondent was able to determine that the partial withdrawal of earned fees was associated with Client J.K. (*Transcript of DHP Hearing held on April 21, 2022, at Vol. 1, pp. 725-727 (TR: 222:6-25)*). Respondent did not withdraw a partial earned fee from Client D.F.'s settlement funds (*Transcript of DHP Hearing held on April 21, 2022, at Vol. 1, pp. 725-727 (TR: 222:6-25)*). In addition, he properly recorded the

partial withdrawal of earned fees in Client J.K.'s ledger and distributed the balance of his earned fees on October 23, 2018 (*Respondent's DHP Hearing Exhibit E1 and E2, pp. 1288-1290, and Informant's DHP Hearing Exhibit 6, pp. 905*).

Respondent's earned fees and expenses for Client J.K.'s matter was \$3,495.50 (*Respondent's DHP Hearing Exhibit E2, pp. 1290*). As mentioned, Respondent withdrew \$1,000.00 on October 18, 2018, as a partial distribution of his earned fee and expenses (*Informant's DHP Hearing Exhibit 6, pp. 905*). He withdrew the balance of \$2,495.50 on October 23, 2018 (*Respondent's DHP Hearing Exhibit E1 and E2, pp. 1288-1290, and Informant's DHP Hearing Exhibit 6, pp. 905*). Aside from the partial withdrawal of the earned fees prior to becoming "good funds," Respondent properly recorded all transactions pertaining to both clients (*Transcript of DHP Hearing held on April 21, 2022, pp. 726-727 (TR: 223-224) and Respondent's DHP Hearing Exhibit E1 and E2, pp. 1288-1290*).

Respondent admits that he violated the *Missouri Rules of Professional Conduct* by withdrawing the funds prior to being considered "good funds;" however, he contends that no client or third-party funds were affected or at risk as a result thereof.

#### XI. Client C.H.

On July 5, 2018, Respondent deposited a settlement check for Client C.H. in the amount of \$14,000.00 into the Trust Account (*Respondent's DHP Hearing Exhibit A, pp. 1247*). On July 12, 2018, he remitted \$5,994.33 to the client for her distribution of the settlement funds, and he withdrew \$5,205.67 for attorney fees and expenses from the Firm's Trust Account. (*Id. at 1248*). Informant falsely accuses Respondent of writing a

check on December 19, 2018, when in actuality he wrote a check on July 12, 2018, to pay a third-party lien in the amount of \$2,800.00 from the Firm's Trust Account. (*Id.*) The check cleared for payment on August 1, 2018.

Respondent and Kelly Dillion, OCDC Fraud Examiner, agreed that the transaction was properly documented, and no infractions or rule violations occurred (*Transcript of DHP Hearing on March 31, 2022, at Vol. 1, pp. 327-328 (TR: 159:24-160:19)*).

**Respondent contends that this matter was handled properly and there was no violation of the *Missouri Rules of Professional Conduct*.**

XII. Client S.W.

On May 15, 2019, Respondent deposited a settlement check for Client S.W. in the amount of \$7,905.21 into the Firm's Trust Account (*Respondent's DHP Hearing Exhibit A, pp. 1249*). Consistent with his then normal practice, he also withdrew \$1,000.00, as a partial withdrawal of earned fees, from the Firm's Trust Account. (*Id.*) On May 17, 2019, Respondent disbursed \$3,594.72 to the client. The client S.W.'s ledger showed a disbursement to Respondent for \$4,310.49, however, the funds were not actually withdrawn from the Firm's Trust Account. (*Id. at 1249-1250*). Respondent explained that he left the funds in the Firm's Trust Account because he was taking precaution and he knew that the Trust Account needed to be reconciled. The Firm's Trust Account was later reconciled, and the amount was deducted from the account (*Respondent's DHP Hearing Exhibit M, pp. 1333*).

**Respondent admits that he violated of the *Missouri Rules of Professional Conduct* by leaving earned fees in the Trust Account; however, he contends that no client or third-party funds were affected.**

**XIII. Client M.T.**

On February 6, 2018, Respondent deposited a settlement check for M.T. in the amount of \$20,000.00 into the Firm's Trust Account (*Respondent's DHP Hearing Exhibit A, pp. 1250*). Consistent with his then normal practice, he also withdrew \$1,000.00, as a portion of the fees earned, from the Firm's Trust Account. (*Id. at 1251*).

In addition, he remitted \$13,795.32 to the client for her distribution of the settlement funds. (*Id.*) On February 9, 2018, he withdrew \$6,204.68 for attorney fees and expenses from the Firm's Trust Account but neglected to ledger the initial \$1,000.00 withdrawal in his accounting, resulting in a negative balance in the amount of \$1,000.00. (*Id.*)

At the time the withdrawal was made, Respondent maintained the following balances:

02/09/2018 Reserve Account Balance	-	\$389,887.81 <sup>24</sup>
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**Respondent admits that he violated the *Missouri Rules of Professional Conduct* by withdrawing the funds prior to being considered "good funds," in addition to not recording the transaction, albeit in error, in Client M.T.'s ledger causing other client's funds to be at risk. Respondent contends that despite the rule violations,**

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<sup>24</sup> *Respondent's DHP Hearing Exhibits: Exhibit H, Vol. 4, pg. 1296.*

**Respondent made full restitution to the Trust Account using the Reserve Account, and no other client or third-party funds were affected by the error.<sup>25</sup>**

**XIV. Client C.T.R. and A.T.**

On February 14, 2019, Respondent deposited two separate settlement checks for C.T.R. and A.T., mother and daughter, in the amount of \$7,500.00 each into the Firm's Trust Account (***Respondent's DHP Hearing Exhibit A, pp. 1251***). On February 20, 2019, he remitted \$2,500.00 to each of the clients for their portion of the settlement funds. (***Id. at 1252***). The Firm's Trust Ledger indicates Respondent withdrew \$2,879.64 for attorney fees and expenses on February 19, 2019. (***Id. at 1254***). However, he actually withdrew \$5,000.00 (\$2,500.00 for each client) on September 3, 2019, for attorney fees and expenses (***Informant's DHP Hearing Exhibit 6, pp. 911***), leaving \$379.64 in each of the clients' ledger accounts. The Firm's Trust Account was later reconciled and the amounts were deducted from the account (***Respondent's DHP Hearing Exhibit M, pp. 1333***).

On February 22, 2019, after negotiating lien reductions, Respondent paid the third-party lienholder \$1,550.00 for each client<sup>26</sup> from the Firm's Trust Account. (***Id.***) Unfortunately, the third-party lienholder did not receive the checks. Respondent later cancelled the initial checks and sent second checks to pay the liens. The second payments were presented and cleared the Trust Account on April 6, 2020. Respondent remitted

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<sup>25</sup> ***Respondent's DHP Hearing Exhibits: Exhibit H, Vol. 4, pg. 1296.***

<sup>26</sup> Client C.T.R. and A.T., mother and daughter, went to the same Chiropractor at the same time for treatment.

payments for the remaining balances of \$570.36 (A.T.) and \$574.72 (C.T.R) to the clients. **(Informant's DHP Hearing Exhibit 6, pp. 915).**

**Respondent admits that he violated the *Missouri Rules of Professional Conduct* by leaving earned fees in the Trust Account; however, he contends that no client or third-party was adversely affected by his error.**

XV. Client A.W.

On May 15, 2019, Respondent deposited a settlement check in the amount of \$4,500.00 for Client A.W. into the Firm's Trust Account. **(Respondent's DHP Hearing Exhibit A, pp. 1254).** On May 17, 2019, he remitted \$1,500.00 to client for her portion of the settlement funds. **(Id. at 1255).** He also paid a third-party lien in the amount of \$1,200.00 from the Firm's Trust Account. **(Id.).** Respondent's ledger indicates that on May 17, 2019, he withdrew \$1,837.34 for attorney fees and expenses from the Firm's Trust Account; however, Respondent did not actually withdraw the earned fee. The Firm's Trust Account was later reconciled, and the amount was deducted from the account **(Respondent's DHP Hearing Exhibit M, pp. 1333).**

**Respondent admits that he violated the *Missouri Rules of Professional Conduct* by leaving earned fees in the Trust Account; however, he contends that no client or third-party was adversely affected by his error.**

XVI. Client K.L. a/k/a C.L.

On May 31, 2019, Respondent deposited a settlement check for K.L. in the amount of \$17,750.00 into the Firm's Trust Account **(Respondent's DHP Hearing Exhibit A, pp. 1256).** On May 31, 2019, he remitted \$8,931.61 to the client for her portion of the

settlement funds. He also paid himself \$6,767.65 for attorney fees and expenses from the Firm's Trust Account. (*Id.*) On January 24, 2020, Respondent paid a third-party lien in the amount of \$1,000.00 from the Firm's Trust Account. In addition, his ledger reflects an additional payment of \$1,050.74 to himself for attorney fees pertaining to a separate matter for the same client. (*Id. at 1257*).

**Respondent contends that this matter was handled properly and there was no violation of the *Missouri Rules of Professional Conduct*.**

#### XVII. Client T.R.

On September 20, 2019, Respondent deposited a settlement check for Client T.R. in the amount of \$6,000.00 into the Firm's Trust Account (*Respondent's DHP Hearing Exhibit A, pp. 1257*). Consistent with his then normal practice, he also withdrew \$500.00, as a portion of the fees earned, from the Firm's Trust Account. (*Id.*) In addition, Respondent remitted \$1,000.00 to Client T.R. as his partial distribution of the settlement funds.<sup>27</sup> (*Id.*) On October 2, 2019, Respondent remitted the remaining \$1,000.00 to Client T.R. as client T.R.'s remaining portion of the settlement funds. (*Id. at 1258*). On February 14, 2020, Respondent paid a third-party lien in the amount of \$1,775.00 from the Firm's Trust Account. Respondent's ledger also indicates that on February 14, 2020, Respondent withdrew \$2,225.00 for attorney fees and expenses from the Firm's Trust Account; however, he did not actually withdraw the earned fee. (*Id.*) The Firm's Trust Account was

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<sup>27</sup> Client T.R. only received a portion of his share of settlement proceeds because of outstanding medical liens that had to be negotiated by Respondent.

later reconciled, and the amount was deducted from the account (*Respondent's DHP Hearing Exhibit M, pp. 1333*).

**Respondent admits that he violated the Missouri Rules of Professional Conduct by leaving earned fees in the Trust Account; however, he contends that no client or third-party was adversely affected by his error.**

XVIII. Client R.P.

On May 23, 2019 after 2:00 p.m. Respondent deposited a settlement check for client R.P. in the amount of \$5,000.00 into the Firm's Trust Account (*Respondent's DHP Hearing Exhibit A, pp. 1259*). However, the bank did not record the deposit until May 24, 2019 since it was made after 2:00 p.m. the previous day. On May 23, 2019, believing the deposit had been properly recorded, Respondent remitted \$2,825.00 to the Client R.P. for his portion of the settlement funds (*Informant's DHP Hearing Exhibit 6, pp. 909*).

Respondent contends that the difference in dates between the deposit and the disbursement represents a bank timing issue. (*Id*).

In addition, on May 24, 2019, consistent with his then normal practice, Respondent also withdrew \$1,000.00, as a portion of his earned fee, from the Firm's Trust Account (*Informant's DHP Hearing Exhibit 6, pp 909*). On June 10, 2019, Respondent withdrew \$2,175.00 via the bank's electronic transfer system for attorney fee and expenses pertaining to client R.P. (*Id*). Respondent neglected to record the initial \$1,000.00 withdrawal in client R.P.'s ledger, and as a result overdrew the Firm's Trust Account by \$1,000.00. The Firm's Trust Account was later reconciled, and the amount was added back to the account (*Respondent's DHP Hearing Exhibit M, pp. 1333*).



