

TABLE OF CONTENTS

TABLE OF CONTENTS 2

TABLE OF AUTHORITIES..... 3

STATEMENT OF JURISDICTION 6

STATEMENT OF FACTS..... 7

POINTS RELIED ON

 I..... 44

 II. 45

ARGUMENT

 I..... 46

 II. 50

CONCLUSION 56

CERTIFICATE OF SERVICE..... 57

CERTIFICATION: RULE 84.06(c)..... 57

TABLE OF AUTHORITIES

CASES

In re Crews, 159 S.W. 3d 355, 358 (Mo. banc 2005) 46

In re Ehler, 319 S.W.3d 442, 451 (Mo. banc 2010)..... 45, 49, 50, 51, 53

In re Farris, 472 S.W.3d 549, 557 (Mo. banc 2015) 44, 45, 46, 51, 52, 55

In re Kayira, No. SC 98531, 2021 WL 97636, at 8 54

In re Mentrup, 665 S.W.2d 324, 325 (Mo. banc 1984)..... 53

In re Schaeffer, 824 S.W.2d 1, 5 (Mo. banc 1992) 44, 45, 49, 53

In re Shelhorse, 147 S.W.3d 79, 80 (Mo. banc 2004)..... 44, 46

In re Storment, 873 S.W.2d 227 (Mo. banc 1994). 50

In re Wiles, 107 S.W.3d 228, 229 (Mo. banc 2003)..... 50

OTHER AUTHORITIES

ABA Standards for Imposing Lawyer Sanctions 45, 50

ABA Standard 3.0..... 50, 52

ABA Standard 4.11..... 52

ABA Standard 4.12..... 52

ABA Standard 9.22(a) 54

ABA Standard 9.22(c) 55

ABA Standard 9.22(d)..... 55

ABA Standard 9.22(i)..... 55

ABA Standard 9.32(b)..... 54

ABA Standard 9.32(d)..... 53

ABA Standard 9.32(e) 53

ABA Standard 9.32(g)..... 54

ABA Standard 9.32(l)..... 54

RULES

Rule 4-1.0(f). 51

Rule 4-1.8 44, 46, 55 ,56

Rule 4-1.8(c) 47

Rule 4-1.8(e) 44, 46

Rule 4-1.14(a)(4) 47

Rule 4-1.14(a)(5) 47

Rule 4-1.15 44, 54, 55

Rule 4-1.15(a) 46, 47, 55, 56

Rule 4-1.15(d)..... 48

Rule 4-1.15(f). 48

Rule 4-1.15(a)(6) 47

Rule 4-1.15(a)(7) 47, 48

Rule 4-8.4 44

Rule 4-8.4(c) 44, 46, 49, 55, 56

Rule 5.19(h), 56

Rule 5.225 45, 53

Rule 5.225(a)(2)..... 53

Rule 5.225(a)(2)(C) 53

Rule 5.27..... 56
Rule 55.03..... 57
Rule 84.06(b)..... 57
Rule 103.08..... 57

STATEMENT OF JURISDICTION

This action is one in which Informant, the Chief Disciplinary Counsel, is seeking to discipline an attorney licensed in the State of Missouri for violation of the Missouri Rules of Professional Conduct. Jurisdiction over attorney discipline matters is established by Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMo 2016.

STATEMENT OF FACTS

Background and Disciplinary Hearing

Respondent, bar number 49548, was licensed as an attorney on or about June 26, 1998 and is currently in good standing. **App. 3, 35 (Vol. 1)**. He has a solo practice primarily comprised of personal injury and criminal defense cases. **App. 226, 228 (Vol. 1)**.

Respondent received a Letter of Caution on May 14, 2010, for violation of Rule 4-1.15 in conjunction with an overdraft in his trust account. **App. 314-15 (Vol. 2)**. The Letter of Caution provided information regarding the CLE titled Fundamentals of Trust Accounting; suggested to Respondent that he should register for the CLE; and told Respondent that his attendance and participation in this CLE would be considered favorably should he be the subject of similar disciplinary investigations by the Office of Chief Disciplinary Counsel (OCDC) in the future. **App. 314 (Vol. 2)**. The OCDC sent two follow-up letters to Respondent informing him that OCDC did not have a record of his attendance at the CLE. **App. 316-17 (Vol. 2)**.

On September 1, 2011, Informant issued an Admonition to Respondent for violation of Rule 4-1.15 in conjunction with another overdraft of his trust account. Respondent accepted the Admonition. **App. 3-4, 36 (Vol. 1)**. The Admonition detailed that Respondent was not depositing advance fees into his trust account, was not reconciling the account on a monthly basis, and was not keeping current and accurate client ledgers. **App. 311-312 (Vol. 2)**. The Admonition contained the same information as the Letter of Caution regarding Informant's suggestion that Respondent attend the trust

accounting CLE. **App. 312 (Vol. 2)**. Informant sent Respondent a follow-up letter reminding Respondent that OCDC did not have a record of his attendance at the trust accounting CLE. **App. 313 (Vol. 2)**.

Respondent never attended the suggested trust accounting CLE. **App. 102, 279-280 (Vol. 1)**.

On April 9, 2021, Informant filed an Information alleging that Respondent violated Rules 4-1.8(e) (providing financial assistance to client), 4-1.15 (trust accounts), and 4-8.4(c) (dishonesty, fraud, deceit, or misrepresentation). **App. 3-34 (Vol. 1)**. On April 29, 2021, Respondent filed his Answer, in which he admitted virtually every allegation, other than allegations of misappropriations or dishonesty or deceit. **App. 35-78 (Vol 1)**.

On December 7, 2021, the Panel held a hearing. Respondent was represented by James Morrow and Michael Moulder. **App. 82 (Vol. 1)**. Informant amended the Information by interlineation without objection to dismiss Count 1 paragraphs 24b and 24d, and Count 10. **App. 94-95 (Vol. 1)**. With the exception of the last two pages of Exhibit 3, which were removed following Respondent's objection, Informant's Exhibits 1-34 were admitted into evidence. **App. 92-94 (Vol. 1)**. Respondent's Exhibits 50-104 were admitted into evidence without objection. **App. 92 (Vol. 1)**. Informant called one witness; Respondent called five witnesses and testified on his own behalf. **App. 83 (Vol. 1)**.

The Disciplinary Hearing Panel issued its decision and recommended that Respondent be suspended indefinitely with no leave to apply for reinstatement for one year, with the suspension to be stayed and Respondent placed on probation for two years. **App. 816-869 (Vol. 5)**. Informant filed its letter of rejection of the decision with the

Advisory Committee on June 17, 2022. **App. 874 (Vol. 5)**. Respondent filed his letter of acceptance with the Advisory Committee on July 11, 2022. **App. 875 (Vol. 5)**.

Trust Account Audit

Kelly Dillon, Investigator and Certified Fraud Examiner for the OCDC, audited Respondent's trust account with Bank Midwest ending in 0475. **App. 97 (Vol. 1), App. 330 (Vol. 2)**. The audit originated due to a client complaint that referenced finances and due to Respondent's disciplinary history, which included overdrafts of his client trust account. **App. 103 (Vol. 1)**. Respondent is the only authorized signer on his bank accounts. **App. 329 (Vol. 2)**.

The audit covered the time period from December 2017 to September 2020. **App. 108 (Vol. 1)**. Ms. Dillon's audit findings provided the basis for the allegations in Informant's Information.

The Information set forth allegations regarding 24 named clients (1 client count (Count 10) was dismissed). In 15 of these counts, Respondent failed to fully reimburse clients and/or third parties, before eventually providing reimbursement after OCDC requested proof of payments during the audit (Counts 2, 3, 5-9, 11, 17-23). In 3 of these counts, Respondent's trust account balance fell below the amount needed to pay the undisbursed client funds for particular individual clients. (Counts 4, 13, 15). And in 22 of these counts, Respondent's trust account balance fell below the amount needed to pay the combined undisbursed client funds on certain dates (Counts 1-9, 11, 13-15, 17-25).

Count 1 – Patricia Ross

Respondent admitted in his Answer the following factual allegations regarding Patricia Ross and admitted violations of Rule 4-1.15(d) (failing to promptly deliver funds) and Rule 4-1.15 (f) (record keeping).

In February of 2020, Patricia Ross filed a consumer complaint against Respondent with the Attorney General of Missouri, in which she complained of missing settlement funds and Respondent's failure to pay medical bills on her behalf. The Attorney General forwarded the complaint to the OCDC. **App. 38 (Vol. 1).**

On or about September 11, 2019, Respondent received \$57,000 in settlement funds on behalf of Ms. Ross. He deposited the funds into his trust account for the benefit of Ms. Ross. **App. 38 (Vol. 1).** On September 25, 2019, Ms. Ross signed a settlement statement. The settlement statement reflects a lien of \$1,292.43 to Coliseum Imaging Center. This amount was subtracted from the total recovery to Ms. Ross. **App. 39 (Vol. 1).** On September 27, 2019, Respondent paid his client \$21,712.85. **App. 39 (Vol. 1).** Respondent did not pay Coliseum Imaging Center the \$1,292.43 lien. Instead, Ms. Ross' auto insurance company paid the \$1,292.43 lien as part of the medical coverage of her insurance policy. **App. 39 (Vol. 1).**

On March 16, 2021, Respondent paid Ms. Ross the \$1,292.43 owed to her. **App. 39-40 (Vol. 1).** Respondent presented a settlement sheet showing a claimed \$19,000 fee and \$499.72 in costs. Respondent's trust accounting records did not include a reference to specific withdrawals for the fee or costs related to Ms. Ross' case. **App. 40 (Vol. 1).**

The \$1,292.43 balance of Ross's client funds went unpaid from September 11, 2019 through March 16, 2021, when Respondent paid Ms. Ross during Informant's investigation of her complaint. Respondent's trust account balance fell below the amount needed to pay combined undisbursed client funds, including those of Patricia Ross, on September 10, 2019, and February 26, 2020. **App. 132-34 (Vol. 1), App. 717 (Vol. 4).**

Count 2 – Tiara Saffold

Respondent admitted in his Answer all of the factual allegations regarding Tiara Saffold and admitted violations of Rule 4-1.15(d) (failing to promptly deliver funds) and Rule 4-1.15 (f) (record keeping).

Tiara Saffold hired Respondent to represent her in a personal injury case related to an incident that occurred on February 28, 2017. **App. 41 (Vol. 1).** On January 29, 2018, Respondent received \$25,000 in settlement funds and deposited that same amount into his trust account for the benefit of Ms. Saffold. **App. 41 (Vol. 1).**

On February 5, 2018, Respondent paid Ms. Saffold \$13,793.80 via check number 1414. **App. 41 (Vol. 1).** Ms. Saffold signed a settlement statement on February 5, 2018. The settlement statement reflects a medical lien of \$721.16 to Equian. This amount was subtracted from the total recovery to the client. **App. 41 (Vol. 1).**

In a letter dated February 18, 2018, Equian asserted a claim of \$638 against Ms. Saffold's recovery. **App. 487 (Vol. 3).** On March 22, 2018, Respondent paid Equian \$638 via check no. 1437. Equian was underpaid according to the settlement statement. **App. 41 (Vol. 1).**

On May 18, 2017, Dr. James Burkhart claimed a lien of \$1,925 for services rendered to Ms. Saffold. **App. 484 (Vol. 3)**. In a letter dated February 5, 2018, the same date Ms. Saffold signed the settlement statement, Dr. Burkhart expressed his willingness to accept \$1,725. **App. 485 (Vol. 3)**. The settlement statement reflects a medical lien of \$1,925 to Dr. James Burkhart. This amount was subtracted from the total recovery to the client. **App. 41 (Vol. 1)**. The actual amount paid to Dr. Burkhart was \$1,725 via check number 1415. **App. 41-42 (Vol. 1), App. 394 (Vol. 2), App. 486 (Vol. 3)**.

On June 24, 2020, Informant asked Respondent to provide documentation of payment for the \$721.16 owed to Equian and the \$1,925 owed to Dr. Burkhart. **App. 42 (Vol. 1)**. In a response dated July 7, 2020, Respondent stated: “Equian, the third-party collector, was paid \$638.00 via check number 1437. I am not sure way [*sic*] the case recap shows \$721.16 (\$83.16 difference). Dr. Burkhart’s lien was \$1925.00, I am unsure why the check was written for \$1,725.00. I will send Dr. Burkhart the \$200.00 difference.” **App. 42 (Vol. 1), App. 480 (Vol. 3)**.

On October 9, 2020, Respondent issued payment to ChiroMed Family Health Center for the \$200, due to Dr. Burkhart, via check number 1901. **App. 42 (Vol. 1), App. 489-490 (Vol. 3)**. On October 12, 2020, Respondent paid his client \$283.16 via check number 1903. **App. 42 (Vol. 1), App. 491 (Vol. 3)**.

The \$483.16 balance of Saffold’s client funds went unpaid from January 29, 2018 through October 9, 2020. Respondent’s trust account balance fell below the amount needed to pay combined undisbursed client funds, including those of Tiara Saffold, on

May 9, 2018, March 26, 2019, September 10, 2019, and February 26, 2020. **App. 132-34 (Vol. 1), App. 717 (Vol. 4).**

Count 3 – Fred Goebel

Respondent admitted in his Answer all of the factual allegations regarding Fred Goebel and admitted a violation of Rule 4-1.15(d) (failure to promptly deliver funds).

Fred Goebel hired the Respondent to represent him in a personal injury case related to an incident that occurred on November 2, 2015. **App. 43 (Vol. 1).** On April 17, 2018, Respondent received \$5,944 in settlement funds and deposited that same amount into his trust account for the benefit of Mr. Goebel. **App. 43 (Vol. 1), App. 369 (Vol. 2), App. 498 (Vol. 3).**

Respondent's settlement statement reflects a medical lien of \$181 to Midwest Radiology Consultants. Respondent withheld this amount from his client and failed to pay Midwest Radiology Consultants. **App. 44 (Vol. 1), App. 369-70 (Vol. 2), App. 493 (Vol. 3).**

On May 8, 2018, Respondent paid his client \$3,889.24 via check number 1475. **App. 499 (Vol. 3).** Midwest Radiology Consultants asserted a lien of \$181 against Mr. Goebel's recovery for medical services provided. **App 496-97 (Vol. 3).**

On June 24, 2020, Informant asked Respondent to provide proof of payment to Midwest Radiology Consultants in the amount of \$181. **App. 44 (Vol. 1).** In a response dated July 7, 2020, Respondent stated: "I personally handled the closing of this matter. I am unsure of how a lien in the amount of \$181.00 was missed. Payment has been issued." **App. 44 (Vol. 1), App. 495 (Vol. 3).**

On July 20, 2020, Respondent paid Midwest Radiology Consultants \$181,000 via check number 2548. **App. 44 (Vol. 1), App. 500-501 (Vol. 3).**

The \$181 balance of Goebel's client funds went unpaid from April 17, 2018 through July 20, 2020. Respondent's trust account balance fell below the amount needed to pay combined undisbursed client funds, including those of Fred Goebel, on May 9, 2018, March 26, 2019, September 10, 2019, and February 26, 2020. **App. 132-34 (Vol. 1), App. 717 (Vol. 4).**

Count 4 – Heidy Ayres

Respondent admitted in his Answer all of the factual allegations regarding Heidy Ayres and admitted a violation of Rule 4-1.15(d) (failure to promptly deliver funds).

Heidy Ayres hired the Respondent to represent her in a personal injury case related to an incident which occurred on December 19, 2016. **App. 45 (Vol. 1).** On April 26, 2018, Respondent received a \$28,000 settlement and deposited that same amount into his trust account for the benefit of Ms. Ayres. **App. 45 (Vol. 1), App. 376 (Vol. 2), App. 506 (Vol. 3).**

On May 9, 2018, prior to making payment to his client or to the lienholder Gallagher Basset, Respondent's trust balance fell to \$12,148.06, which was not enough to hold the monies that still needed to be paid out to the client and Gallagher Bassett. **App. 45, 118 (Vol. 1), App. 433 (Vol. 3).**

On November 20, 2018, Respondent made a wire transfer to his client, Heidy Ayres, for \$11,623.08. **App. 45 (Vol. 1), App. 376 (Vol. 2), App. 507 (Vol. 3).** On

January 31, 2019, Respondent paid \$3,995.94 to Gallagher Bassett. **App. 45 (Vol. 1), App. 508 (Vol. 3).**

The \$15,619.02 balance of Ayres's client funds went unpaid from May 9, 2018 through November 20, 2018. Respondent's trust account balance fell below the amount needed to pay combined undisbursed client funds, including those of Heidy Ayers, on May 9, 2018, and March 26, 2019. **App. 132-34 (Vol. 1), App. 717 (Vol. 4).**

Count 5 – Gurtha Ingram

Respondent admitted in his Answer all of the factual allegations regarding Gurtha Ingram and admitted a violation of Rule 4-1.15(d) (failure to promptly deliver funds).

Gurtha Ingram hired the Respondent to represent her in a personal injury case related to an incident which occurred on August 23, 2016. **App. 46 (Vol. 1).** On April 30, 2018, Respondent received \$2,000 in settlement funds and deposited that amount into his trust account for the benefit of Ms. Ingram. **App. 46 (Vol. 1), App. 513 (Vol. 3).**

The unsigned and undated settlement statement for Ms. Ingram reflects a lien of \$500 to Rawlings Company, withheld from the client. **App. 46 (Vol. 1), App. 510 (Vol. 3).** On December 17, 2018, Respondent paid Rawlings Company \$500. **App. 47 (Vol. 1), App. 514 (Vol. 3).**

The settlement statement shows a total recovery to the client of \$178.32, which Respondent did not pay. **App. 47 (Vol. 1), App. 502 (Vol. 3).** The settlement statement shows a lien of \$237.84 due to Drisko, Fee & Parkins, which Respondent did not pay. **App. 47 (Vol. 1), App. 502 (Vol. 3).**

On June 24, 2020, Informant asked Respondent for documentation of payment of amounts owed to his client and to Drisko, Fee & Parkins. **App. 47 (Vol. 1)**. In a response dated July 7, 2020, Respondent stated: “I show that the client never came in to pick up her check for \$178.32; We are waiting to see if the \$237.84 [is] due to the provider.” **App. 512 (Vol. 3)**.

On October 9, 2020, Respondent issued payment to Ms. Ingram for \$178.32. **App. 47 (Vol. 1), App. 515-16 (Vol. 3)**. On October 9, 2020, Respondent issued payment to Orthopedic Health of Kansas City – formally known as Drisko, Fee & Parkins – for \$237.84. **App. 47 (Vol. 1), App. 517-21 (Vol. 3)**.

The \$416.16 balance of Ingram’s client funds went unpaid from April 30, 2018 through October 9, 2020. Respondent’s trust account balance fell below the amount needed to pay combined undisbursed client funds, including those of Gurtha Ingram, on May 9, 2018, March 26, 2019, September 10, 2019, and February 26, 2020. **App. 132-34 (Vol. 1), App. 717 (Vol. 4)**.