At the time the transfer was made, Respondent maintained the following balances that protected client funds from inadvertent errors:

06/10/2019 TLW Funds held in Trust Account	-	\$48,182.97 <sup>28</sup>
06/10/2019 Reserve Account Balance	-	\$506,528.17 <sup>29</sup>

**Respondent admits that he violated the *Missouri Rules of Professional Conduct* by withdrawing the funds prior to being considered “good funds,” in addition to not recording the transaction, in error, in client M.T.’s ledger causing other client’s funds to be at risk. Respondent contends that despite the rule violations, clients’ and third parties’ funds were protected by the Reserve Account and full restitution was made to the Trust Account. As such, no client or third-party funds were affected by the error.**

#### **XIX. Trust Account Deficit**

Respondent’s neglect to ledger some of the partial fee withdrawals in QuickBooks, along with his failure to reconcile, caused the ensuing problem with the Firm’s Trust Account. Upon receiving the initial complaint and throughout the Informant’s audit, Respondent, himself, revealed a problem with the Firm’s Trust Account after a transaction on October 31, 2019, that left the Trust Account’s QuickBooks balance greater than the Busey Bank’s actual balance (*Transcript of DHP Hearing held on March 31, 2022, pp. 433-435 (TR: 265:1-267:15)*).

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<sup>28</sup> Respondent’s *DHP Hearing Exhibit L*, Vol. 4, pg. 1331.

<sup>29</sup> Respondent’s *DHP Hearing Exhibit H*, Vol. 4, pg. 1306.

Informant falsely alleges that “*Respondent admit[ted] that he was not reconciling the client trust account until he was prompted to do so by the OCDC’s audit...*” (*Informant’s Brief*, pp. 22). However, as previously mentioned (See pg. 7 *supra*), after the problem with the Trust Account was discovered by Respondent in October 2019, he immediately researched and interviewed companies and individuals to hire to reconcile the account. K.K. was retained in December 2019 but did not commence reconciling the accounts until February 2020 (*Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 515 (TR: 12:13-17)*).

Informant also stated that Respondent’s bookkeeper, K.K., testified that after the reconciliation of the Trust Account, Respondent was still keeping \$150 to \$200 of the firm’s funds in the Trust Account; however, Respondent testified that he had no personal funds in the Trust Account. Respondent contends that those funds remained in the account to pay bank charges in accordance with the Rules of Professional Conduct, and he did not consider those funds personal because they were held in the Trust Account for that purpose.

#### XX. Respondent’s Efforts to Remedy Problems with the Trust Account

As previously mentioned, prior to the Claim against Respondent and OCDC’s investigation, Respondent recognized and took measures to remedy the problems with the Firm’s Trust Account (*Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 512-515 (TR: 10-12) and Id. at pp. 709-710 (TR: 206:3-207:3)*). In February 2020, after researching and interviewing since November 2019, Respondent hired a new bookkeeper, K.K. to reconcile the Firm’s Trust Account. (*Transcript of DHP Hearing on March 31,*

**2022, at Vol. 1, pp. 362-363 (TR: 194:25-195:13)).** Currently, K.K. continues reconcile the Firm's bank accounts on a regular basis.

In October 2020, Respondent gained additional trust account education, and now better understands trust account operations (*Transcript of DHP Hearing on March 31, 2022, at Vol. 1, pp. 370 (TR: 202:14-19)* and *Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 642 (TR: 139:2-22)*) Respondent testified that the October 2020 trust account training helped him learn what he can and cannot do with this trust account. (*Id*). Specifically, Respondent gained greater knowledge about client ledgers; "good funds;" trust account disbursements; and keeping track of the reconciliation process on a monthly basis. (*Id*). Respondent also understands that earned fees should not remain in the Trust Account for unreasonable periods of time (*Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 669 (TR: 166:5-10)*). Respondent has modified his trust accounting practices to ensure all of his actions comply with his obligations under the Missouri Rules of Professional Conduct (*Transcript of DHP Hearing on March 31, 2022, at Vol. 1, pp. 370 (TR: 202:1-19)* and *Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 641-642, 669 (TR: 138-39, 166:8-20)*). Respondent now regularly reconciles the Trust Account, and he no longer leaves earned funds in the Trust Account. (*Id*). Respondent's Trust Account has been fully reconciled since March 2020 (*Transcript of DHP Hearing on March 31, 2022, at Vol. 1, pp. 362 (TR: 194:17-25, 241, 277)*). In addition, Respondent's client ledgers and related document are now to corrected and updated (*Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 696 (TR: 193:1-25)*).

Respondent now disburses client and third party-funds, and his fees and expenses at the same time and after the funds are considered “good funds.” (*Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 696, 711-712 (TR: 193, 208-09)*). Respondent also understands that Respondent can no longer utilize counter check or take cash withdrawals out of the Trust Account, including at the time of depositing the settlement funds into the Trust Account (*Transcript of DHP Hearing on March 31, 2022, at Vol. 1, pp. 370 (TR: 202) and Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 695-696 (TR: 192:22-193:2)*). Respondent has not withdrawn cash from the Firm’s Trust Account since November 2020 (*Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 695-696, 712 (TR: 192:18-193:2, 209:9-12)*).

Both OCDC and Respondent acknowledged that no clients were harmed due to Respondent’s Trust Account issues (*Transcript of DHP Hearing on March 31, 2022, at Vol. 1, pp. 330-331, 332 (TR: 162-63, 164)*). This includes the fact that Respondent never withheld money from clients or third parties when the funds should have been disbursed to clients or third parties in a reasonable time period (*Id. and Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 708 (TR: 205:1-8)*). Further, once the Trust Account problems were discovered, Respondent made immediate restitution to the Trust Account to ensure all clients’ and third parties’ funds were accounted for and protected (*Transcript of DHP Hearing on March 31, 2022, at Vol. 1, pp. 333 (TR: 165:5-7)*). At no point did Respondent intentionally misuse client funds (*Transcript of DHP Hearing on March 31,*

2022, at Vol. 1, pp. 330-331, 332 (TR: 162-63, 164) and *Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 708 (TR: 205:1-8).*

XXI. Testimony Regarding Respondent's Character

During the DHP, Respondent called six character witnesses who testified about Respondent's good character, integrity and reputation (**See Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 735-769 (TR: 232-266).** These witnesses stated that they found Respondent to be of very strong moral character, to be honest, trustworthy and an asset to the community. (*Id.*). In addition, all six character witnesses either referred clients to Respondent and/or engaged Respondent in legal services themselves. (*Id.*). Testimony from the six character witnesses were as follows:

A. A.M.J. – Character Witness

A.M.J. is a nurse anesthetist that has known Respondent for Respondent's entire life (*Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 736-737 (TR: 233-34)*). A.M.J. testified that Respondent has very good character: Respondent is honest, trustworthy, congenial, and very professional to his clients (*Id. at 234-35*) A.M.J. has never been a client of Respondent, but she has referred at least three clients to Respondent and all were pleased with his representation. (*Id.*). A.M.J. is also familiar with Respondent's reputation in their community and believes it is excellent (*Id. at 235*) A.M.J. has never heard a complaint about Respondent's character. (*Id.*).

B. M.B. – Character Witness

M.B. is a retired engineer at KMOV Channel 4 in St. Louis. (*Id.* at 236) M.B. has also known Respondent from birth. (*Id.* at 236-37) M.B. is very proud of Respondent's success story going from their neighborhood to law school at Washington University. (*Id.* at 237-238) M.B. testified Respondent is considered a role model in his St. Louis community because of this success. (*Id.* at 238-40) M.B. specifically testified that she believes Respondent is of outstanding character and integrity. (*Id.*) M.B. has also never been a client of Respondent, but she has referred approximately four people to Respondent and none complained about his legal representation. (*Id.* at 240-241)

C. K.T. Character Witness

K.T. is an archives technician with the National Archives and Records Administration and has known Respondent for almost 54 years (*Id.* at 242-43). K.T. grew up with Respondent and they have remained life-long friends. (*Id.*) Respondent represented K.T. in a criminal case relating to allegations of sexual misconduct. (*Id.* at 243-244) K.T. testified that Respondent's representation saved his life because K.T. was facing 67 years in prison (*Id.* at 244, 247) K.T. was found not guilty of the accused crimes (*Id.* at 247). Respondent has also handled other legal matters for K.T. including preparing powers of attorneys for K.T. in-laws. (*Id.* at 244-45) K.T. has also referred at least ten people to Respondent for legal representation, and all have been pleased with the legal services they received. (*Id.*) K.T. believes Respondent has an upstanding character and is known for being honest. (*Id.* at 245-47)

D. A.T. – Character Witness

A.T. is an associate director with Protiviti and has known Respondent since high school. (*Id.* at 249) A.T. continues to interact with Respondent to this day and Respondent is A.T. daughters' godfather. (*Id.* at 249-50) A.T. testified that Respondent serves as her family's attorney. (*Id.* at 250) Respondent has helped A.T.'s family when her parents had some medical issues in 2018. (*Id.*) A.T. recommends Respondent for family law matters to her friends and family. (*Id.* at 251) A.T. considers Respondent a person who can be trusted and has integrity. (*Id.* at 251-52, 254).

E. B.H. – Character Witness

B.H. is an assistant pathologist with Washington University and an entrepreneur and has known Respondent for approximately 20 years. (*Id.* at 255, 259) B.H. met Respondent through their sons running track together. (*Id.* at 256) Respondent has also represented B.H. on several legal matters including accidents and foreclosure matters. (*Id.* at. 256-57) B.H. has referred people to Respondent for legal representation and has always heard good things from people he referred to Respondent. (*Id.* at 257) B.H. testified that Respondent is caring and he would trust Respondent with his life. (*Id.* at 257, 259) B.H. testified that Respondent has an excellent reputation in the community. (*Id.* at 258)

F. K.B. – Character Witness

K.B. is a federal IT consultant. (*Id.* at 260) K.B. has known Respondent since high school, including in personal and professional settings. (*Id.* at 260-61) Respondent serves as the attorney for K.B.'s company and has also represented K.B.'s family members and business partners in various legal matters, as well. (*Id.* at 261-62) K.B. has never heard of any issues with Respondent's representation. (*Id.* at. 262) Although K.B. now lives in

California, he flew into St. Louis to personally testify in support of Respondent. (*Id.* at 263) K.B. testified at length as to what Respondent meant to him as a person and attorney, including that Respondent's character is untouchable. (*Id.* at 264-66)

G. Community Involvement and Service

Respondent is an active board member of Legal Services of Eastern Missouri ("LSEM"), currently serving on the Budget and Finance Committee. (*Id.* at 124-26) Respondent has served on the Board of LSEM for over twenty (20) years. (*Id.*)

Respondent provides considerable volunteer legal and other services to the greater St. Louis metropolitan community. Respondent served on the Budget and Finance Committee for the Monsanto YMCA and downtown St. Louis YMCA for approximately eight years (*Id.* at. 122-23). Respondent is involved with the Matthew-Dickey's Boys' Club and Herbert Hoover Boys' Club of Greater St. Louis, serving as a coach for their youth sports programs and a legal advisor and consultant for the organizations (*Id.* at 128-130, 132).

Respondent formed charitable foundations for professional athletes and entertainer clients, as well as St. Louis University High School. (*Id.* at 131). Respondent provided his legal services pro bono. (*Id.*) Respondent is a member of the fraternity Alpha Phi Alpha, Inc. (*Id.* at 132). Respondent participates in the fraternity's fundraisers and feeding the community programs for Thanksgiving and Christmas. (*Id.*) Respondent is a very active member of his church, Cote Brillante Presbyterian Church, where Respondent serves as an elder and legal advisor and consultant. (*Id.* at 133). In most instances, Respondent provides his services pro bono. (*Id.*)



## SUMMARY

Prior to 2019, Respondent managed and maintained the Firm's Trust Account without interruption or encountering any significant problem. Respondent regularly reconciled the Trust Account. Respondent employed a staff member specifically to reconcile the Firm's bank accounts and pay the Firm's expenses (*Transcript of DHP Hearing held on March 31, 2022, at Vol. 1, pp. 351-352 (TR: 183-84) and Transcript of DHP Hearing held on April 21, 2022, pp. 658-670, 664, 710 (TR: 155-57, 161, 207)*). Respondent regularly updated client ledgers to reflect transactions associated with the clients' accounts (*Transcript of DHP Hearing held on March 31, 2022, at Vol. 1, pp. 372 (TR: 204)*). Respondent regularly withdrew fees as the fees were earned from the Trust Account, and Respondent did not leave known personal funds in the Trust Account for any unreasonable period of time. (*Transcript of DHP Hearing held on April 21, 2022, pp. 665 (TR: 162)*).