Count 6 – Bertha Rucker-Ross

Respondent admitted in his Answer all of the factual allegations regarding Bertha Rucker-Ross and admitted a violation of Rule 4-1.15(d) (failure to promptly deliver funds).

Bertha Rucker-Ross hired the Respondent to represent her in a personal injury case. **App. 48 (Vol. 1)**. On June 26, 2018, \$15,500 in settlement funds was deposited into Respondent’s trust account for the benefit of Ms. Rucker-Ross. **App. 49 (Vol. 1), App. 533 (Vol. 3)**.

On July 26, 2018, Respondent made payment to his client for \$9,577.24. **App. 49 (Vol. 1), App. 534 (Vol. 3)**. Ms. Rucker-Ross signed the Respondent's settlement statement on July 2, 2018. Respondent's settlement statement reflects a medical lien of \$325 to Camren Healthcare Group. Respondent withheld this amount from his client. **App. 49 (Vol. 1), App. 523 (Vol. 3)**.

On June 24, 2020, Informant asked Respondent for documentation of payment to Cameron Health Care for \$325. **App. 49 (Vol. 1)**. In a response dated July 7, 2020, Respondent stated: "A \$325.00 check was written to Camren Healthcare Group on July 25, 2018: check number 1494. This check was not presented to the bank. I have contacted Dr. Haughton, the chiropractor, whom I work with on many cases. He will check his records and let me know if this is still due. If so, I will make the payment again." **App. 49 (Vol. 1), App. 524 (Vol. 3)**.

In a subsequent response dated September 8, 2020, Respondent stated: "This payment due Camren Healthcare Group of Bertha Rucker-Ross shows outstanding. This has been sent to Camren Healthcare Group in the amount of \$325.00 (Check No.: 1887). (Exhibit 4)". **App. 527, 529 (Vol. 3)**. However, Dr. Haughton collected the lien from the insurance company for the \$325 that Respondent withheld from his client's total recovery. **App. 49 (Vol. 1), App. 528 (Vol. 3)**.

On September 8, 2020, Respondent issued payment to Ms. Rucker-Ross for \$325. **App. 530 (Vol. 3)**.

The \$325 balance of Rucker-Ross's client funds went unpaid from June 26, 2018 through September 8, 2020. Respondent's trust account balance fell below the amount

needed to pay combined undisbursed client funds, including those of Bertha Rucker-Ross, on March 26, 2019, September 10, 2019, and February 26, 2020. **App. 132-34 (Vol. 1), App. 717 (Vol. 4).**

Count 7 – Victoria Washington

Respondent admitted in his Answer all of the factual allegations regarding Victoria Washington.

Victoria Washington hired Respondent to represent her in a personal injury case related to an incident which occurred on March 1, 2018. **App. 50 (Vol. 1).** On June 5, 2018, Respondent received \$7,500 in settlement funds and deposited that amount into his trust account for the benefit of Ms. Washington. **App. 50 (Vol. 1), App. 539 (Vol. 3).**

The settlement statement was signed by the client on July 19, 2018. It reflects a medical lien of \$1,906.90 to Truman Medical Center. This amount was subtracted from the total recovery to the client. **App. 50-51 (Vol. 1), App. 536 (Vol. 3).**

On July 19, 2018, Respondent issued payment to Ms. Washington for \$2,989.25. **App. 540 (Vol. 3).** On October 30, 2018, Respondent paid to Truman Medical Center \$1,890.34. **App. 51 (Vol. 1), App. 541 (Vol. 3).**

On June 24, 2020, Informant asked Respondent for documentation of payment to Truman Medical for the \$1,906.90 lien, pursuant to the settlement agreement. **App. 51 (Vol. 1).** In a response dated July 7, 2020, Respondent stated: “I am unsure why there is a \$16.56 discrepancy. I will pay the client the difference of \$16.56.” **App. 51 (Vol. 1), App. 538 (Vol. 3).**

On October 9, 2020, Respondent paid Truman Medical Center the \$16.56. **App. 51 (Vol. 1), App. 542-43 (Vol. 3).**

The \$16.56 balance of Washington's client funds went unpaid from June 5, 2018 through October 9, 2020. Respondent's trust account balance fell below the amount needed to pay combined undisbursed client funds, including those of Victoria Washington, on March 26, 2019, September 10, 2019, and February 26, 2020. **App. 132-34 (Vol. 1), App. 717 (Vol. 4).**

Count 8 – Ralph Smith

Respondent admitted in his Answer all of the factual allegations regarding Ralph Smith and admitted a violation of Rule 4-1.15(d) (failure to promptly deliver funds).

Ralph Smith hired Respondent to represent him in a personal injury case related to an incident which occurred on December 31, 2017. **App. 51-52 (Vol. 1).** On July 9, 2018, Respondent received \$6,000 in settlement funds and deposited that amount into his trust account for the benefit of Mr. Smith. **App. 52 (Vol. 1), App. 551 (Vol. 3).**

On August 3, 2018, Respondent issued payment to Mr. Smith for \$3,368.97. **App. 554 (Vol. 1).** The settlement statement reflects a medical lien of \$820 to Dr. Zimmerman. This amount was subtracted from the total recovery to the client, but was not paid. **App. 52 (Vol. 1), App. 545 (Vol. 3).** The settlement statement also reflects a lien to Interpreters Inc. for \$139.05. This amount was subtracted from the total recovery to the client, but was not paid. **App. 52 (Vol. 1), App. 545 (Vol. 3).**

On June 24, 2020, Informant asked Respondent for documentation of payment to Dr. Zimmerman and Interpreters Inc. **App. 52 (Vol. 1).** In a response dated July 7, 2020,

Respondent stated: “We could not prove payment to Dr. Zimmerman for the worker’s compensation disability rating . . . I have made payment of \$820.00 to Dr. Zimmerman after checking with his office to find out if this was still open. I am waiting on payment confirmation to Interpreters, Inc. for deposition consult.” **App. 52-53 (Vol. 1), App. 546 (Vol. 3).**

On September 8, 2020, Respondent provided a copy of payment to Interpreters for \$69.53 and said that he would mail a check to his client for the difference of \$69.52. **App. 53 (Vol. 1), App. 548 (Vol. 3).** On September 8, 2020, Respondent issued payment to Mr. Smith for \$69.52. **App. 558-59 (Vol. 3).**

The \$889.52 balance of Smith’s client funds went unpaid from July 9, 2018 through June 24, 2020. Respondent’s trust account balance fell below the amount needed to pay combined undisbursed client funds, including those of Ralph Smith, on March 26, 2019, September 10, 2019, and February 26, 2020. **App. 132-34 (Vol. 1), App. 717 (Vol. 4).**

Count 9 – Donald Allen

Respondent admitted in his Answer all of the factual allegations regarding Donald Allen.

Donald Allen hired Respondent to represent him in a personal injury case related to an incident which occurred on September 18, 2017. **App. 53 (Vol. 1).** On July 16, 2018, Respondent received \$9,502.62 in settlement funds and deposited that amount into his trust account for the benefit of Mr. Allen. **App. 54 (Vol. 1).**

The settlement statement reflects a total recovery to Mr. Allen of \$3,435.61. However, on July 30, 2018, Respondent paid his client \$3,035.61. **App. 54 (Vol. 1), App. 561 (Vol. 3).**

On June 24, 2020, Informant asked Respondent for documentation of payment to the client for the \$400 difference between the \$3,435.61 recovery amount listed on the settlement sheet and the \$3,035.61 actually paid to the client. **App. 54 (Vol. 1).**

On October 9, 2020, Respondent paid his client the \$400 difference. **App. 54 (Vol. 1).**

The \$400 balance of Allen's client funds went unpaid from July 16, 2018 through July 7, 2020. Respondent's trust account balance fell below the amount needed to pay combined undisbursed client funds, including those of Donald Allen, on March 26, 2019, September 10, 2019, and February 26, 2020. **App. 132-34 (Vol. 1), App. 717 (Vol. 4).**

Count 10 – Dismissed by Informant

Count 11 – Marquita Edwards

Respondent admitted in his Answer all of the factual allegations regarding Marquita Edwards and admitted a violation of Rule 4-1.15(d) (failure to promptly deliver funds).

Marquita Edwards hired Respondent to represent her in a personal injury case related to an incident which occurred on July 13, 2018. **App. 56 (Vol. 1).** On October 23, 2018, Respondent received \$25,000 in settlement funds and deposited that amount into his trust account for the benefit of Ms. Edwards. **App. 56 (Vol. 1), App. 579 (Vol. 4).**

On November 2, 2018, Respondent paid Camren Health \$4,365 via check number 1526. **App. 56 (Vol. 1), App. 581 (Vol. 4)**. On November 5, 2018, Respondent paid the client \$10,789.20, via check number 1527. **App. 580 (Vol. 4)**. The settlement statement dated November 5, 2018, signed by the client, reflects a medical lien of \$5,665 to Camren Healthcare. This amount was subtracted from the total recovery to the client. **App. 56 (Vol. 1), App. 571 (Vol. 4)**.

On June 24, 2020, Informant asked Respondent for documentation of payment to Camren Healthcare in the amount of \$5,665. **App. 56 (Vol. 1)**. In a response dated July 7, 2020, Respondent stated: “I am awaiting confirmation of payment from Dr. Haughton.” **App. 56-57 (Vol. 1), App. 572 (Vol. 4)**.

In a subsequent response dated September 8, 2020, Respondent stated: “I just spoke with Dr. Haughton, the owner of Camren Health Care Group, PA regarding the check that was written for \$4,365.00 (Check No.: 1526). Therefore, due to Camren Health Care Group is \$1,200.00 (Check No.: 1890) per the case recap. Therefore, the client is due \$100.00 (Check No.: 1891). I do not know how this accounting occurred.” **App. 574 (Vol. 4)**.

On September 8, 2020, Respondent paid Camren Healthcare \$1,200 and paid his client \$100. **App. 57 (Vol. 1), App. 582-84 (Vol. 4)**.

The \$1,300 balance of Edward’s client funds went unpaid from October 23, 2018 through September 8, 2020. Respondent’s trust account balance fell below the amount needed to pay combined undisbursed client funds, including those of Marquita Edwards,

on March 26, 2019, September 10, 2019, and February 26, 2020. **App. 132-34 (Vol. 1), App. 717 (Vol. 4).**

Count 12 -Gregory Belcher

Respondent admitted in his Answer all of the factual allegations regarding Gregory Belcher and admitted a violation of Rule 4-1.15(a)(6) (disbursing funds based on a deposit of funds not yet collected).

Gregory Belcher hired the Respondent to represent him in a personal injury case related to an incident which occurred on July 14, 2018. **App. 57 (Vol. 1).** On December 20, 2018, Respondent paid Mr. Belcher \$1,427.43. At that time, Respondent had not received funds on behalf of Mr. Belcher, so it was drawn against funds of other clients. **App. 58, 124, 168-69 (Vol. 1), App. 591 (Vol. 4).** A day later, on December 21, 2018, \$4,566.60 in settlement funds was deposited into Respondent's trust account for the benefit of Mr. Belcher. **App. 58 (Vol. 1), App. 590 (Vol. 4).**

Count 13 – Christopher Duisik

Respondent admitted in his Answer all of the factual allegations regarding Christopher Duisik and admitted a violation of Rule 4-1.15(d) (failure to promptly deliver funds).

Christopher Duisik hired the Respondent to represent him in a personal injury case related to an incident which occurred on June 21, 2017. **App. 58 (Vol. 1).** On January 17, 2019, Respondent received \$34,000 in settlement funds and deposited that amount into his trust account for the benefit of Mr. Duisik. **App. 59 (Vol. 1), App. 594 (Vol. 4).**

On March 11, 2019, Respondent paid his client \$13,279.16. **App. 59 (Vol. 1), App. 595 (Vol. 4)**. On June 27, 2019, Respondent paid the \$3,000 medical lien owed to American Family. **App. 59 (Vol. 1), App. 596 (Vol. 4)**. On July 12, 2019, Respondent paid the \$5,372.60 medical lien owed to North Kansas City Hospital. **App. 59 (Vol. 1), App. 597**.

On March 26, 2019, prior to the payment of medical liens, Respondent's trust account balance fell to \$5,603.69, below the \$8,372.60 owed to the lienholders. **App. 59, 258-59 (Vol. 1), App. 440 (Vol. 3)**.

In addition, the \$8,372.60 balance of Duisik's client funds went unpaid from January 17, 2019 through June 27, 2019. Respondent's trust account balance fell below the amount needed to pay combined undisbursed client funds, including those of Christopher Duisik, on March 26, 2019. **App. 132-34 (Vol. 1), App. 717 (Vol. 4)**.

Count 14 – Dalice Dupree

Respondent admitted in his Answer all of the factual allegations regarding Dalice Dupree.

Respondent represented Dalice Dupree in a personal injury case related to an incident which occurred on December 31, 2018; a car accident that involved Dalice Dupree, a minor, and her mother Arimeta Dupree. **App. 60, 260 (Vol. 1)**. On May 14, 2019, Respondent received \$1,000 in settlement funds and deposited that amount into his trust account for the benefit of Dalice Dupree. **App. 60 (Vol. 1), App. 603 (Vol. 4)**. Then, on May 24, 2019, Respondent received \$3,000 and deposited that amount into his trust account for the benefit of Arimeta Dupree. **App. 60 (Vol. 1), App. 604 (Vol. 4)**.

Over a year later, on June 12, 2020, Respondent paid to Arimeta Dupree on behalf of Dalice Dupree \$2,454.58. **App. 60-61 (Vol. 1), App. 605 (Vol. 4).** Respondent testified at the hearing that Dalice Dupree was a minor and that her mother, Armeta Dupree, knew about the settlement funds but declined to come pick up the funds until her case was settled as well. Respondent noted that Arimeta Dupree wrote a favorable letter to the Disciplinary Committee regarding Respondent's representation of her and her daughter. **App. 260-62 (Vol. 1).** The letter does not specifically address Arimeta Dupree telling Respondent to hold her daughter's settlement funds until her case was settled. **App. 805-06 (Vol. 5).**

The \$2,454.48 balance of the Dupree's client funds went unpaid from May 14, 2019 through June 12, 2020. Respondent's trust account balance fell below the amount needed to pay combined undisbursed client funds, including those of the Duprees, on September 10, 2019, and February 26, 2020. **App. 132-34 (Vol. 1), App. 717 (Vol. 4).**

Count 15 – James Johnson

Respondent admitted in his Answer all of the factual allegations regarding James Johnson.

James Johnson hired Respondent to represent him in a personal injury case related to an incident which occurred on April 4, 2017. **App. 61 (Vol. 1).** On June 3, 2019, Respondent received \$100,000 in settlement funds and deposited that amount into his trust account for the benefit of Mr. Johnson. **App. 61 (Vol. 1), App. 613 (Vol. 4).**

On September 10, 2019, Respondent's trust balance fell to just over \$40,000. This was prior to Respondent making any payments to the client or for medical liens, and the

trust balance fell below the at least \$61,000 in funds needed for those payments. **App. 61, 125-26 (Vol. 1), App. 447 (Vol. 3).**

A settlement statement was signed by the client on May 12, 2020. **App. 607 (Vol. 4).** On May 13, 2020, Respondent paid his client \$58,976.02. **App. 61 (Vol. 1), App. 614 (Vol. 4).** On June 8, 2020, Respondent paid a medical lien to Dr. Driely in the amount of \$1,100. **App. 61-62 (Vol. 1), App. 615 (Vol. 4).** On June 19, 2020, Respondent paid a medical lien to Dr. Poppa in the amount of \$950. **App. 62 (Vol. 1), App. 616 (Vol. 4).**

The \$61,026.02 balance of Johnson's client funds went unpaid from June 3, 2019 through May 13, 2020. Respondent's trust account balance fell below the amount needed to pay combined undisbursed client funds, including those of James Johnson, on September 10, 2019, and February 26, 2020. **App. 132-34 (Vol. 1), App. 717 (Vol. 4).**

Count 16 – Natasha Neal

Respondent admitted in his Answer all of the factual allegations regarding Natasha Neal and admitted a violation of Rule 4-1.8(e) (providing financial assistance to client in connection with pending litigation).

Natasha Neal hired the Respondent to represent her in a personal injury case related to an incident which occurred on October 24, 2018. **App. 63 (Vol. 1).** On July 3, 2019, Respondent received \$5,135 in settlement funds and deposited that amount into his trust account for the benefit of Ms. Neal. **App. 63 (Vol. 1), App. 623 (Vol. 4).**

The settlement statement was signed by the client on July 10, 2019 and reflects a total recovery to the client of \$1,783.59. **App. 63 (Vol. 1), App. 618 (Vol. 4).** On July 10, 2019, Respondent paid his client \$1,283.59. **App. 63 (Vol. 1), App. 625 (Vol. 4).**

On June 24, 2020, Informant asked Respondent for documentation of payment to the client of the \$500 difference between the recovery amount listed on the settlement sheet and the \$1,283.59 which was actually paid to the client. **App. 63 (Vol. 1).** In a response dated July 7, 2020, Respondent stated: “[Ms. Neal] was paid \$500.00 directly prior to receiving the remainder of her settlement because she had a financial crisis. We needed to wait until the trust funds were available, therefore, I wrote her a check for \$500.00 from the operating account.” **App. 64 (Vol. 1).**

On June 26, 2019, Respondent wrote a check out of Respondent’s operating account for \$500 to advance his client funds ahead of her settlement. **App. 64, 126 (Vol. 1).**

Count 17 – Shelly Baker

Respondent admitted in his Answer all of the factual allegations regarding Shelly Baker.

Shelly Baker hired Respondent to represent her in a personal injury case related to an incident which occurred on September 29, 2017. **App. 64 (Vol. 1).** On June 18, 2019, Respondent received \$10,000 in settlement funds and deposited that amount into his trust account for the benefit of Ms. Baker. **App. 64 (Vol. 1), App. 631 (Vol. 4).**

Ms. Baker signed a settlement statement on June 21, 2019. The statement shows a lien to Dr. McAllister for \$375, deducted from the total recovery to the client. **App. 65 (Vol. 1), App. 628 (Vol. 4).**

On August 24, 2020, Informant asked Respondent for documentation of payment to Dr. McAllister for the \$375 lien. **App. 65 (Vol. 1).** On September 8, 2020, Respondent paid Dr. McAllister \$375. **App. 65 (Vol. 1), App. 635 (Vol. 4).**

The \$375 balance of Baker's client funds went unpaid from June 18, 2019 through September 8, 2020. Respondent's trust account balance fell below the amount needed to pay combined undisbursed client funds, including those of Shelly Baker, on September 10, 2019, and February 26, 2020. **App. 132-34 (Vol. 1), App. 717 (Vol. 4).**

Count 18 – Christine Grant

Respondent admitted in his Answer all of the factual allegations regarding Christine Grant.