The problems with Firm's Trust Account began when Respondent lost the services of the staff member responsible for paying the Firm's expenses and reconciling the Firm's bank accounts. During the time of the staff members absence, Respondent ceased reconciling the Firm's Trust Account on a regular basis; Respondent inadvertently made mistakes and erred in disbursing funds from the Trust Account. (*Transcript of DHP Hearing held on March 31, 2022, at Vol. 1, pp. 408 (TR: 240:1-17, 193;20-23), pp. 350-353 (TR: 182-185, 199-200), Transcript of DHP Hearing held on April 21, 2022, pp. 664 (TR: 161) and Exhibit 18, pp. 1068*); and Respondent did not timely post transactions associated with client matters in their respective ledgers. (*Id.*).

In addition, Respondent began commingling by leaving Respondent's earned fees and personal funds in the Trust Account for unreasonable periods of time. (See *Transcript of DHP Hearing held on April 21, 2022*, pp. 662, 710 (TR: 159, 207)). Respondent tried to wait for the staff member's return in order to catch up on posting transactions to the client ledgers and reconciling the Firm's Trust Account. (*Id.* at 665-666 (TR: 162-63)).

Prior to October 2020, Respondent made a practice of withdrawing portions of Respondent's earned fees at the time client settlement checks were deposited into the Firm's Trust Account. (See *Transcript of DHP Hearing held on March 31, 2022*, at Vol. 1, pp. 408 (TR: 205-206)). During this period, Respondent was not aware he was doing anything wrong by withdrawing a portion of his fees contemporaneous with depositing the funds into Firm's Trust Account, including because he did not appreciate the meaning of "good funds". (*Transcript of DHP Hearing held on April 21, 2022*, pp. 656 (TR: 154)). Unfortunately, some of the partial withdrawal of earned fees were not posted in the clients' ledger accounts during the absence of the pertinent staff member, (*Transcript of DHP Hearing held on March 31, 2022*, at Vol. 1, pp. 372-373 (TR: 204-205)).

While it may appear that client funds were at risk when Respondent failed to reconcile or inadvertently made mistakes or errors while disbursing from the Trust Account, the client funds were not at-risk due to Respondent's creation of the Firm's Reserve Account to protect client assets from mistakes and errors. During the OCDC audit period, the Firm's Reserve Account maintained an average balance in excess of \$385,000. This account was utilized by Respondent to protect client and third-party funds held in the

Trust Account (*Respondent's DHP Hearing Exhibit H*, pp. 1295); (*Transcript of DHP Hearing held on April 21, 2022*, pp. 613 (TR: 110)).

Respondent utilized the Firm's Reserve Account to correct errors made in the Trust Account on two occasions. On November 1, 2019,<sup>30</sup> Respondent withdrew \$25,000.00 from the Reserve Account and deposited that amount into the Firm's Trust Account after Respondent discovered a problem pertaining to the Trust Account balance. (*Transcript of DHP Hearing held on March 31, 2022*, at Vol. 1, pp. 356-358, 409, 460, 463-464 (TR: 188-90, 241, 292, 295-96) and *Informant's DHP Hearing Exhibit 6*, pp. 914). On March 3, 2020, Respondent again withdrew \$25,000.00 from the Reserve Account and deposited that amount into the Firm's Trust Account as a precautionary matter to ensure the protection of client assets while the Trust Account was being reconciled (*Transcript of DHP Hearing held on April 21, 2022*, at Vol. 1, pp. 544-545 (TR: 41:20-43:4) and *Informant's DHP Hearing Exhibit 6*, pp. 915).

Prior to the OCDC's Audit, Respondent knew the Trust Account had been out of balance, and Respondent sought to engage a bookkeeper to help reconcile the Trust Account to ensure all client and third-party funds were protected (*Transcript of DHP Hearing held on March 31, 2022*, at Vol. 1, pp. 338-339, 354-355 (TR: 170-171, 186-187)). In March 2020, the Firm's Trust Account was reconciled and client ledgers were updated (*Transcript of DHP Hearing held on March 31, 2022*, at Vol. 1, pp. 362 (TR:

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<sup>30</sup> The Deposit was actually made on October 31, 2019; however, the transaction was not recorded by the bank until November 1, 2019 because the deposit was made after 2:00 p.m., the bank transaction cutoff time.

**194:17-25, 241, 277)).** Adjustments were made for all errors and mistakes. Under and overdrawn funds were reconciled, and funds that were considered earned and personal funds that were held in the Firm's Trust Account were withdrawn (*Respondent's DHP Hearing Exhibit L*, pp. 1329).

Respondent and Informant agree that there were no situations where Respondent failed to timely disburse funds to clients or third parties (*Transcript of DHP Hearing held on April 21, 2022, pp. 662, 710 (TR: 159, 207)*). Respondent also contends that he never took client funds that he was not entitled to receive (*Transcript of DHP Hearing held on April 21, 2022, pp. 708 (TR: 205)*). Kelly Dillon, OCDC's Certified Fraud Examiner, also acknowledged that Respondent made restitution to the Trust Account to assure clients and third parties' assets were secured. (*Transcript of DHP Hearing held on March 31, 2022, at Vol. 1, pp. 333 (TR: 165:5-7)*). In addition, Kelly Dillon acknowledged that Respondent never withheld money from clients or third parties, or failed to disburse funds to clients or third parties within a reasonable time. (*Transcript of DHP Hearing held on March 31, 2022, at Vol. 1, pp. 330-331 (TR: 162-63)*).

Respondent now operates the Firm's Trust Account in compliance with the *Missouri Rules of Professional Conduct*.

## **POINTS RELIED UPON WITH AUTHORITIES**

### **POINT I**

**This Court Should Not Discipline Respondent Thayer Weaver Because The Informant Has Not Met Its Burden In Proving That Respondent Violated Supreme Court Rules 4-1.15(A), 4-1.15(A)(5), 4-1.15(A)(6), 4-1.15(A)(7), 4-1.15(B), 4-1.15(C), 4-1.15(D), 4-1.15(F), And 4-8.4(C) In The Allegations Concerning: June 29, 2018, Deposit Of \$8,000.00; August 14, 2018, Deposit Of \$32,000.00 From A Client's Morgan Stanley Trust Account; September 19, 2018, Deposit Of \$108.91 From Ameren And \$1,418.97 Payable To Respondent And His Wife From Bank Of America; February 21, 2019, Deposit Of \$3,400.00 From Sale Of Mother's Estate Assets; February 28, 2019, Deposit Of \$27,153.44 From An Estate Account At Busey Bank To The Firm's Trust Account; September 20, 2019, Deposit Of \$113.43 From Xcellence, Inc.; Client K.H.; Client C.L.; Client C.H; And Client K.L. A/K/A C.L., In That Respondent Did Not Violate Supreme Court Rules 4-1.15(A), 4-1.15(A)(5), 4-1.15(A)(6), 4-1.15(A)(7), 4-1.15(B), 4-1.15(C), 4-1.15(D), 4-1.15(F), And 4-8.4(C) As They Pertain To The Above-Referenced Incidents. (Response to Informant's Point I).**

*In re Griffey* 873 S.W.2d 600 (Mo. banc 1994)

*In Re Madison*, 282 S.W.3d 350 (Mo. banc 2009)

*In re Maribile*, 975 S.W.2d 936 (Mo. banc 1998)

*Rule 4-1.15(c)*

*Rule 4-1.15(d)*

*Rule 4-8.4 (c)*

## **POINT II**

**This Court Should Not Disbar or Suspend Respondent Because His Conduct and Evidence of Mitigation Support Imposition of a Sanction No More Than an Admonishment or Stayed Suspension In That Respondent's Actions Were Not Intentional And Client Funds Were Not At Risk. (Response to Informant's Point II).**

*Bertram v. Kempster*, 216 S.W.2d 494 (Mo. 1949)

*In re Elliot*, 694 S.W.2d 262 (Mo. banc 1985)

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

*Larabee v. Eichler*, 271 S.W.3d 542 (Mo. banc 2008)

*Rule 4-1.15*

*Rule 4-8.4(c)*

## **POINT III**

**Respondent Should Receive No More Than an Admonishment or Stayed Suspension Based Because Of This Court's Decisions In Previous Attorney Discipline Cases And The ABA Sanction Guidelines In that Respondent's Actions Were Not Intentional And Client Funds Were Not In Danger.**

*In re Caranchini*, 956 S.W.2d 910 (Mo. banc 1997)

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

*In re Forck*, 418 S.W.3d 437 (Mo. banc 2014)

*In re Gardner*, 565 S.W.3d 670 (Mo. banc 2019)

## **ARGUMENT**

### **POINT I**

**This Court Should Not Discipline Respondent Thayer Weaver Because The Informant Has Not Met Its Burden In Proving That Respondent Violated Supreme Court Rules 4-1.15(A), 4-1.15(A)(5), 4-1.15(A)(6), 4-1.15(A)(7), 4-1.15(B), 4-1.15(C), 4-1.15(D), 4-1.15(F), And 4-8.4(C) In The Allegations Concerning: June 29, 2018, Deposit Of \$8,000.00; August 14, 2018, Deposit Of \$32,000.00 From A Client's Morgan Stanley Trust Account; September 19, 2018, Deposit Of \$108.91 From Ameren And \$1,418.97 Payable To Respondent And His Wife From Bank Of America; February 21, 2019, Deposit Of \$3,400.00 From Sale Of Mother's Estate Assets; February 28, 2019, Deposit Of \$27,153.44 From An Estate Account At Busey Bank To The Firm's Trust Account; September 20, 2019, Deposit Of \$113.43 From Xcellence, Inc.; Client K.H.; Client C.L.; Client C.H; And Client K.L. A/K/A C.L. In That Respondent Did Not Violate Supreme Court Rules 4-1.15(A), 4-1.15(A)(5), 4-1.15(A)(6), 4-1.15(A)(7), 4-1.15(B), 4-1.15(C), 4-1.15(D), 4-1.15(F), And 4-8.4(C) As They Pertain To The Above-Referenced Incidents. (Response to Informant's Point I).**

#### **I. Standard of Review**

In attorney disciplinary cases, the Supreme Court reviews the evidence *de novo*, determining all issues pertaining to credibility of witnesses and the weight of the evidence



and draws its own conclusions of law. The Supreme Court is free to reject wholly or in part the recommendation of the disciplinary hearing panel. *In Re Madison*, 282 S.W.3d 350, 352 (Mo. banc 2009). As this Court noted in *In re Griffey* 873 S.W.2d 600, 601 (Mo. banc 1994), the hearing panel's "findings, conclusions and recommendations are helpful in determining disposition in a particular case but, ultimately, this Court examines the evidence and makes the necessary factual determinations."

The burden of proof for professional misconduct is a preponderance of evidence. *In re Coleman*, 295 S.W.3d 857, 865 (Mo. banc 2009). "The burden of proof shall be on the informant to establish a violation of Rule 4 by a preponderance of the evidence." *Missouri Supreme Court Rule 5.15 (d)*.

## II. Argument

As referenced previously, Informant has made several allegations that Respondent has violated various Missouri Supreme Court Rules. While Respondent has made some errors, he steadfastly denies violating said Rules in the matters addressed below. It is Respondent's position that his actions in line with the Rules and thus, Informant has not met its burden of persuasion.

### June 29, 2018, Deposit of \$8,000.00

Informant has alleged that Respondent violated *Rule 4-1.15(c)* by depositing \$8,000.00 from petty cash funds into the Trust Account which represented earned and unearned fees and making bulk withdrawals from the trust account without referencing from which client the funds were being withdrawn. (***Informant's Br.* pp 11**).

Pursuant to *Rule 4-1.15(c)*, a “lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, except that an advanced flat fee which does not exceed \$2,000 is exempted from this requirement and may be deposited into another account.”

Respondent denies depositing “petty cash” into the Trust Account. Respondent had a merchant account at Bank of America (***Transcript of DHP Hearing held on April 21, 2022, pp. 643-644 (TR 140:23-141:25)***). During the OCDC audit period, the Firm’s bank account labeled as a “petty cash” account at Bank of America was actually the Firm’s Merchant Account where both earned and unearned fees are deposited.<sup>31</sup> The June 29, 2018, deposit in the amount of \$8,000.00 was deposited from the Firm’s Merchant Account at Bank of America that receives retainers from clients who pay by credit card and mobile payments (Zelle, CashApp and Venmo) (***Transcript of DHP Hearing held on April 21, 2022, at Vol. 1, pp. 645 (TR: 142:6-14)***). Respondent deposited all the funds from the Merchant Account to the Firm’s Trust Account because he had to determine the unearned fee amount that needed to be held in trust (***Respondent’s DHP Hearing Exhibit A, pp. 1237 and Transcript of DHP Hearing held on April 21, 2022, at Vol. 1, pp. 645 (TR: 142:6-25)***).