On July 29, 2019, Respondent received \$55,000 in settlement funds and deposited that same amount into his trust account for the benefit of Ms. Grant. **App. 65 (Vol. 1).**

Ms. Grant signed the settlement statement on August 27, 2019. It reflects a medical lien of \$11,049.29 to Optum. This amount was subtracted from the total recovery to the client. **App. 65-66 (Vol. 1), App. 638 (Vol. 4).** On November 26, 2019, Respondent paid Optum \$10,000. **App. 645 (Vol. 4).**

On June 3, 2020, Informant asked Respondent for documentation of payment of the difference between the amount of the medical lien on the settlement statement and the \$10,000 which was actually paid to Optum. **App. 66 (Vol. 1).** On June 16, 2020,

Respondent told the OCDC that he had checked with his client to determine if she was paid the difference and she said no, and that he would send his client a check for the difference of \$1,049.29. **App. 66 (Vol. 1), App. 639 (Vol. 4)**. On July 3, 2020, Respondent paid his client \$1,049.29. **App. 644 (Vol. 4)**.

At the hearing, Respondent testified that Ms. Grant had agreed for Respondent to hold back the payment of \$1,050 to pay a probate attorney to open an estate for her daughter. **App. 266-67 (Vol. 1)**. Respondent agreed that he had not said anything in his earlier response to the OCDC about holding on to the money for the opening of a probate estate. **App. 287-88 (Vol. 1)**.

The \$1,049.29 balance of Grant's client funds went unpaid from July 28, 2019 through July 3, 2020. Respondent's trust account balance fell below the amount needed to pay combined undisbursed client funds, including those of Christine Grant, on September 10, 2019, and February 26, 2020. **App. 132-34 (Vol. 1), App. 717 (Vol. 4)**.

Count 19 – Angelic Brown

Respondent admitted in his Answer all of the factual allegations regarding Angelic Brown.

Angelic Brown hired Respondent to represent her in a personal injury case related to an incident which occurred on October 24, 2018. **App. 66 (Vol. 1)**. On November 14, 2019, Respondent received \$13,000 in settlement funds and deposited that same amount into his trust account for the benefit of Ms. Brown. **App. 66 (Vol 1), App. 650 (Vol. 4)**.

Ms. Brown signed a settlement statement on December 2, 2019. The settlement statement reflects a medical lien of \$4,258.34 to The Health & Wellness Center. This

amount was subtracted from the total recovery to the client. **App. 67 (Vol. 1), App. 647 (Vol. 4)**. The client was paid \$4,412.66 on December 2, 2019 via check number 1732. **App. 651 (Vol. 4)**.

On June 3, 2020, Informant asked Respondent to provide proof of payment to The Health & Wellness Center. **App. 67 (Vol. 1)**. On June 16, 2020, Respondent stated that the Health & Wellness Center was previously paid via check but the doctor was waiting for a copy of the distribution sheet before he would cash the check. **App. 67 (Vol. 1)**. Although Respondent stated that he had previously paid The Health & Wellness Center via check, there were no missing checks in the sequence (indicating a check being held) from December 2, 2019 (when the client was paid) to at least March 2020. **App. 128-29 (Vol 1)**. On June 16, 2020, Respondent paid The Health & Wellness Center the \$4,258.34 owed to it via check number 1854. **App. 67 (Vol. 1), App. 652 (Vol. 4)**.

The \$4,258.34 balance of Brown's client funds went unpaid from November 14, 2019 through June 16, 2020. Respondent's trust account balance fell below the amount needed to pay combined undisbursed client funds, including those of Angelic Brown, on February 26, 2020. **App. 132-34 (Vol. 1), App. 717 (Vol. 4)**.

Count 20 – Gabrielle Smith

Respondent admitted in his Answer all of the factual allegations regarding Gabrielle Smith.

Gabrielle Smith hired Respondent to represent her in a personal injury case related to an incident which occurred on December 17, 2018. **App. 67 (Vol. 1)**. On November

22, 2019, Respondent received \$30,500 in settlement funds and deposited that amount into his trust account for the benefit of Ms. Smith. **App. 68 (Vol. 1), App. 657 (Vol. 4).**

Ms. Smith signed a settlement statement on December 2, 2019. The settlement statement reflects a medical lien of \$387.92 to Marvin's Midtown Chiropractic Clinic. This amount was subtracted from the total recovery to the client. **App. 68 (Vol. 1), App. 654 (Vol. 4).**

On June 3, 2020, Informant asked Respondent to provide documentation of payment to Marvin's Midtown Chiropractic Clinic of \$387.92. **App. 68 (Vol. 1).** On June 16, 2020, Respondent stated he would send payment for that medical lien. **App. 68 (Vol. 1).** On July 9, 2020, Respondent paid Marvin's Midtown Chiropractic Clinic \$387.92. **App. 68 (Vol. 1), App. 660 (Vol. 4).**

The \$387.92 balance of Smith's client funds went unpaid from November 22, 2019 through July 9, 2020. Respondent's trust account balance fell below the amount needed to pay combined undisbursed client funds, including those of Gabrielle Smith, on February 26, 2020. **App. 132-34 (Vol. 1), App. 717 (Vol. 4).**

Count 21 – Darcy May

Respondent admitted in his Answer all of the factual allegations regarding Darcy May.

Darcy May hired Respondent to represent her in a personal injury case related to an incident which occurred on December 19, 2018. **App. 69 (Vol. 1).** On December 19, 2019, Respondent received \$22,000 in settlement funds and deposited that same amount into his trust account for the benefit of Ms. May. **App. 69 (Vol. 1), App. 665 (Vol. 4).**

Ms. May signed a settlement statement on February 25, 2020. The settlement statement reflects a medical lien of \$1,585.23 to Davis Chiropractic. This amount was subtracted from the total recovery to the client. **App. 69 (Vol. 1), App. 662 (Vol. 4)**. On March 18, 2020, Respondent paid Davis Chiropractic \$1,541.28. **App. 69 (Vol. 1), App. 668 (Vol. 4)**.

On June 3, 2020, Informant asked Respondent to provide documentation of payment of the \$43.95 difference between the amount stated on the settlement statement and what was actually paid to Davis Chiropractic. **App. 69 (Vol. 1)**. Respondent told OCDC that he did not know why there was a difference between the withholding for Davis Chiropractic and the payment, as “I wrote the check myself.” **App. 663 (Vol. 4)**. On July 16, 2020, Respondent paid the difference of \$43.95 to Davis Chiropractic. **App. 69 (Vol. 1), App. 670 (Vol. 4)**.

At the hearing, Respondent testified that the difference was caused because someone else wrote the check for the wrong amount and he signed it. **App. 270-71 (Vol. 1)**.

The \$43.95 balance of May’s client funds went unpaid from December 19, 2019 through July 16, 2020. Respondent’s trust account balance fell below the amount needed to pay combined undisbursed client funds, including those of Darcy May, on February 26, 2020. **App. 132-34 (Vol. 1), App. 717 (Vol. 4)**.

Count 22 – Talicea Bresette

Respondent admitted in his Answer all of the factual allegations regarding Talicea Bresette.

Talicea Bresette hired Respondent to represent her in a personal injury case related to an incident which occurred on June 11, 2019. **App. 70 (Vol. 1)**. On November 26, 2019, Respondent received \$6,698 in settlement funds and deposited that same amount into his trust account for the benefit of Ms. Bresette. **App. 70 (Vol. 1), App. 675 (Vol. 4)**.

Ms. Bresette signed a settlement statement on January 30, 2020. The settlement statement reflects a total payment to the client of \$4,263.89. **App. 70 (Vol. 1), App. 672 (Vol. 4)**. Respondent's payment to Ms. Bresette was instead for \$4,236.89. **App. 70 (Vol. 1), App 676 (Vol. 4)**.

On June 3, 2020, Informant asked Respondent for documentation of payment for the \$27 difference between the payment listed on the settlement statement and the actual payment issued to the client. **App. 70-71 (Vol. 1)**. On July 27, 2020, Respondent paid his client the \$27 difference. **App. 71 (Vol. 1), App. 677 (Vol. 4)**.

The \$27 balance of Bresette's client funds went unpaid from December 26, 2019 through July 27, 2020. Respondent's trust account balance fell below the amount needed to pay combined undisbursed client funds, including those of Talicea Bresette, on February 26, 2020. **App. 132-34 (Vol. 1), App. 717 (Vol. 4)**.

Count 23 – Annie Bomar

Respondent admitted in his Answer all of the factual allegations regarding Annie Bomar.

Annie Bomar hired Respondent to represent her in a personal injury case related to an incident which occurred on November 1, 2018. **App. 71 (Vol. 1)**. On January 16,

2020, Respondent received \$10,000 in settlement funds and deposited that same amount into his trust account for the benefit of Ms. Bomar. **App 71 (Vol. 1), App. 689 (Vol. 4).**

Ms. Bomar signed a settlement statement on January 25, 2020. The settlement statement reflects a medical lien of \$3,168.64 to Health & Wellness Clinic. This amount was subtracted from the total recovery to the client. **App. 71 (Vol. 1), App. 679 (Vol. 4).**

On June 3, 2020, Informant requested proof of payment for the \$3,168.64 owed to Health & Wellness Clinic. **App. 72 (Vol. 1).** On June 16, 2020, Respondent admitted that he paid the lien via cash from his operating account on June 12, 2020. **App. 72, 271-72 (Vol. 1), App. 681 (Vol. 4).**

The \$3,168.64 balance of Bomar's settlement funds went unpaid from January 16, 2020 through June 12, 2020. Respondent's trust account balance fell below the amount needed to pay combined undisbursed client funds, including those of Annie Bomar, on February 26, 2020. **App. 132-34 (Vol. 1), App. 717 (Vol. 4).**

Count 24 – Terrill Skinner

Respondent admitted in his Answer all of the factual allegations regarding Terrill Skinner.