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<sup>31</sup> After the reconciliation, Respondent closed the account known as “Petty Cash” and replaced it with the account correctly termed “Merchant Account.”

Respondent's earned fees were later withdrawn from the Firm's Trust Account (**Day 1 Tr., pp 199**).

August 14, 2018, Deposit of \$32,000.00 from a Client's Morgan Stanley Trust Account

The \$32,000.00 was from a client trust account at Morgan Stanley (**Transcript of DHP Hearing held on April 21, 2022, at Vol. 1, pp. 691-692 (TR: 188:2-189:5)**).

Respondent serves as trustee for the account held at Morgan Stanley. Respondent made the deposit of \$32,000.00 into the Firm's Trust Account in order to obtain a cashier's check for the same amount to purchase a special handicap accessible vehicle for the client/beneficiary. (**Id**). The purchase of the vehicle required the use of a cashier's check and Morgan Stanley does not provide cashier's checks. (**Id**).

Kelly Dillion, OCDC's Certified Fraud Examiner, agreed that this transaction was handled properly and Respondent had not violated of the *Missouri Rules of Professional Conduct* (**Transcript of DHP Hearing on March 31, 2022, at Vol. 1, pp. 299-300 (TR: 131:10-132:5)**). The funds in question were client funds and were properly used for the client's benefit for the client's purpose.

September 19, 2018, Deposit of \$108.91 from Ameren And \$1,418.97 payable To Respondent And His Wife from Bank Of America

On September 19, 2018, Respondent deposited a check from Ameren for \$108.91 and Bank of America payable to him and his wife for \$1,418.97 into the Trust Account. Respondent did not know the nature of the checks so as precautionary measure he deposited

the funds into the Firm's Trust Account. (*Informant's DHP Hearing Exhibit 13*, pp. 987 (Tr: 109:6-11) and *Respondent's DHP Hearing Exhibit A*, pp. 1238).

Respondent later determined that the Ameren check was a refund for an estate that Respondent was administering. (*Respondent's DHP Hearing Exhibit L*, pp. 1331). Thus, the Ameren check constituted client funds and were properly deposited into Firm's Trust Account.

The Bank of America check also constituted client funds. Respondent represented his wife on a matter. The Bank of America check related to that legal matter and therefore, had to be deposited in the Trust Account.

Respondent contends that the deposits were proper because at the time the deposits were made, he believed the deposits may have been client-related; it was later determined that both checks were client-related, and the funds were properly recorded and disbursed.

*February 21, 2019, Deposit of \$3,400.00 from Sale Of Mother's Estate Assets*

On February 21, 2019, Respondent deposited \$3,400.00 into the Trust Account. (*Respondent's DHP Hearing Exhibit A*, pp. 1238). The \$3,400.00 were the proceeds from an estate sale that Respondent was administering on behalf of a family member. Because the \$3,400.00 were client funds, they were properly deposited into the Firm's Trust Account.

*February 28, 2019, Deposit of \$27,153.44 from an Estate Account at Busey Bank*

The deposit of \$27,153.44 were client funds from a separate client account at Bank of America that were consolidated into the Firm's Trust Account for the distribution of the estate's assets to the heirs and the ultimate closing of the estate. (*Respondent's DHP*

**Hearing Exhibit I, pp. 1325).** Because the funds were client funds, Respondent properly deposited the funds into the Trust Account.

*September 20, 2019, Deposit of \$113.43 from Xcellence, Inc.*

On September 20, 2019, Respondent deposited \$113.43 into the Firm's Trust Account from Xcellence, Inc. which is a document copy service company. At the time of the deposit, Respondent was unsure regarding the nature of the check. It was later determined that the funds represented a refund related to a client matter, and the deposit was in compliance with the Rules (***Respondent's DHP Hearing Exhibit A, pp. 1240***).

*Client K.H.*

Informant argues that Respondent violated *Rule 4-1.15(d)* when he failed to realize he was holding funds for client K.H. and not delivering said funds in a timely manner; Informant also claims that Respondent violated this rule when he failed to satisfy liens on behalf of clients C.T.R. and A.T. (***Informant's Br. 29***)

*Rule 4-1.15(d)* requires that:

*"Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as provided in Rules 4-1.145 to 4-1.155 or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property."*

On December 10, 2018, Respondent received and deposited two settlement check on behalf of Client K.H. and her son, for \$10,348.60 and \$3,200.00, respectively

**(Informant’s DHP Hearing Exhibit 13, pp. 993-994 (TR: 132:10-137:7), Exhibit 20, pp. 1077-1083, and Respondent’s DHP Hearing Exhibit A, pp. 1243).** On December 13, 2018, Respondent disbursed \$5,026.36 for K.H.’s portion of the settlement and \$857.38 for her son’s portion. **(Id).** On December 17, 2018, Respondent withdrew his fees in the amount of \$3,814.24 and \$1,312.23, respectively. **(Id. at pp. 1244).** Respondent negotiated and satisfied the chiropractor liens in the amount of \$1,600.00 (\$800 per client). **Id.** At the request of the chiropractor, Respondent paid the negotiated lien amounts in cash **(Id., Respondent’s DHP Hearing Exhibit P, pp. 1340, Transcript of DHP Hearing held on March 31, 2022, at Vol. 1, pp. 697-698) and Transcript of DHP Hearing held on April 21, 2022, pp. 697-698 (TR: 194:2-195:7)).**

In addition to the chiropractor lien, Respondent satisfied a Medicaid lien in the amount of \$44.00 **(Transcript of DHP Hearing held on March 31, 2022, at Vol. 1, pp. 421-426 and Informant’s DHP Exhibit 34, pp. 1198-1206).** Contrary to the Informant’s contention that “Respondent testified that he was not aware of the outstanding lien until it was brought to his attention by the OCDC”, Respondent sent several lien requests for C.H. to Medicaid during the COVID period **(Informant’s DHP Exhibit 34, pp. 1204-1205).** Respondent never received a response from the original request. **(Id).** Respondent then sent another lien request. **(Id).** The Medicaid lien holder responded and requested \$44.00 to satisfy the lien. **(Id).** Respondent promptly paid Medicaid lien holder from the Firm’s Trust Account, and then sent the client two (2) checks for remaining balance in the amount

of \$258.00 and \$230.39 for K.H. and her son, respectively (***Informant's DHP Exhibit 20, pp. 1081***).

Respondent contends that this matter was handled properly and there was no violation of the *Missouri Rules of Professional Conduct*.

***Client C.L.***

Informant falsely accuses Respondent of failing to ledger or document the \$1,000.00 early withdrawal in the matter involving Client C.L. (***Informant's Br. 15***). However, the Respondent's only mistake was paying the prior attorney's lien out of the Firm's operating account, and this mistake was corrected during the reconciliation of the Firm's Trust Account (***Respondent's DHP Hearing Exhibit M, pp. 1333***). In this instance, Respondent properly deducted the \$1,000.00 earlier withdrawal in the client ledger (***Respondent's DHP Hearing Exhibit M, pp. 1333***).

The total amount received as a settlement in C.L.'s case was \$7,637.28 (***Respondent's DHP Hearing Exhibit K, pp. 1327-1328***). Respondent remitted \$5,264.94 to C.L. for his portion of the settlement funds. (***Respondent's DHP Hearing Exhibit A, pp. 1246***).

Respondent's fee was calculated at \$2,352.32, however, he only withdrew \$1,034.32 for attorney fees and expenses from the Firm's Trust Account. (***Respondent's DHP Hearing Exhibit K, pp. 1326***). However, Respondent left \$318.00 in the account to satisfy an attorney's lien for the prior retained attorney. The attorney's lien was paid out

of the Firm's operating account and Respondent recovered the amount during the reconciliation of the Firm's Trust Account. (*Id.*).

Respondent denies violation of the *Missouri Rules of Professional Conduct*.

Clients P.H. and C.H

Informant claims that Respondent was guilty of misrepresentation, deceit, and fraud in violation of *Rule 4-8.4 (c)* reference to Client C.H.'s government benefits (*Informant's Br. pp 10*). Informant alleges that the Respondent deposited C.H.'s inheritance from C.H.'s mother's estate in the amount of \$64,202.70 into the Trust Account so that C.H. would not receive income that could jeopardize his unidentified government benefits. Informant infers a nefarious intent because of the fact that the inherited funds were withdrawn over time. (*Id. pp 10-11*).

Respondent was engaged by P.H. and C.H. to collect C.H.'s inheritance from C.H.'s mother's estate. Respondent collected C.H.'s inheritance then disbursed the funds as instructed by the client. Respondent had no direct knowledge as to what benefits C.H. was receiving. (*Transcript of DHP Hearing held on March 31, 2022, pp. 379-380 (TR:211:18-212:18)*). Respondent did not provide any legal service to C.H. to obtain any government benefits. (*Id.*).

Respondent dispersed the client funds as the client instructed. **Transcript of DHP held on April 21, 2022, pp. 686-688 (TR:183-185) and Informant's DHP Exhibits: Exhibit 16, pp. 1052-1053**). "Attorneys generally must follow their clients' instructions,



but only within the limits of the law.” *In re Maribile*, 975 S.W.2d 936, 940 (Mo. banc 1998).

Informant has provided no evidence in support of the notion that the Respondent’s actions were in violation of *Rule* 4-8.4 (c). Informant has produced no evidence of any statute or rule violation for the receipt of inherited assets in connection herewith. Furthermore, Informant has produced no evidence of any fraud, deception, misrepresentation. As such, Informant has not met its burden in reference to this allegation.

*Different Client C.H.*

On July 5, 2018, Respondent deposited a settlement check for Client C.H. in the amount of \$14,000.00 into the Trust Account (***Respondent’s DHP Hearing Exhibit A, pp. 1247***). Informant falsely alleges that Respondent wrote a check on December 19, 2018, when in actuality he wrote a check on July 12, 2018, to pay a third-party lien in the amount of \$2,800.00 from the Firm’s Trust Account. (***Id.***). The check cleared for payment on August 1, 2018.

Kelly Dillion, OCDC Certified Forensic Accountant, agreed that the transaction was properly documented, and no infractions or rule violations occurred (***Transcript of DHP Hearing on March 31, 2022, at Vol. 1, pp. 327-328 (TR: 159:24-160:19)***).

*Client K.L. a/k/a C.L.*

Informant alleges that Respondent failed to ledger earned fees in the amount of \$1,050.74 and assumes they were removed from the Trust Account in a bulk sweep. (***Informant’s Br. pp 20***).

Respondent denies that he failed to ledger the \$1,050.74 in question. On May 31, 2019, Respondent deposited a settlement check for K.L. in the amount of \$17,750.00 into the Firm's Trust Account (*Respondent's DHP Hearing Exhibit A*, pp. 1256). On May 31, 2019, he remitted \$8,931.61 to the client for her portion of the settlement funds. Respondent also paid himself \$6,767.65 for attorney fees and expenses associated with a personal injury matter from the Firm's Trust Account. (*Id.*) On January 24, 2020, Respondent paid a third-party lien in the amount of \$1,000.00 from the Firm's Trust Account. In addition, the client's ledger reflects an additional payment of \$1,050.74 to Respondent for attorney fees pertaining to a separate matter for the same client. (*Id.* at 1257).

### III. Conclusion

Respondent denies that he committed any violations of the Missouri Rules of Professional Responsibility in the above-referenced cases. Informant has not met its burden in proving their corresponding allegations. Respondent should not be sanctioned for his actions in these cases.

## **POINT II**

**This Court Should Not Disbar or Suspend Respondent Because His Conduct and Evidence of Mitigation Support Imposition of a Sanction No More Than an Admonishment or Stayed Suspension In That Respondent's Actions Were Not Intentional And Client Funds Were Not At Risk. (In Response to Informant's Point II).**

### **I. Standard of Review**

As stated *supra*, the Supreme Court reviews the evidence *de novo*, determining all issues pertaining to credibility of witnesses and the weight of the evidence and draws its own conclusions of law and is free to reject wholly or in part the recommendation of the disciplinary hearing panel. *In Re Madison*, 282 S.W.3d 350, 352 (Mo. banc 2009).

The burden of proof is a preponderance of evidence. *In re Coleman*, 295 S.W.3d 857, 865 (Mo. banc 2009). "The burden of proof shall be on the informant to establish a violation of Rule 4 by a preponderance of the evidence." *Missouri Supreme Court Rule* 5.15 (d).

### **II. Argument**

In its brief, Informant alleged that Respondent had violated the following *Rules of Professional Responsibility*: 1. *Rule* 4-1.15(a); 2. *Rule* 4-1.15(a)(5); 3. *Rule* 4-1.15(a)(6); 4. *Rule* 4-1.15(a)(7); 5. *Rule* 4-1.15(b); 6. *Rule* 4-1.15(c); 7. *Rule* 4-1.15(d); 8. *Rule* 4-1.15(f); and 9. *Rule* 4-8.4(c).

Nearly all of the allegations against Respondent involve the Trust Account. Trust accounts are governed generally by *Rule 4-1.15*. While Respondent admittedly made errors in the course of operation of Firm's Trust Account, it is important to consider these errors in context.

**1. Rule 4-1.15(a)**

*Rule 4-1.15(a)* states that “(a) lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. “

Informant has alleged that Respondent violated *Rule 4-1.15(a)* when he “*deposited earned fees and other personal funds directly into the client trust account and when he routinely allowed earned fees to remain in that account for an unreasonable period of time.*” (***Informant's Br. pp 27***).

As previously stated, the problems began when P.H. work schedule was interrupted by personal and health issues. P.H. continued to work through 2017, but her hours greatly decreased in 2018, dropping from 20 hours per week to less than 5 hours per month (***Transcript of DHP Hearing held on March 31, 2022, Vol.1, pp. 351 (TR: 184:4-12)***). Initially, Respondent and P.H. believed that the decrease in hours was only temporary. (***Transcript of DHP Hearing held on March 31, 2022, Vol.1, pp. 353 (TR:185:2-3)***).

P.H.'s job duties included maintaining the Firm's books, paying its expenses and reconciling the bank accounts. (***Transcript of DHP Hearing held on March 31, 2022, Vol.1, pg. 350-351 (TR: 182:17-183:14)***).

Respondent did not seek a replacement employee because he was loyal to P.H. and thought her absence was only temporary. Instead, Respondent assumed most of P.H.'s duties on a temporary basis until P.H. could return. (*Transcript of DHP held on April 21, 2022, pp. 665 (TR: 162)*). Respondent believed that the Trust Account could be reconciled once P.H. returned (*Id. at 665-666 (TR: 162-63)*).

Respondent testified that he did not leave earned funds in the Trust Account until early 2019, when P.H. began missing work due to P.H. and her husband's health issues. (*Transcript of DHP held on April 21, 2022, pp. 665 (TR: 162)*).

Admittedly, Respondent left some earned fees in the Trust Account, however this was a precautionary measure to protect client funds until the account could be reconciled. (*Respondent's DHP Hearing Exhibit L, Vol. 4, pg. 1329-1332 and Exhibits M, pp. 1333*).

## 2. Rule 4-1.15(a)(5)

*Rule 4-1.15(a)(5)* states that "(w)ithdrawals shall be made only by check payable to a named payee, and not to cash, or by authorized electronic transfer."

Informant specifically claim that Respondent violated *Rule 4-1.15(a)(5)* every time he made a cash withdrawal from the Firm's Trust Account. (*Informant's Br. pp 28*).

Respondent admitted that, prior to 2020, he routinely withdrew cash from the Firm's Trust Account – normally in the amount of \$500.00 or \$1,000.00 – and contemporaneous with depositing client or third-party funds into the Firm's Trust Account (*Transcript of*

***DHP Hearing on March 31, 2022, at Vol. 1, pp. 202-203, 369 (TR: 34-35, 201), Transcript of DHP Hearing held on April 21, 2022, at Vol. 1, pp. 651-652 (TR: 148-49); and Informant's DHP Hearing Exhibit 12, pp. 936).***

Respondent testified that he would receive a settlement check, calculate his portion for attorney fees, and typically withdraw \$500 or \$1,000 as an advance withdrawal of Respondent's attorney fees at the same time the deposit was made. (***Transcript of DHP Hearing held on April 21, 2022, pp. 651-652 (TR: 148-49))***).

At that time, Respondent did not believe he was doing anything wrong by withdrawing a portion of his fees contemporaneous with depositing the funds into the Trust Account. (***Transcript of DHP Hearing held on April 21, 2022, pp. 656 (TR: 154))***). When taking such withdrawals at the time of deposits, Respondent would staple a copy of the counter check to the back of the deposits documentation then ledger the transactions when the settlement checks were posted to the particular client ledgers. (***Id. at 149***).

Since that time, Respondent has completed training on Trust Account management and Respondent understands that he cannot take cash withdrawals from the Trust Account and no longer does so. (***Transcript of DHP Hearing held on April 21, 2022, pp. 651-652 (TR: 148-49))***).

### **3. Rule 4-1.15(a)(6)**

*Rule 4-1.15(a)(6)* states that:

*“No disbursement shall be made based upon a deposit:*

*(A) if the lawyer has reasonable cause to believe the funds have not actually been collected by the financial institution in which the trust account is held; and*

*(B) until a reasonable period of time has passed for the funds to be actually collected by the financial institution in which the trust account is held.”*

Informant alleges that Respondent violated *Rule* 4-1.15(a)(6) when he made cash withdrawals from the Trust Account immediately after depositing client funds and for making distribution of funds to clients without waiting for reasonable time for the funds to clear. (*Informant’s Br. 28*).

As stated *supra*, Respondent admits that he withdrew cash simultaneously with deposit of settlement checks. (*Transcript of DHP Hearing held on April 21, 2022, pp. 651-652 (TR: 148-49)*). At the time, Respondent was confident that the settlement checks were “good funds” because the checks were issued from major insurance companies such as State Farm and Prudential, and Respondent knew there was essentially no risk the checks would be dishonored. (*Day 1 Tr. 205-06, 232*). When settlement checks came from smaller, unknown entities or people, Respondent would not withdraw cash contemporaneously when he deposited checks. (*Id.*)

In addition, *Rule* 4-1.15(a)(6) had only recently changed, becoming effective January 1, 2019. The previous version only required that a check be held “*until a reasonable period of time has passed*”; this language was amended, and the new rule required a check to be held 10-days to be considered “*good funds*” (*Respondent’s DHP*

**Hearing Exhibit B at Vol. 4 and Transcript of DHP Hearing held on March 31, 2022, pp. 285-293 (TR:117-125)).** Respondent was not aware of the Rule change.

Respondent now understands that he is required to wait 10 days before deposited funds can be distributed, regardless of who issued the settlement check.

**4. Rule 4-1.15(a)(7)**

*Rule 4-1.15(a)(7)* requires that “*reconciliation of the account shall be performed reasonably promptly each time an official statement from the financial institution is provided or available*”.

Informant alleges that Respondent violated *Rule 4-1.15(a)(7)* when he failed to reconcile his account each time he received a bank statement. (***Informant’s Br.* pp. 28**).

Respondent acknowledged that he should have reconciled his account in a timelier manner. As previously stated, Respondent relied on employee, P.H., to reconcile the Trust Account. As stated, he anticipated that her absence would only be temporary. (***Transcript of DHP Hearing held on March 31, 2022, Vol.1, pp. 353 (TR:185:2-3)***). Respondent testified that he was waiting for P.H.’s return to reconcile the Trust Account. (***Id.* at 665-666 (TR: 162-63)**).

Respondent now has a bookkeeper that reconciles the account on a monthly basis.

**5. Rule 4-1.15(b)**



Pursuant to *Rule 4-1.15(b)* “(a) lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying financial institution service charges on that account, but only in an amount necessary for that purpose.”

Informant alleges that Respondent violated this rule by depositing earned fees and checks into the Trust Account. (***Informant's Br.* pp 28**).

While Respondent acknowledges that non-client related funds should not be deposited in the Firm's Trust Account and earned fees should not be left in the Trust Account, he felt that doing so, during the audit period, would protect clients' assets and not cause the clients' assets to be at-risk. (***Transcript of DHP Hearing held on March 31, 2022, at Vol.1, pp. 454 (TR: 286:8-23) and Respondent's DHP Hearing Exhibit H, pp. 1317***).

During the period when Respondent knew there was a problem with the Trust Account, Respondent elected to protect clients' funds by leaving earned fees in and depositing personal funds into the Trust Account. Respondent now has a new staff member that reconciles the Trust Account on a monthly basis and Respondent no longer leaves earned fees in or deposits non-client related funds into the Trust Account.

**Rule 4-1.15(f)**

*Rule 4-1.15(f)* mandates that the lawyer maintain and preserve complete trust records for each client. Informant has alleged that Respondent violated this rule by not reconciling the trust account in a timely manner, making withdrawals from the trust

account without making a corresponding ledger entries and sweeping fees out of the trust account without making corresponding ledger entries. (*Informant's Br. pp 29*).

Respondent admits that he knew the firm's Trust Account had not been reconciled since May 10, 2018 (*Informant's DHP Hearing Exhibit 6, pp. 902*). However, Respondent believed so long as the Busey Bank's actual balance exceeded the QuickBooks' balance, client's funds would be secured, and Respondent could carry on with business.

Prior to recognizing the discrepancy between the QuickBooks Trust Account balance and the Bank's Trust Account balance, Respondent did not realize there was a problem. When he realized the discrepancy on October 31, 2019,<sup>32</sup> Respondent immediately made a \$25,000.00 deposit to the Trust Account from the Reserve Account to protect and safeguard clients' assets (*Transcript of DHP Hearing held on April 21, 2022, pp. 648-649, 676 (TR: 145-46, 173)*).

Respondent acknowledged that Respondent may have *appeared* to put client funds at risk when he failed to ledger Respondent's partial fees withdrawn from the Trust Account and failed to reconcile the Trust Account regularly (*Transcript of DHP Hearing held on April 21, 2022, pp. 613 (TR: 110)*). However, this risk was in appearance only as Respondent's Reserve Account maintained a balance in excess of \$385,000 for him to

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<sup>32</sup> As previously stated, the Deposit was actually made on October 31, 2019; however, the transaction was not recorded by the bank until November 1, 2019 because the deposit was made after 2:00 p.m., the bank transaction cutoff time.

utilize to protect client and third-party funds held in the Trust Account (*Respondent's DHP Hearing Exhibit H*, pp. 1295).

**6. Rule 4-8.4(c)**

Informant claims that Respondent violated Rule 4-8.4(c) by engaging ‘*in conduct involving dishonesty, fraud, deceit, or misrepresentation.*’ Informant alleged multiple violations of Rule 4-8.4(c).

Rule 4-8.4(c) does not define what constitutes “*dishonesty, fraud, deceit, or misrepresentation.*” Comment 2 to Rule 4-8.4(c) provides some guidance:

*“Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud.... Traditionally, the distinction was drawn in terms of offenses involving “moral turpitude.” That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category.”*

When looking at the common law definitions of these terms, it becomes apparent that “*dishonesty, fraud, deceit, or misrepresentation*” requires a knowing or intentional act. Fraud refers to a “willful, malevolent act, directed to perpetrating a wrong to the rights of another.” *Bertram v. Kempster*, 216 S.W.2d 494, 497 (Mo. 1949) (*internal quotes omitted*).

The elements of a misrepresentation tort claim require a showing that the party made a false statement with “knowledge of its falsity”. *Larabee v. Eichler*, 271 S.W.3d 542, 546 (Mo. banc 2008).

When examining the alleged violations of *Rule* 4-8.4(c), it is clear that Respondent’s acts lack the specific intent to commit “*dishonesty, fraud, deceit, or misrepresentation*”.