Terrill Skinner hired Respondent to represent him in a personal injury case related to an incident which occurred on December 5, 2018. Mr. Skinner also retained Respondent for representation related to a criminal matter. **App. 72 (Vol. 1).** On November 19, 2019, Respondent received \$2,500 in a refunded bond and deposited that same amount into his trust account for the benefit of Mr. Skinner. **App. 73 (Vol. 1), App. 697 (Vol. 4).** Then, on January 16, 2020, Respondent received \$17,000 in

settlement funds – related to the personal injury matter – and deposited that same amount into his trust account for the benefit of Mr. Skinner. **App. 73 (Vol. 1), App. 698 (Vol. 4).**

Mr. Skinner signed a settlement statement on June 1, 2020. The settlement statement reflects a total net recovery to the client of \$3,288.37. **App. 73 (Vol. 1), App. 693-94 (Vol. 4).** On June 3, 2020, Respondent paid his client the \$3,288.37. **App. 73 (Vol. 1), App. 701 (Vol. 4).**

After payments to the client, ESA, and Northland, \$13,762.63 of the client's settlement funds were undisbursed. Respondent testified he held that money in the trust account for his fees in the criminal matter. Respondent held money that he already earned through court appearances of his client in that same criminal matter in his trust account. **App. 73 (Vol. 1).**

Respondent's trust account balance fell below the amount needed to pay combined undisbursed client funds, including those of Terrill Skinner, on February 26, 2020. **App. 132-34 (Vol. 1), App. 717 (Vol. 4).**

Count 25 – Eric Hollins

Respondent admitted in his Answer to Informant's Information all of the factual allegations regarding Eric Hollins.

Eric Hollins hired Respondent to handle his workers compensation case related to an incident which occurred on January 20, 2019. **App. 74 (Vol. 1).** On February 4, 2020, Respondent received \$58,800 in settlement funds and deposited that same amount into his trust account for the benefit of Mr. Hollins. **App. 74 (Vol. 1), App. 709 (Vol. 4).**

Mr. Hollins signed a settlement statement on March 3, 2020. The settlement statement reflects a medical lien of \$4,416.50 to Russel B. Porter. This amount was subtracted from the total recovery to the client. **App. 74 (Vol. 1), App. 705-06 (Vol. 4)**. Also, the settlement statement reflects a medical lien of \$131 to Midwest Radiology Consultants. This amount was also subtracted from the total recovery to the client. **App. 74 (Vol. 1), App. 705-06 (Vol. 4)**.

On June 3, 2020, Informant requested proof of payment from Respondent for both medical liens. **App. 74-75 (Vol. 1)**. Respondent stated that Mr. Hollins had asked him not to pay Dr. Porter because he believed he had been overcharged. On June 15, 2020, Respondent paid Dr. Porter \$4,416.50. **App. 75 (Vol. 1), App. 707, 715 (Vol. 4)**. On July 20, 2020, Respondent paid Midwest Radiology Consultants \$131. **App. 75 (Vol. 1), App. 716 (Vol. 4)**.

The \$4,547.50 balance of Hollins' client funds went unpaid from February 4, 2020 through June 15, 2020. Respondent's trust account balance fell below the amount needed to pay combined undisbursed client funds, including those of Eric Hollins, on February 26, 2020. **App. 132-34 (Vol. 1), App. 717 (Vol. 4)**.

Count 26 – Routine Trust Account Processes

Respondent is the only authorized signer on his bank accounts. **App. 329 (Vol. 2)**. Respondent testified at his sworn statement that he was not aware of a pattern of mismanagement with regard to his trust account until Informant audited it in 2020. **App. 397 (Vol. 2)**. He did not reconcile his trust account prior to Informant's audit. **App. 334**

(Vol. 2). He assumed everyone was getting paid their money “since there was money in the trust account.” **App. 335-36 (Vol. 2).**

From December of 2017 through September of 2020, Respondent routinely failed to timely withdraw earned fees from his trust account. **App. 37, 112 (Vol. 1).** He testified that he tried to keep track of the amount of his fees in his head. **App. 245-46 (Vol. 1).** From December 5, 2017, through September 1, 2020, Respondent paid himself from the trust account in large, round, transfer amounts and not based on exact fees earned. **App. 38, 105 (Vol. 1).** From December 2017 through September 2020, Respondent frequently made withdrawals from his trust account, and not by check or authorized electronic transfer, in amounts as high as \$90,000, totaling over \$550,000. **App. 38, 105-106, 109-110 (Vol. 1), App. 428-457 (Vol. 3).**

On October 26, 2018, \$13,711.34 from AT&T was deposited into Respondent’s trust account. **App. 76, 111 (Vol. 1), App. 436 (Vol. 3).** Respondent was unaware of the matter associated with the AT&T deposit, but suspected it was attorney fees for a case he was co-counsel on and to pay some expenses. **App. 76 (Vol. 1), App. 695 (Vol. 4).** On October 23, 2018, \$12,500 was deposited into Respondent’s trust account with a memo reading: Kenneth Jones. **App. 76 (Vol. 1).** According to the Respondent, the \$12,500 deposit included attorney fees already earned. **App. 76 (Vol. 1).**

Throughout December 2017 to September 2020, Respondent failed to keep accurate trust account records. **App. 75-76, 230-31, 246-46 (Vol. 1).** From December 2017 to September 2020, Respondent frequently failed to promptly pay clients and third parties funds that he received and deposited into his trust account and was obligated to

hold in trust for their benefit. **App. 113-14 (Vol. 1), App. 475 (Vol. 3); App. 115-17 (Vol. 1), App. 478 (Vol. 3); App. 117 (Vol. 1), App. 492 (Vol. 3); App. 118 (Vol. 1), App. 502 (Vol. 3); App. 118-19 (Vol. 1), App. 509 (Vol. 3); App. 119 (Vol. 1), App. 522 (Vol. 3); App. 119-20 (Vol. 1), App. 535 (Vol. 3); App. 120 (Vol. 1), App. 544 (Vol. 3); App. 120-21 (Vol. 1), App. 560 (Vol. 3); App. 121-23 (Vol. 1), App. 570 (Vol. 4); App. 124-25 (Vol. 1), App. 592 (Vol. 4); App. 125 (Vol. 1), App. 600 (Vol. 4); App. 125-26 (Vol. 1), App. 606 (Vol. 4); App. 127 (Vol. 1), App. 627 (Vol. 4); App. 127-28 (Vol. 1), App. 637 (Vol. 4); App. 128-29 (Vol. 1), App. 646 (Vol. 4); App. 129 (Vol. 1), App. 653 (Vol. 4); App. 129-30 (Vol. 1), App. 661 (Vol. 4); App. 130 (Vol. 1), App. 671 (Vol. 4); App. 130-31 (Vol. 1), App. 678 (Vol. 4); App. 131-32 (Vol. 1), App. 707 (Vol. 4)**

Kelly Dillon, an investigator and examiner with the OCDC, testified regarding her audit of Respondent's trust account. **App. 96-98 (Vol. 1), App. 413-416 (Vol. 2).** Ms. Dillon prepared a spreadsheet from the records she obtained from Respondent and Respondent's bank. On the spreadsheet, payments drawn against a deposited item that had yet to become good funds were shaded peach. There were 16 examples of this during the time period of the audit. **App. 110 (Vol. 1), App. 428-457 (Vol. 3).** Cash withdrawals from the trust account were shaded olive green. There were 93 examples of this during the audit period. **App. 109-10 (Vol. 1), App. 428-457 (Vol. 3).** Instances of commingling in the client trust account (a deposit of personal funds or earned fees) were shaded in purple. There were three examples of this during the audit period. **App. 110-11 (Vol. 1), App. 428-457 (Vol. 3).** Split deposits were shaded in blue. There were

seven examples of this during the audit period. **App. 108-09 (Vol. 1), App. 428-457 (Vol. 3).**

Ms. Dillon testified regarding Respondent's misappropriation using Informant's Exhibit 34. The exhibit compared the available funds in Respondent's trust account with the known amounts undisbursed to clients and third parties. As shown in **App. 717 (Vol. 4):**

- a. On May 9, 2018, Respondent's trust account balance was \$12,148.06, and the known amounts undisbursed to clients and third parties totaled \$16,669.34; meaning the trust account was over \$4,000 short;
- b. On March 26, 2019, Respondent's trust account balance was \$5,603.69, and the known amounts undisbursed to clients and third parties totaled \$12,384; meaning the trust account was over \$6,700 short;
- c. On September 10, 2019, Respondent's trust account balance was \$40,510.32, and the known amounts undisbursed to clients and third parties totaled \$70,208.63; meaning the trust account was over \$29,000 short;
- d. On February 26, 2020, Respondent's trust account balance was \$27,420.82, and the known amounts undisbursed to clients and third parties totaled \$87,763.44; meaning the trust account was over \$60,000 short.

App. 132-34 (Vol. 1), App. 717 (Vol. 4).