*i.      Depositing funds from Cleveland Indians*

As explained in the Statement of Facts, the deposit of this check was inadvertent. (***Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 681-684 (TR: 178:1-181:13)***). The check in question was opened by a staff member from Respondent’s Firm and placed in a deposit with 2 other checks (***Respondent’s DHP Hearing Exhibits: Exhibit C, pp. 1285***). Respondent did not notice the errant inclusion of the check and proceeded to deposit all the checks listed on one deposit slip (***Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 681-684 (TR: 178:1-181:13)***). This errant deposit was not discovered during the reconciliation of the Firm’s Trust Account because staff members did not make a copy of this deposit, which was the Firm’s general practice, and copies of deposited checks were not included on monthly bank statements.

While unfortunate, this deposit was done in error and should not be grounds for disbarment. See *In re Elliot*, wherein an attorney was not sanctioned for an erroneous deposit. 694 S.W.2d 262, 264 (Mo. banc 1985). Respondent’s actions were at most negligent as opposed to fraudulent, dishonest or deceitful. Dishonesty, fraud, deceit, and misrepresentation are conscious acts with intended results. See *In re Schaeffer* 824 S.W.2d

1, 4-5 (Mo. banc. 1992). Furthermore, upon Respondent discovering the errant deposit, Respondent immediately corrected the error and repaid the payor. (*supra.*)

ii. Withdrawing money from trust account, leaving insufficient funds for client money on October 31, 2019

Informant alleges that Respondent violated *Rule* 4-8.4(c) on October 31, 2019. (*Informant's Br.*, pp 30). According to Informant, there was a deficit of \$28,483.58. (*Id.* at pp 22).

On October 31, 2019, while paying payroll and the firm's monthly expenses, Respondent noticed that the QuickBooks Trust Account balance exceeded the bank's Trust Account balance, indicating a problem with the Firm's Trust Account. (*Transcript of DHP Hearing held on March 31, 2022, Vol.1, pp. 352-353 (TR: 184:16-185:25)*). Respondent had previously transferred \$14,000.00 in earned fees from the Firm's Trust Account to the firm's operating account on September 15, 2019, believing these funds were available to be transferred<sup>33</sup> (*Transcript of DHP Hearing held on March 31, 2022, Vol.1, pp. 455-456 (TR: 287:3-288:8)*). On October 31, 2019, Respondent noticed the QuickBooks' Trust Account balance exceeded the Bank's Trust Account balance (*Transcript of DHP Hearing held on March 31, 2022, at Vol.1, pp. 454 (TR: 286:8-23)*). On the same day,<sup>34</sup>

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<sup>33</sup> It was later determined that the \$14,000.00 in earned fees were not available because Respondent did not ledger the partial distribution of earned fees at the time of the deposit.

<sup>34</sup> The transaction was not recorded in the bank's records until November 1, 2019, because the deposit was made after 2:00 p.m. on October 31, 2019 (See *Informant's DHP Hearing Exhibits: Exhibit 6, pp. 901*)

Respondent immediately transferred \$25,000.00<sup>35</sup> from the Reserve Account to the Firm's Trust Account to protect the client funds held in the account until a complete reconciliation of the Trust Account could be performed (*Id. and Respondent's DHP Hearing Exhibits: Exhibit H, pp. 1317*).

Informant incorrectly alleges that "*Respondent admit[ted] that he was not reconciling the client trust account until he was prompted to do so by the OCDC's audit...*" (*Informant's Br., pp 22*). Informant does not cite any portion of the hearing transcript to support this allegation because there was no evidentiary support.

In addition, Informant later contradicts itself when Informant notes that Respondent had tried to address the Trust Account deficit "(e)ven before Respondent undertook his own reconciliation." (*Id.*).

Upon learning of the error on October 31, 2019, Respondent took immediate action. Respondent researched and interviewed companies and individuals to hire to reconcile the Trust Account. Respondent retained a bookkeeper in December of 2019, but the bookkeeper could not commence reconciling the accounts until February of 2020 (*Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 515 (TR: 12:13-17)*). Respondent also deposited \$25,000.00 from the Reserve Account to protect client assets until the reconciliation of the Trust Account could be completed.

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<sup>35</sup> As previously mentioned, the Reserve Account was established and maintained for the specific purpose of protecting client assets (See *Transcript of DHP held on April 21, 2022, pp. 646-647 (TR 143:1-144:25)*).

iii. Withdrawing \$14,000 when only \$13,674.17 was available.

This transaction involved fees related to Respondent's representation of Go Properties of GVA & Associates. (*Informant's Br.*, pp 30). This allegation concerns Respondent withdrawing \$14,000 in earned fees from the Trust Account which was \$325 more than the fees deposited. (*Id.* at pp 9). The initial deposit into the Trust Account took place on May 3, 2018. (*Id.*).

At the time the deposit was made, the funds consisted of both earned and unearned fees. (*Transcript of DHP Hearing held on March 31, 2022, Vol. 1, pp. 415 (TR: 247:10-22)*). Respondent earned fees were withdrawn from the account over a period of time (*Transcript of DHP Hearing held on March 31, 2022, Vol. 1, pp. 416- (TR: 248:16-249:16)*) However, the final withdrawal, on August 22, 2019, led to an overdraft in the client's ledger in the amount of \$325.83. (*Id.*). Other Client funds were not at-risk as a result of the overdraft due to the funds Respondent's personal funds held in the Trust Account (\$31,160.97<sup>36</sup> balance) and the Reserve Account (\$464,687.57<sup>37</sup> balance). (*Transcript of DHP Hearing held on April 21, 2022, at Vol. 1, pp 578 (TR: 75:11-24) and Respondent's DHP Hearing Exhibit L, pp. 1331*).

iv. Withdrawing \$846,000 when only \$843,923.00 was available.

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<sup>36</sup> See Respondent's DHP Hearing Exhibit L, Vol. 4, pg. 1331.

<sup>37</sup> See Respondent's DHP Hearing Exhibit H, Vol. 4, pg. 1315.

This transaction involved a settlement received from a lawsuit involving the Los Angeles Rams. The Informant has alleged that Respondent withdrew \$846,000.00 when only \$843,923.00 was available. Thus, Respondent was alleged to have withdrawn \$2,077.00 more than he had deposited. (*Informant's Br.*, pp 9-10).

On January 31, 2020, \$843,923.00 was wired to the Firm's Trust Account from a Class Action Settlement involving the St. Louis Rams, LLC (*Informant's DHP Hearing Exhibit 17*, pp. 1067). At the time the deposit was made, Respondent believed that the funds consisted of both client settlement funds for one of the named class members, as well as Respondent's earned fees (*Informant's DHP Hearing Exhibit 13*, pp. 992 (TR: 127:21-129:25)). Respondent later determined that the entire deposit represented earned fees from the lawsuit. (*Id.*). Upon learning the client's settlement funds were mailed directly to the named class action client on February 10, 2020, Respondent withdrew \$846,000.00, which he believed was the amount of the wire; this transaction was done remotely because Respondent was out of town. (*Informant's DHP Hearing Exhibit 13*, pp. 992 (TR: 127:21-129:25) and *Transcript of DHP Hearing held on March 31, 2022*, Vol. 1, pp. 405- 406 (TR: 237-238)).

During the reconciliation of the Trust Account, it was determined that Respondent errantly overdrew the wire deposit by \$2,077.00. (*Id.*). On March 3, 2020, Respondent deposited \$25,000.00 into the Trust Account in order to protect the client funds from being at-risk from the mistaken overdraw. (*Informant's DHP Hearing Exhibit 13*, pp. 992 (TR:



127:21-129:25), *Informant's DHP Hearing Exhibit 6*, pp. 914-915 and *Transcript of DHP Hearing held on April 21, 2022*, at Vol. 1, pp. 544-545 (TR: 41:20-42:12)).

No client funds were at risk because of this error made by Respondent. In addition, the Firm's Reserve Account had a balance of \$1,219,191.67<sup>38</sup> on the date in question.

v. *American Express Card Payment*

Informant alleges that Respondent violated Rule 4-8.4(c) when he made a \$10,000.00 payment on his American Express Card out of the Trust Account. (*Informant's Br. pp 31*). When making the American Express Card payment, Respondent inadvertently selected the wrong account number in the bank's on-line payment system (*Respondent's Answer to the Amended Information filed with AC on March 30, 2022*, at Vol. 1, pp. 102).

Thus, instead fraud or deceit, the payment was a result of error. Again, this case is similar to *In re Elliot*, which involved an attorney making an erroneous deposit; this attorney was not sanctioned for their conduct. 694 S.W.2d 262, 264 (Mo. banc 1985)).

vi. *Dog Purchase*

Informant also alleges that Respondent violated Rule 4-8.4(c) when he purchased a dog with the Trust Account. (*Informant's Br. pp 31*).

This transaction was the result of the bank using the wrong account number; Respondent did not make the error in question. (*Respondent's Answer to the Amended Information filed with AC on March 30, 2022*, at Vol. 1, pp. 103).

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<sup>38</sup> *Respondent's DHP Hearing Exhibit H*, Vol. 4, pg. 1320.

Again, this is an error, not an intentional act to defraud a client. Furthermore, Respondent had \$9,165.00<sup>39</sup> in Firm funds held in the Trust Account as well as \$464,687.57 in the Reserve Account<sup>40</sup>.

### **III. Conclusion**

Respondent admits that he committed the violations that are referenced above. The majority of the issues stem isolated incidents and from Respondent's failure to reconcile the Trust Account. The errors were corrected with the Firm Funds held in the Trust Account, and Respondent has since reconciled the Trust Account. Respondent has taken substantial corrective measures to ensure that the Trust Account is compliant with the Missouri Rules of Professional Responsibility. While the violations may have occurred, the Client Funds were never in jeopardy, as Respondent had more than ample funds to protect all Client Funds. The errors made by Respondent were not intentional and any sanction levied against Respondent should so reflect.

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<sup>39</sup> Respondent's DHP Hearing Exhibit L, Vol. 4, pg. 1330.

<sup>40</sup> Respondent's DHP Hearing Exhibit H, Vol. 4, pg. 1315.

### POINT III

**Respondent Should Receive No More Than an Admonishment or Stayed Suspension Based Because Of This Court's Decisions In Previous Attorney Discipline Cases And The ABA Sanction Guidelines In that Respondent's Actions Were Not Intentional And Client Funds Were Not In Danger.**

#### I. Standard of Review

As referenced previously, this Court will conduct a de novo review of the facts and apply its conclusions of law. *In Re Madison*, 282 S.W.3d 350, 352 (Mo. banc 2009). The allegations must be proven by a preponderance of the evidence. *Id.* "The burden of proof shall be on the informant to establish a violation of Rule 4 by a preponderance of the evidence." *Missouri Supreme Court Rule 5.15 (d)*.

#### II. Argument

##### APPROPRIATE SANCTIONS

"This Court has inherent authority to regulate the practice of law." *In re Zink*, 278 S.W.3d 166, 169 (Mo. banc 2009).

"It is this Court's duty to determine what discipline is appropriate to impose for these violations by reviewing similar past cases, the disciplinary rules, and the applicable ABA standards." *In re Forck*, 418 S.W.3d 437, 441 (Mo. banc 2014). The purpose of attorney

disciplinary proceedings “is not to punish the attorney, but to protect the public and maintain the integrity of the legal profession.” *In re Gardner*, 565 S.W.3d 670, 677 (Mo. banc 2019).

When determining the appropriate discipline, the “Court considers the ethical duty violated, the attorney's mental state, the extent of actual or potential injury caused by the attorney's misconduct, and any aggravating or mitigating factors.” *In re Ehler*, 319 S.W.3d 442, 451 (Mo. banc 2010). While this Court takes the *ABA Standards for Imposing Lawyers Sanctions* into considering, the ABA Standards are only advisory. *Id.*

In general, this Court can order 4 types of discipline against an attorney: reprimand; indefinite suspension; suspension for a fixed period; and disbarment. *In re Oberhellmann*, 873 S.W.2d 851, 856 (Mo. banc 1994); *Rule 5.21(c)*.

“Absent aggravating or mitigating circumstances, reprimand is generally appropriate when a lawyer has received an admonition for the same or similar conduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession” *In re Frank*, 885 S.W.2d 328, 333 (Mo. banc 1994); citing *ABA Standards for Imposing Lawyer Sanctions*, *Rule 8.3(b)* (1986). “Reprimand ... is appropriate only where the attorney's breach of discipline does not involve dishonest, fraudulent, or deceitful conduct on the part of the attorney.” *In re Littleton*, 719 S.W.2d 772, 777 (Mo. banc 1986).