As shown in Exhibit 34, the difference between the balance in the client trust account and the undisbursed client and third-party funds supposed to be in the client trust account continued to grow until the account was finally audited by OCDC and reconciled. **App. 134 (Vol. 1), App. 717 (Vol. 5).**

Ms. Dillon testified that Respondent was cooperative with her during the reconciliation. She testified that he was remorseful with regard to his trust accounting practices, and that he paid the clients and/or third parties the amounts that had been unpaid. **App. 134 (Vol. 1).**

Respondent agreed that he did not do good record-keeping, did not reconcile the trust account, and did not do those things the rules require him to do, but he maintained that he was not dishonest and that he did not take his client's money. **App. 280-82 (Vol. 1).** When asked if he knew where the money went when the trust account balance fell below the amounts undisbursed to clients and third parties, he answered "no." **App. 291.**

Changes to Trust Accounting Practice

Respondent opened a new trust account in late September of 2020, and hired an accounting firm to provide him with monthly reconciliations. **App. 283 (Vol. 1).** Timothy Eaton, an accountant for the firm of DeFrain & Million CPAs in Overland Park, Kansas, testified that the firm reconciles Respondent's bank accounts and prepares his taxes. **App. 175 (Vol. 1).** Mr. Eaton never reconciled Respondent's old trust account; but he has reconciled the new trust account monthly since it opened. **App. 176-78, 181, 283 (Vol. 1).** His work is reviewed by a CPA in the office. **App. 176 (Vol. 1).** Mr. Eaton testified that

the reconciliation is done to be sure that everything going in and out of the trust account remains a liability and is never marked as an income or expense on the financial statement. **App. 177 (Vol. 1)**. Mr. Eaton admitted that he is not familiar with the requirements concerning trust accounts that are found in Rule 4-1.15. **App. 182 (Vol. 1)**. He testified that he has other clients that are attorneys that have instructed him in the same manner as Mr. Fulcher. “They have instructed me that I should not record any of the transactions from the trust account onto the income statement, that it’s simply a liability.” **App. 182 (Vol. 1)**.

In addition, Respondent testified that he now is personally involved in doing the case recaps (settlement statements). He also testified he has reduced the number of cases he has taken because he wants to be sure is on top of what he has and that no clients are harmed. **App. 283 (Vol. 1)**.

Background, Community Involvement, and Character Witness Testimony and Letters

Respondent has been a resident of the Kansas City area for his entire life. **App. 223 (Vol. 1)**. He graduated from the University of Kansas and then worked for a few years at Evangelical Children’s Home before going to law school. **App. 223-24 (Vol. 1)**. After law school, Respondent clerked for Judge Gray in Jackson County Circuit Court from 1997-1998. **App. 224 (Vol. 1)**. Respondent has been in private practice since that time, and he started his own practice in 2012. That practice was initially doing mostly criminal work, but later evolved to include more personal injury cases **App. 225-26 (Vol. 1)**.

Four individuals testified with respect to Respondent's character. They generally attested to his honesty, his commitment to his clients, and his commitment to his community. None of the witnesses addressed the specific allegations in the Information. **App. 183-221 (Vol. 1)**. Respondent also provided character witness letters from eight individuals. None of the letters address the specific allegations in the Information. **App. 801-814 (Vol. 5)**.

Disciplinary Hearing Panel's Decision

On June 6, 2022, the Hearing Panel issued its decision and concluded that Respondent violated Rule 4-1.8(e), Rule 4-1.15(a), Rule 4-1.15(a)(6), Rule 4-1.15(a)(7), Rule 4-1.15(d), and Rule 1.15(f). **App. 816-873 (Vol. 5)**.

With regard to Rule 4-8.4(c), the Panel found the evidence "insufficient for a finding of misappropriation of funds pursuant to dishonesty, fraud, deceit or misrepresentation" and the Panel found "the preponderance of the evidence was that Respondent was negligent." The Panel also found that "[a]lthough the trust account balance fell below the funds necessary to pay all clients and third parties on two occasions, at no time was the trust account overdrawn."

The Disciplinary Hearing Panel's Recommended Discipline

The Disciplinary Hearing Panel recommended that Respondent be suspended indefinitely with no leave to apply for one year, with the suspension to be stayed and Respondent placed on probation for two years. **App. 869 (Vol. 5)**. The Panel concluded that Respondent knowingly converted client funds and acknowledged that disbarment is the presumptive discipline. **App. 865-66 (Vol. 5)**. It determined that Respondent had

provided evidence of his good character in the community and of his efforts to improve his trust accounting practices. **App. 867 (Vol. 5)**. The Panel concluded there was “an absence of dishonest or selfish motive by Respondent relating to the trust account violations, despite Respondent’s numerous trust account violations.” **App. 868 (Vol. 5)**. It also considered as mitigating Respondent’s good faith efforts to make restitution in every case and his cooperative attitude toward the proceedings. **App. 868 (Vol. 5)**.

As to aggravating factors, the Panel found that Respondent was aware of issues with his trust account since 2010, but never attended the CLE on trust accounting, even though it was recommended in conjunction with his Letter of Caution and Admonition for trust accounting issues. In addition, the Panel considered Respondent’s substantial experience in practice of the law. When both mitigating and aggravating factors were weighed, the Panel found suspension was the appropriate discipline. **App. 868 (Vol. 5)**. They recommended suspension with no leave to apply for one year, with the suspension to be stayed and Respondent placed on probation for two years. **App. 869 (Vol. 5)**.

On June 17, 2022, Informant rejected the decision. **App. 874 (Vol. 5)**. On July 11, 2022, Respondent accepted the decision. **App. 875 (Vol. 5)**.

POINTS RELIED ON

I.

**RESPONDENT VIOLATED RULES 4-1.8(e) 4-1.15 (a), (d), and (f),
and 4-8.4(c) AS ALLEGED IN THE INFORMATION.**

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

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

In re Schaeffer, 824 Sw.2d 1 (Mo. banc 1992)

Rule 4-1.8

Rule 4-1.15

Rule 4-8.4

POINTS RELIED ON

II.

UPON CONSIDERATION OF THIS COURT'S DECISIONS IN PREVIOUS ATTORNEY DISCIPLINE CASES AND THE ABA SANCTION GUIDELINES, RESPONDENT SHOULD BE SUSPENDED AND PROBATION IS NOT APPROPRIATE.

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

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

In re Schaeffer, 824 Sw.2d 1 (Mo. banc 1992)

Rule 5.225

ABA Standards for Imposing Lawyer Sanctions (1992)

ARGUMENT

I.

RESPONDENT VIOLATED RULES 4-1.8, 4-1.15(a), (d), and (f), and 4-8.4(c) AS ALLEGED IN THE INFORMATION.

Standard of Review

Professional misconduct is established by a preponderance of the evidence. *In re Crews*, 159 S.W. 3d 355, 358 (Mo. banc 2005). This Court reviews the evidence *de novo*, independently determining all issues pertaining to the credibility of witnesses and the weight of the evidence and reaches its own conclusion of law. *Id.* In matters of attorney discipline, the disciplinary panel's decision is advisory. *In re Farris*, 472 S.W.3d 549, 557 (Mo. banc 2015).

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

Nearly all of the factual allegations in this case were admitted by Respondent. Many of the Rule violations were admitted as well. Respondent uniformly denied that he misappropriated client funds and that he violated Rule 4-8.4(c).

A. Violation of Rule 4-1.8

Rule 4-1.8(e) provides that a lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation. Respondent admitted that he violated Rule 4-1.8(e) when he provided financial assistance to client Natasha Neal.

B. Violation of Rule 4-1.15(a)

Rule 4-1.15(a) provides, in relevant part, 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. Respondent violated Rule 4-1.15(a) when he routinely failed to timely withdraw earned fees from his trust account and deposited personal funds into his trust account from AT&T and Kenneth Jones, thereby commingling the account.

Rule 4-1.14(a)(4) requires receipts to be deposited intact. Respondent violated Rule 4-1.14(a)(4) when he made split deposits seven times during the audit period.

Rule 4-1.14(a)(5) requires withdrawals to be made only by check payable to a named payee, and not to cash, or by authorized electronic transfer. Respondent violated Rule 4-1.14(a)(5) when he made cash withdrawals from the trust account 93 times during the audit period

Rule 4-1.15(a)(6) provides that no disbursement shall be made based upon a deposit 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. Respondent violated Rule 4-1.15(a)(6) when he paid client Gregory Belcher before his settlement funds were deposited into Respondent's trust account. The OCDC audit revealed 15 other examples of payments drawn against a deposited item that had yet to become good funds.

Rule 4-1.15(a)(7) provides that a reconciliation of a trust account shall be performed reasonably promptly each time an official statement from the financial

institution is provided or available. Respondent violated Rule 4-1.15(a)(7) because he had no process for a periodic reconciliation of his trust account. From at least December of 2017 through September of 2020, Respondent did not reconcile his trust account.

C. Violation of Rule 4-1.15(d)

Rule 4-1.15(d) requires a lawyer to promptly notify the client or third person of receipt of funds in which the client or third person has an interest and to promptly deliver to the client or third person funds that the client or third person is entitled to receive. Respondent violated Rule 4-1.15(d) when he failed to promptly deliver funds that the client or third-party were entitled to with regard to the following clients: Ross, Saffold, Goebel, Ayres, Ingram, Rucker-Ross, Washington, Smith, Allen, Edwards, Duisik, Dupree, Johnson, Baker, Grant, Brown, Smith, May, Bresette, Bomar, and Hollins.

D. Violation of Rule 4-1.15(f)

Rule 4-1.15(f) requires a lawyer to maintain and preserve complete trust account records for at least six years to include receipt and disbursement journals containing a record of deposits to and withdrawals from the client trust account, specifically identifying the date, source, and description of each item deposited as well as the date, payee, and purpose of each disbursement. Further required are reconciliations of the client trust account. Respondent did not keep a ledger and he did not perform reconciliations. Respondent's admitted failure to maintain the required trust accounting records is a violation of Rule 4-1.15(f).