ABA Standard 4.1 lists appropriate sanctions for violations of concerning client funds:

*“Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client property:*

*4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.*

*4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.*

*4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.*

*4.14 Admonition is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.”*

When comparing ABA Standard 4.1 to Respondent’s actions, it is clear that disbarment is not appropriate. §4.11 of the ABA Standards applies to situations wherein the “lawyer knowingly converts client property and causes injury or potential injury to a client.” Respondent’s actions were clearly not intentional and thus, disbarment is not the appropriate baseline sanction.

§4.12 of the *ABA Standards* recommends a baseline sanction of suspension in cases where the “*lawyer knows or should know that he is dealing improperly with client property.*” The baseline sanction for negligent acts is a reprimand (when a client is injured or is threatened with injury--§4.13) or admonishment (when lawyer’s action cause little or actual or potential injury--§4.14).

According to *ABA Standard* §4.1, Respondent’s baseline sanction should be, at worst, suspension. However, we believe Respondent’s actions were negligent, and the baseline sanction should be admonishment or reprimand based on the mitigating factors.

### *FACTORS TO CONSIDER AND MITIGATION*

*ABA Standard 3.0* outlines the factors that a court should consider when disciplining an attorney:

*In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors:*

- (a) the duty violated;*
- (b) the lawyer’s mental state;*
- (c) the potential or actual injury caused by the lawyer’s misconduct; and*
- (d) the existence of aggravating or mitigating factors.*

#### **A. Duty Violated**

The duty violated was the handling and protection of client property in reference to the admitted violations. This is not in dispute.

## **B. Mental State**

In examining the case at bar, Respondent's mental state clearly shows that the actions were not intentional.

"The recommended discipline for violations under the ABA Standards differs based on whether the lawyer acted intentionally, knowingly, or negligently". *In re Gardner*, 565 S.W.3d 670, 678 (Mo. banc 2019); *ABA Standards* § 3.0. "(A)n appropriate remedy for *willful* conversion or misappropriation of client's funds is disbarment," *In re Mendell*, 693 S.W.2d 76, 78 (Mo. banc 1985) (emphasis added).

As *Mendell* states, disbarment is appropriate for willful or intentional misappropriation. In the case at bar, however, Respondent's actions were not willful or intentional. As such, the Court should consider other sanctions besides the disbarment requested by the Informant.

"Generally, the baseline discipline for intentional misconduct is disbarment, for knowing misconduct is suspension, and for isolated instances of negligent misconduct is a reprimand." *Gardner* at 678; *ABA Standards* § 3.0.

The evidence at bar supports Respondent's state of mind being more in line with negligence and not intentional or knowing misconduct. As outlined extensively in the Statement of Facts, Respondent's bookkeeper was on leave for health reasons. Respondent was monitoring the Trust Account via QuickBooks; however, he had not performed a reconciliation under the belief that his bookkeeper would return soon.

## **C. The actual or potential injury caused by the lawyer's misconduct.**

It is undisputed that Respondent's clients were not injured in this matter. Both OCDC and Respondent acknowledged that no clients were harmed due to Respondent's Trust Account issues. (*Transcript of DHP held on March 31, 2022*, pp. 330-332 (TR 162--164)). Respondent did not withhold money from clients or third parties when the funds should have been disbursed to clients or third parties in a reasonable time period. (*Id.* and (TR 205)).

The potential harm to the clients was non-existent as well. The record clearly shows that Respondent had ample funds available, and the client's funds were not at risk. Respondent testified that the Reserve Account was specifically established to ensure that client's assets were protected. (*Transcript of DHP held on April 21, 2022*, pp. 646-647 (TR 143:1-144:25)). As referenced in the Statement of Facts *supra*, the Reserve Account routinely held hundreds of thousands of dollars, which could be accessed, and were accessed in the event that any client's property was in any way jeopardized.

#### **D. The existence of aggravating or mitigating factors**

“Regardless of the baseline or presumptive discipline, the DHP, and this Court, always consider aggravating and mitigating factors.” *In re Kayira*, 614 S.W.3d 530, 533 (Mo. banc 2021). “The Court must consider mitigating and aggravating circumstances before determining whether to depart from this discipline in a particular case. ...Mitigating factors do not constitute a defense to a finding of misconduct. ... But they may justify a downward departure from the presumptively proper discipline (*internal citations omitted*).” *In re Farris*, 472 S.W.3d 549, 563 (Mo. banc 2015).



*ABA Standard 9.32* lists several mitigating factors to consider that are applicable to the case at bar. Such factors consist of:

**1. Absence of a dishonest or selfish motive. Standard 9.32(b).**

The record clearly reflects that Respondent's actions were not based on dishonesty or a selfish motive. Respondent did not profit off of his actions.

This matter was investigated by Kelly Dillon. In her testimony before the Hearing Panel, Ms. Dillon acknowledged that Respondent's never withheld money from clients or third parties or failed to disburse funds to clients or third parties within a reasonable time. (*Transcript of DHP held on March 31, 2022, pp. 330-332 (TR 162--164)*). Ms. Dillon also acknowledged that Respondent has made restitution to the Trust Account because of the account balance issues caused by Respondent's errors. (*Id. and (TR 205:1-8)*).

At no point did Respondent intentionally misuse client funds for any purpose, including for himself or the Firm. (*Transcript of DHP held on March 31, 2022, pp. 330-333 (TR 165.5)*). In fact, some of Respondent's comingling issues stemmed from Respondent's efforts to ensure no client or third-party funds were improperly used. (*Respondent's DHP Hearing Exhibit H, pp 1317*).

**2. Timely good faith effort to make restitution or to rectify consequences of Misconduct. Standard 9.32(d).**

It is important to note that, despite Informant's uncited statement to the contrary, Respondent took actions to reconcile the Firm's Trust Account, thus rectifying the consequences therefrom.

On October 31, 2019, Respondent discovered that the QuickBooks Trust Account balance exceeded the bank's Trust Account balance, indicating a problem with the Firm's Trust Account. (*Transcript of DHP Hearing held on March 31, 2022, Vol.1, pp. 352-353 (TR: 184:16-185:25)*). Concerned that client funds were at risk, Respondent immediately transferred \$25,000.00 from the Reserve Account to the Firm's Trust Account to protect the client funds held in the account until a complete reconciliation of the Trust Account could be performed (*Transcript of DHP Hearing held on March 31, 2022 at Vol.1, pp. 454 (TR: 286:8-23) and Respondent's DHP Hearing Exhibits: Exhibit H, pp. 1317*).

While Respondent has been accused of co-mingling client funds with his funds, he felt that this needed to be done to ensure that his clients were not harmed by the Trust Account accounting or ledger posting errors.

Respondent then began making efforts to contact accounting firms and bookkeepers to assist in reconciling the Trust Account. (*Transcript of DHP Hearing held on March 31, 2022, Vol.1, pp. 362-363 (TR: 194:23-195:13) and Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 512-515 (TR: 10-12)*). Despite his best efforts, Respondent was unable to retain outside help with the reconciliation of the Trust Account prior to the February 2020.

Further, through the March 2020 reconciliation, Respondent has made restitution to the Trust Account to correct balance issues created by Respondent's mistakes and errors. (*Transcript of DHP held on March 31, 2022, pp. 330-332 (TR 205:1-8)*).

**3. Full and free disclosure to disciplinary board or cooperative attitude toward Proceedings. Standard 9.32(e).**

Respondent was cooperative and forthcoming with the investigation process. (*DHP Decision*, pp 30). Respondent was forthcoming with the Disciplinary Hearing Panel, admitting his errors. (*Id*).

**4. Character or reputation. Standard 9.32(g).**

Respondent called six-character witnesses who testified about Respondent's good character and reputation. These witnesses stated that they found Respondent to be of very strong moral character. In addition, all six-character witnesses either referred clients to Respondent and/or engaged Respondent in legal services themselves.

Respondent has also been involved in public and charitable work as more fully outlined in the Statement of Facts, *supra*.

This evidence of Respondent's good character should be given more weight in light of his cooperation, remorse and admission of his mistakes. "Evidence of good character is more likely to be a mitigator when the attorney has also admitted to the misdeeds and shows some remorse." *In re Gardner*, 565 S.W.3d at 680.

**5. Remorse. Standard 9.32(l).**

Respondent is clearly remorseful for the events that have occurred. This is reflected in the fact that he was taking steps to reconcile the account prior to the initiation of the investigation. (*See Transcript of DHP Hearing held on March 31, 2022, Vol.1, pp. 362-*

**363 (TR: 194:23-195:13) and *Transcript of DHP Hearing* held on April 21, 2022, Vol.1, pp. 512-515 (TR: 10-12)).**

Furthermore, he put his own money at stake in order to protect the clients. (*Transcript of DHP Hearing on March 31, 2022, at Vol. 1, pp. 428, 464 (TR: 260, 296) and Informant's DHP Exhibits: Exhibit 32, pp. 1156).*

Respondent's remorse is also evident by the steps Respondent took to ensure that this situation does not re-occur. Respondent's Trust Account is now regularly reconciled and is in compliance with the *Rules of Professional Responsibility*. (*Transcript of DHP Hearing on March 31, 2022, at Vol. 1, pp. 370 (TR: 202:1-19) and Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 641-642, 669 (TR: 138-39, 166:8-20)*). Since the OCDC's Trust Account audit, in or about October 2020, Respondent has gained additional Trust Account training, and now better understands Trust Account operations. (*Transcript of DHP Hearing on March 31, 2022, at Vol. 1, pp. 370 (TR: 202:14-19) and Transcript of DHP Hearing held on April 21, 2022, Vol.1, pp. 642 (TR: 139:2-22)*).

#### **6. Remoteness of Prior Offenses. Standard 9.32(m).**

Respondent admittedly has received prior admonishments in response to his actions. In 2006, although Respondent maintained individual client ledgers in hand-written logs, Respondent was admonished for failure to maintain electronic client ledgers (*Transcript of DHP Hearing held on March 31, 2022, pp. 272 (TR 104:15-19)*). As a result of the 2006 admonishment, Respondent obtained QuickBooks, a software accounting system, to maintain individual client ledgers and bookkeeping in an electronic and computer-based

format. Respondent continues to use the QuickBooks system for maintaining all client ledgers, bookkeeping for multiple bank accounts, accounting, disbursements and payment of firm expenses (*Informant's DHP Hearing Exhibit 13*, pp. 967 (TR:26-28)).

In 2010, Respondent was admonished as result of one overdraft issue in the Firm's Trust Account (*Informant's DHP Hearing Exhibit 13*, pp. 989 (TR:114-115)). At the time of the mistake, TLW maintained four (4) accounts at Busey Bank: 1) an Operating Account; 2) a Petty Cash Account; 3) a money market/savings account and 4) the Firm's Trust Account (which is also the subject account at issue in these proceedings), as well as three (3) accounts at Bank of America: 1) a checking account; 2) a merchant account; and 4) another trust account for unearned retainers. (*Transcript of DHP Hearing held on April 21, 2022*, pp. 643-644 (TR 140:23-141:25)). Each account had a separate distinct account number. Unfortunately, the accounts were only identified by numbers on the on-line banking systems.

The overdraft occurred because Respondent inadvertently transferred funds from the Firm's Trust Account number to the firm's operating account, instead of transferring the funds to the operating account from the money market/savings account number (*Id*). The transfer was conducted via the Busey Bank on-line banking system. (*Id*). The mistake occurred because Respondent inadvertently selected the wrong account number in conducting the transfer of the funds. Even though the mistake was immediately corrected on the same day, it triggered the overdraft alert to OCDC. This experience caused Respondent to modify his practice in maintaining and administering the Firm's Trust

Account by establishing a new and separate Firm Reserve Account with sufficient funds to secure and protect client assets that may be affected by inadvertent mistakes or errors (“Reserve Account”) (*Transcript of DHP Hearing held on April 21, 2022*, pp. 646-647 (TR 143:1-144:25)). Respondent also changed some of the Firm’s accounting and bookkeeping practices after attending an OCDC Trust Accounting CLE

Respondent had gone over 10 years without any trust accounting disciplinary issues.

**DISBARMENT IS THE NOT APPROPRIATE SANCTION**

Informant argues that Respondent’s disbarment is the appropriate sanction. (*Informant’s Br.* pp 34).