E. Misappropriation and Violation of Rule 4-1.8(c)

Respondent engaged in misappropriation when he made disbursements from the client trust account that caused the balance of the trust account to drop below the sum required to satisfy all client trust obligations. “When an attorney deposits the client’s funds into an account used by the attorney for his own purposes, any disbursements from the account for purposes other than those of the client’s interests has all the characteristics of misappropriation, particularly when the disbursement reduces the balance of the account to an amount less than the amount of the funds being held by the attorney for the client. *In re Schaeffer*, 824 S.W.2d 1, 5 (Mo. banc 1992).

Misappropriation of "client funds necessarily involves deceit and misrepresentation.” *In re Ehler*, 319 S.W.3d 442, 451 (Mo. banc 2010). Respondent violated Rule 4-8.4(c) (dishonesty, fraud, deceit, or misrepresentation) when he misappropriated client funds of specific clients Ayres, Duisik, and Johnson, and when Respondent’s trust account balance fell below the amount needed to pay combined undisbursed client funds, on May 9, 2018, March 26, 2019, September 10, 2019, and February 26, 2020, as shown in Informant’s Exhibit 34. Respondent benefitted for several years by using many clients’ and third parties’ money as his own.

II.

UPON CONSIDERATION OF THIS COURT’S DECISIONS IN PREVIOUS ATTORNEY DISCIPLINE CASES AND THE ABA SANCTION GUIDELINES, RESPONDENT SHOULD BE SUSPENDED.

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

This Court has consistently turned to ABA Standards for Imposing Lawyer Sanctions (ABA Standards) for guidance in deciding what discipline to impose. *In re Storment*, 873 S.W.2d 227 (Mo. banc 1994). Per ABA Standard 3.0, when imposing a sanction, a court should consider the: (1) duty violated, (2) lawyer’s mental state, (3) potential or actual injury caused by the lawyer’s misconduct, and (4) the existence of aggravating and mitigating factors. When an attorney has committed multiple acts of misconduct, the ultimate sanction imposed should be at least consistent with the sanction for the most serious instance of misconduct. *In re Ehler*, 319 S.W.3d at 451.

ABA Sanction Analysis for Cases Involving Misappropriation

Here, the duty violated was Respondent's duty to protect his clients' money. It is among the highest duties the rules address. *In re Ehler*, 319 S.W.3d at 451.

Respondent's mental state with regard to his failure to preserve client property was knowing. "Knowledge" as defined by the ABA Standards, is "the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result." A person's knowledge may be inferred from the circumstances. Rule 4-1.0(f).

Respondent certainly knew he was not caring for his client's property when he: failed to keep a general ledger; failed to reconcile his trust account; removed his fees in large, round, transfer amounts and not based on exact fees earned; and made almost one hundred withdrawals from the trust account, and not by check or authorized electronic transfer, in amounts totaling over \$550,000 during the audit period. *See In Re Farris*, 472 S.W.3d 549, 568 (Mo. Banc 2015) (by requiring lawyers to keep complete trust account records, Rule imposes affirmative duty to inquire and understand information in those records; failure to do so does not protect the lawyer; it creates an inference that the lawyer knew all that those records would have shown). This is not a case in which Respondent simply failed to follow established proper accounting procedures. Respondent had no established proper accounting procedures.

As to the third consideration, injury, it is undisputed that Respondent converted funds that were to be preserved for the listed clients. Respondent offers that all clients and third parties were eventually paid. But the ABA Standards address both injury and

potential injury, or “harm to the client that is reasonably foreseeable at the time of the lawyer’s misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct.” ABA Standards (Definitions). That potential injury arose when Respondent’s trust account balance fell below the known amounts undisbursed to clients and third parties on multiple occasions, and, by February 26, 2020, was over \$60,000 short. When asked where the money went, Respondent testified that he did not know.

In Missouri, the standard for the most serious violation is the starting place for analysis. *In re Ehler*, 319 S.W.3d 442, 451 (Mo. banc 2010). Standard 4.11 serves as the baseline this Court routinely applies in misappropriation cases: “Absent aggravating or mitigating circumstances, upon application of the factors set out in [Standard] 3.0, ... disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.” *In re Farris*, 472 S.W.3d at 563. Standard 4.12, suggests suspension is 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.” Respondent either knew or should have known he was dealing improperly with client money.

Although the Panel recommended a stayed suspension with probation, it did not appear to consider the minimum standards for the use of probation in Missouri discipline cases. A lawyer is eligible for probation if (a) the lawyer is unlikely to harm the public and can be supervised, (b) continued practice by the lawyer would not harm the

profession's reputation, and (c) the misconduct doesn't warrant disbarment, Rule 5.225 (a)(2).

This Court's probation rule, in proper settings, allows the lawyer being disciplined an opportunity to improve his or her practice, while on probation. It does not, however, permit probation when disbarment is "warranted." Rule 5.225(a)(2)(C). And "[m]isappropriation of a client's funds, entrusted to an attorney's care, is always grounds for disbarment." *In re Schaeffer*, 824 S.W.2d 1, 5 (Mo. banc 1992) (quoting from *In re Mentrup*, 665 S.W.2d 324, 325 (Mo. banc 1984)). Even if this Court decided to impose a suspension in this case, Respondent would not be eligible for probation. Under Rule 5.225, probation is never available where the baseline sanction would be disbarment. To read the rule otherwise would defeat the whole meaning of Section (a)(2)(C).

Applicable Mitigating Factors

Upon finding the applicable baseline standard, aggravators and mitigators are considered. The following mitigating factors apply:

ABA Standard 9.32(d) (timely good faith effort to make restitution or to rectify consequences of misconduct). Respondent worked with the OCDC investigator during the audit to identify clients and third-parties that had not been fully paid. He then paid the identified clients and third parties the amounts they were owed.

ABA Standard 9.32(e) (full and free disclosure to disciplinary board or cooperative attitude toward proceedings). Respondent was cooperative with the trust account audit and provided requested information to the OCDC.

ABA Standard 9.32(g) (character or reputation). Respondent’s character witnesses and letters from fellow attorneys and judges, clients, and members of the community describe Respondent as hard-working, professional, honest, caring, and a youth mentor. They do not address the specific allegations against Respondent in the Information.

ABA Standards 9.32(l) (remorse). Respondent expressed remorse about his trust accounting practices and a desire to improve those practices.

Non-applicable Mitigating Factors

The Panel concluded there was “an absence of dishonest or selfish motive by Respondent relating to the trust account violations, despite Respondent’s numerous trust account violations.” But application of this mitigating factor, ABA Standard 9.32(b) is inconsistent with the Panel’s finding that Respondent’s misappropriated and “knowingly converted” client funds.

Applicable Aggravating Factors

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

ABA Standard 9.22(a) (prior disciplinary offenses). Respondent received an Admonition in 2011. It was for a violation of Rule 4-1.15, and specifically states that Respondent was not depositing advance fees into his trust account, not reconciling his trust account on a monthly basis, and failing to keep current and accurate client ledgers. None of those issues were rectified by the time of the 2020 audit of his account.

ABA Standards 9.22(c) (a pattern of misconduct). Respondent's failure to protect client funds occurred at least throughout the time period of the audit and, based on Respondent's testimony regarding his failure to reconcile his trust account prior to the audit, had been going on during his years of private practice.

ABA Standards 9.22(d) (multiple offenses). Respondent violated Rules 4-1.8, 4-1.15(a), (d), and (f), and 4-8.4(c)

ABA Standards 9.22(i) (substantial experience in the practice of law). Respondent has been licensed to practice law since 1998. During the majority of that time, he engaged in private practice, and should have been familiar with the requirements of Rule 4-1.15.

Based on previous rulings from this Court and the ABA Sanction Standards, an actual suspension is the minimum appropriate sanction. Discipline is intended to protect the public and preserve the integrity of the legal profession. In regards to safeguarding property, this Court has recognized that its "obligation to protect the public and the profession from attorneys who violate this trust is as important today as ever. There simply is no room in this profession for attorneys who take property held in trust for others and use it as their own." *In re Farris*, 472 S.W.3d 549, 562 (Mo. banc 2015).

If the Court decides to impose a stayed suspension with probation, Informant would welcome the opportunity to recommend probation terms and conditions.

CONCLUSION

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

- (a) find that Respondent is guilty of professional misconduct and find that Respondent has violated Missouri Supreme Court Rules 4-1.8, 4-1.15(a), (d), and (f), and 4-8.4(c);
- (b) suspend Respondent’s law license indefinitely with no leave to apply for reinstatement until after the expiration of two (2) years;
- (c) tax all costs in this matter to Respondent, including the \$1,000.00 fee pursuant to Rule 5.19(h), and
- (d) require Respondent to comply with Rule 5.27.

Respectfully submitted,

ALAN D. PRATZEL #29141
Chief Disciplinary Counsel

By: 

Carolyn Gail Vasterling #38172
Staff Counsel
3327 American Avenue
Jefferson City, MO 65109
(573) 635-7400 - Telephone
(573) 635-2240 - Fax
Email: Carolyn.Vasterling@courts.mo.gov


ATTORNEYS FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August, 2022, a copy of Informant’s Brief is being served upon Respondent’s counsels through the Missouri Supreme Court electronic filing system pursuant to Rule 103.08.

James C. Morrow
Todd Moulder
Hillary Hyde
Ste 300 8330 Ward Parkway
Kansas City, MO 63114-2045

Attorneys for Respondent




Carolyn Gail Vasterling

CERTIFICATION: RULE 84.06(c)

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

1. Includes the information required by Rule 55.03;
2. The brief was served on Respondent through the Missouri electronic filing system pursuant to Rule 103.08;
3. Complies with the limitations contained in Rule 84.06(b);
4. Contains 12,689 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



Carolyn Gail Vasterling