Because disbarment is the most severe of these sanctions, it has typically been reserved for those instances where an attorney is clearly unfit to continue to practice law (citations omitted)” *In re Caranchini*, 956 S.W.2d 910, 919 (Mo. banc 1997). “Disbarment is the ultimate sanction and should be reserved for a clear case.” *In re Fenlon*, 775 S.W.2d 134, 142 (Mo. banc 1989).

Informant alleges that disbarment is the starting point because *ABA Standard* 4.11, which recommends disbarment when an attorney “knowingly converts client property” because Respondent’s actions constitute “misappropriation”. (*Informant’s Br.* pp 34). The sanction for the most serious violation is the starting place for analysis. *In re Ehler*, 319 S.W.3d 442, 451 (Mo. banc 2010).

As used throughout Missouri law, the term “misappropriation” typically is used to describe a deliberate act. This Court has previously used “misappropriation” interchangeably with “willful conversion.” In describing disbarment as a sanction for misappropriation, this Court has stated “an appropriate remedy for *willful conversion or misappropriation* of client's funds is disbarment”. *In re Mendell*, 693 S.W.2d 76, 78 (Mo. banc 1985) (*emphasis added*).

Respondent’s actions were not intentional, willful or knowingly and, therefore, disbarment is not the baseline sanction under the *ABA Standards*.

Informant argues that Respondent’s acts are intentional without citing any pertinent evidence. Informant then uses this conjectured intent to incorrectly apply *ABA Standard* 4.11 as the baseline sanction. When considering Respondent’s actions and intent, it is apparent that the facts of this case are more in line with *ABA Standard* 4.13 or 4.14, which involve attorney negligence. At worst, Respondent’s actions could be construed as knowingly using client funds improperly, which *ABA Standard* 4.12 describes, recommending suspension as a baseline sanction.

Informant cites *In re Farris* to support their position that Respondent should be disbarred because of his actions. It is important to note that the facts of *Farris* are readily distinguishable. The attorney in *Farris* lied to his clients about satisfying nearly \$100,000.00 in hospital liens that were never paid and later used the money for his own benefit. 472 S.W.3d 549, 551-556 (Mo. banc 2015). Furthermore, the attorney did not pay restitution and lied to investigators. *Id* at 558.

Informant also cites *In re Schaeffer* to support its argument that disbarment is warranted. In *Schaeffer*, the attorney deposited settlement checks into his general account instead of his trust account. 824 S.W.2d 1, 4-5 (Mo. banc. 1992). In addition, the attorney account balance fell below what was owed to his client. *Id.*

Attorneys have been disbarred for trust account violations; however, the facts are readily distinguishable from the case at bar. In the case of *In re Ehler*, the attorney was disbarred, but restitution had not been paid. 319 S.W.3d 442, 447 (Mo. banc 2010). In addition, the attorney had been previously suspended for similar actions. *Id.* at 452. The attorney's actions were worse than failing to reconcile her trust account—she had no trust account records. Furthermore, she disregarded the OCDC investigator's request to recreate the records and would not assist the investigator's attempt to recreate the trust account ledger. *Id.* at 450.

In *In re Griffey*, the attorney was disbarred. The attorney's actions were much more egregious than Respondent's. The attorney in *Griffey* not only deposited client funds into his operating account, but he also forged his client's signatures on the checks. 873 S.W.2d 600, 603 (Mo. banc 1994).

Informant cites aggravating factors to support its argument that Respondent should be disbarred.

Informant cites *ABA Standard* 9.22(a) (prior disciplinary offenses) as an aggravating factor. Respondent acknowledges that he has received prior disciplinary actions from the Court. As argued previously, these disciplinary actions were remote in time and



Respondent has practiced for a substantial period of time without further issues, with exception to the case at-bar.

Informant also argues that the numerosity of the violations should be considered an aggravating factor as recommended in *ABA Standards* 9.22(d) (multiple offenses). While Respondent admits that there are a number of violations alleged, this is more a function of timing rather than anything else. As previously stated, Respondent relied heavily on his bookkeeper to reconcile the Trust Account. When the staff members work hours decreased because of personal and health issues, Respondent presumed that her absence would be only temporary. It was during this absence that the violations occurred.

Respondent also admits that he had been in the practice of law for over twenty years and had been operating his own firm for fifteen years at the beginning of the audit period. This is considered an aggravating factor. *ABA Standards* 9.22(i) (substantial experience in the practice of law)

While these aggravating factors are present, they are heavily outweighed by the mitigating factors, as well as the circumstances surrounding the violations.

*REPRIMAND OR STAYED SUSPENSION IS THE APPROPRIATE*  
*SANCTION*

When viewed in context of all the evidence, the appropriate sanction in this matter is a reprimand. Should the Court decide that a reprimand is not appropriate, the Court should consider staying execution of a suspension and placing Respondent on probation.

The evidence at bar demonstrates that Respondent's actions were more in line with negligence as opposed to willful behavior. There is no evidence that he acted fraudulently, dishonestly or deceitfully. Because of this and the overwhelming presence of mitigating factors, the Court should consider a reprimand.

This Court has given reprimands in several recent cases involving conduct similar to Mr. Weaver's. Other similar cases include *In re Cox*, Case No. SC96837 (Mo. banc 2017) (violation of *Rule* 4-1.15(a)); *In re Nelson*, Case No. SC96536 (Mo. banc 2017) (violation of *Rules* 4-1.15(a), (b)); *In re Haitbrink*, Case No. SC96298 (Mo. banc 2017) (reciprocal reprimand for violation of *Rules* 4-1.4(a); 4-1.8(h); 4- 1.15(a); 4-1.16(d); 4-2.1)); and *In re Martin*, Case No. SC96121 (Mo. banc 2017) (reprimand with requirements for violation of *Rules* 4-1.15(a), (b), (c)).

There has been established precedent where attorneys received a reprimand for conduct much worse than Respondent's. For example, in *In re Miller*, 568 S.W.2d 246 (Mo. banc 1978), this Court imposed a reprimand despite concluding the lawyer Miller had misappropriated \$30,000.00 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.

Additionally, in *In re Elliott*, 694 S.W.2d 262 (Mo. banc 1985), this Court reprimanded the lawyer where the lawyer – in addition to maintaining poor records and having insufficient funds in the account – mishandled deposits, failed to forward payments to a client promptly, and failed to respond to client inquiries.

In the *Matter of Smith*, 749 S.W.2d 408 (Mo. banc 1988), a non-practicing attorney was admonished for depositing a settlement check directly into a client's bank account. The attorney in question did not have a trust account.

In *In re Sheth*, Case No. SC95382 (Mo. banc 2016). Lawyer Sheth was found to have violated Rules 4-1.15(a), (b), (f), and 4-8.4(d) of the *Rules of Professional Conduct* and received a reprimand. Sheth's conduct was similar to Respondent's and included: (1) depositing personal funds and earned fees into the trust account; (2) commingling personal funds with property belonging to clients in the trust account; and (3) failing to maintain and preserve records of his trust account

All of these cases involve conduct much more egregious than Respondent's, yet in those cases each attorney received only a reprimand. Respondent admits he commingled funds with client or third-party funds, but neither his clients nor third parties were harmed by the commingling.

Should the Court decide that a reprimand is inappropriate, Respondent's actions should be considered worthy of probation or stayed suspension with probation. Pursuant to *Rule 5.225(2)*, an attorney is eligible for probation provided that the attorney:

“(A) Is unlikely to harm the public during the period of probation and can be adequately supervised;

(B) Is able to perform legal services and is able to practice law without causing the courts or profession to fall into disrepute; and

(C) Has not committed acts warranting disbarment.”

The Missouri Supreme Court precedent supports imposition of such a non-practice interrupting sanction. In *In re Armano*, Case No. SC91601 (Mo. banc 2011), this Court only reprimanded Mr. Armano when he was found to have violated *Rules* 4-1.15(c) and 4-1.15(d) for – in the words of the Office of Chief Disciplinary Counsel – “routinely using his trust account for personal banking.” Similarly, in *In re Norsigian, Jr.*, Case No. SC97130 (Mo. banc 2018), attorney Norsigian was placed on one year of probation despite violating *Rules* 4-1.15(a), (d) and (f). This Court found that Mr. Norsigian failed to safeguard his clients’ money, failed to promptly deliver funds to third-parties, failed to keep complete trust account records including but not limited to trust account reconciliations and client ledgers, and made disbursements upon deposits when he should have known that the funds had not actually been collected by the financial institution where his trust account was held.

In the past five years, there have also been several cases involving conduct worse than or equal to Mr. Weaver’s, where the attorney received from this Court an Order of probation or a stayed suspension contingent upon successful completion of probation. These cases include: *In re Stiles*, Case No. SC99030 (Mo. banc 2021) (violation of *Rules* 4-1.3, 4-1.15(a), (f); 4-1.16(d)); *In re Griffin*, Case No. SC98235 (Mo. banc 2020) (violation of *Rules* 4-1.15(a), (d); 4-4.1(a), (b); 4-8.4(a), (c), (d)); *In re Wampler*, Case No.

SC98004 (Mo. banc 2019) (violation of *Rules* 4-1.4; 4-1.15(a), (c), (f)); *In Jones*, Case No. SC97880 (Mo. banc 2019) (violation of *Rules* 4-1.8(a); 4-1.15(a), (c), (f); 4-8.4(a)); *In re Capelovitch*, Case No. SC97505 (Mo. banc 2018) (violation of *Rules* 4-1.4; 4-1.15(c); 4-8.1(c); 4-8.4(c), (d)); *In re Boggs*, Case No. SC96897 (Mo. banc 2018) (violation of *Rules* 4-1.15(a), (f); 4-1.22; 4-8.4(b)); *In re Risler*, Case No. SC96742 (Mo. banc 2019) (violation of *Rules* 4-1.15(a), (b), (c), (f); 4-8.1(c); 4-8.4(c)); *In re Crawford*, Case No. SC96010 (Mo. banc 2017) (violation of *Rules* 4-1.15(a), (b), (f)); and *In re Lander*, Case No. SC95263 (Mo. banc 2016) (violation of *Rules* 4-1.15(a), (d), (f); 4-8.1(c)).

### **III. Conclusion**

The evidence clearly demonstrates that the errors made by Respondent were negligent and not intentional. Respondent should not be disbarred because of negligent acts. Based on the ABA Standards and this Court's prior rulings, Respondent should receive a reprimand or admonishment. Should this Court decide that neither punishment is appropriate, then Respondent respectfully requests that he receive a stayed suspension with probation. He has taken remedial actions to ensure that these issues do not occur in the future. As such, Respondent does not pose any risk of harming current and future clients.

## CONCLUSION

Respondent admits that he did not do everything properly. Respondent clearly should have taken steps to reconcile the Trust Account in a timelier fashion. Respondent truly believed that his bookkeeper would return to reconcile the Trust Account. While he did not reconcile the account, Respondent did monitor the account balance. When Respondent discovered that there was a problem, Respondent quickly addressed the issue and took immediate action to protect client funds. Respondent's actions were not taken to deceive, defraud or misrepresent. No client was at risk of losing funds because of Respondent's mistakes or errors. The client funds were protected by the Firm's Reserve Account, which was more than sufficient to cover any potential client loss. The Trust Account has been reconciled and now there are no deficits.

Respondent has taken steps to not only correct the problems but also to ensure that there are no future issues as well. Respondent has hired a new staff member to reconcile the Firm's Trust Account on a monthly basis. Respondent has a broader understanding of Respondent's ethical duties and has already implemented them into Respondent's practice. Respondent has learned from this process and does not pose any harm to current and future clients.

As such, Respondent respectfully requests this Court issue a reprimand or, in the alternative, a stay execution of any suspension to prevent any disruption in Respondent's continued service to both his clients and the community as a whole.

Respectfully submitted,

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*Attorneys for Respondent*

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing was served upon the attorneys of record through the Missouri e-filing system on this 16<sup>th</sup> day of December, 2022.

/s/ 

**RULE 84.06(c) CERTIFICATION**

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

1. includes information required by Rule 55.03
2. was served upon Informant through the Missouri electronic filing system pursuant to Rule 103.08;
3. complies with the limitations contained in Rule 84.06(b );
4. contains 24,121 words, according to Microsoft Word, which is the word processing system used to prepare this brief.

/s/ 