

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

**JUSTIN LAMAR MASON
1717 Park Avenue
St. Louis, MO 63104**

Missouri Bar No. 62571

Respondent.

)
)
)
)
)
)
)
)
)

Supreme Court No. SC100685

**INFORMANT'S BRIEF
(REDACTED)**

Respectfully submitted,

LAURA E. ELSBURY #60854
Chief Disciplinary Counsel

Carolyn G. Vasterling #38172
Staff Counsel
3327 American Avenue
Jefferson City, MO 65109
(573) 635-7400
(573) 635-2240 fax
Carolyn.Vasterling@courts.mo.gov

ATTORNEYS FOR INFORMANT

TABLE OF CONTENTS

COVER PAGE	1
TABLE OF CONTENTS	2
TABLE OF AUTHORITIES.....	3
STATEMENT OF JURISDICTION	5
STATEMENT OF FACTS.....	6
INFORMANT’S EVIDENCE	7
RESPONDENT’S EVIDENCE	13
DISCIPLINARY HEARING PANEL’S DECISION.....	21
THE DISCIPLINARY HEARING PANEL’S RECOMMENDED DISCIPLINE	22
POINTS RELIED ON	
I.....	24
II	25
ARGUMENT	
I.....	26
II	29
CONCLUSION	33
CERTIFICATE OF SERVICE.....	34
CERTIFICATION: RULE 84.06(c).....	34

TABLE OF AUTHORITIES

CASES

<i>In re Belz</i> , 258 S.W.3d 38 (Mo. banc 2008).....	32
<i>In re Crews</i> , 159 S.W. 3d 355 (Mo. banc 2005)	24, 26
<i>In re Ehler</i> , 319 S.W. 3d 442 (Mo. banc 2010).....	25, 29
<i>In re Farris</i> , 472 S.W.3d 549, 562 (Mo. banc 2015)	24, 25, 26, 30, 32
<i>In re Mentrup</i> , 665 S.W.2d 324 (Mo. banc 1984).....	32
<i>In re Shelhorse</i> , 147 S.W.3d 79 (Mo. banc 2004).....	24, 26
<i>In re Storment</i> , 873 S.W.2d 227 (Mo. banc 1994)	25, 29
<i>In re Wiles</i> , 107 S.W.3d 228 (Mo. banc 2003).....	29
<i>Matter of Mendell</i> , 693 S.W.2d 76 (Mo. banc 1985)	32

Other Authorities

ABA Standards for Imposing Lawyer Sanctions (1992).....	25, 29, 30
ABA Standard 3.0.....	29
ABA Standard 4.11.....	30
ABA Standard 9.22(a)	22, 31
ABA Standard 9.22(c)	22, 31
ABA Standard 9.22(d).....	22, 31
ABA Standard 9.22(i).....	31
ABA Standard 9.32(g).....	22, 31

RULES

Rule 4-1.1	6, 31
------------------	-------

Rule 4-1.3	6, 31
Rule 4-1.4	6, 31
Rule 4-1.7	24
Rule 4-1.8	24
Rule 4-1.15	24, 26
Rule 4-1.15(a)	6, 26, 33
Rule 4-1.15(a)(1)	21
Rule 4-1.15(a)(5)	6, 21, 27, 33
Rule 4-1.15(a)(6)	6, 21, 27, 33
Rule 4-1.15(a)(7).....	6, 21, 27, 33
Rule 4-1.15(d)	6, 21, 27, 32, 33
Rule 4-1.15(f).....	6, 21, 28, 32, 33
Rule 4-8.4(c)	6, 22, 24, 28, 33
Rule 4-8.4(d).....	24
Rule 5.285.....	22, 31
Rule 5.285(d)	31
Rule 5.285(e)	14, 31

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

Respondent, bar number 62571, was licensed as an attorney on April 10, 2010, and is currently tax suspended. **1 R. 1, 13-14¹**. Respondent accepted an Admonition dated January 26, 2017, for violating Rule 4-1.1 (Competence), Rule 4-1.3 (Diligence), and Rule 4-1.4 (Communication). **1 R. 50-54**. On September 28, 2021, this Court suspended Respondent's license pursuant to Rule 5.245 for failure to pay tax. **1 R. 47-48**. Respondent filed a Petition for Reinstatement on October 26, 2021. This Court granted Informant leave to conduct a full investigation. While Informant continued its investigation, Respondent withdrew his Petition for Reinstatement and that motion was granted by this Court. On March 29, 2023, Informant filed an Information alleging that Respondent violated Rules 4-1.15(a), 4-1.15(a)(5), 4-1.15(a)(6), 4-1.15(a)(7), 4-1.15(d), 4-1.15(f), and 4-8.4(c) . On May 30, 2023, Respondent filed his Answer. **1 R. 1-20**.

On March 26, 2024, the appointed Disciplinary Hearing Panel held a hearing. Respondent was represented by Dan Church and Brittain McClurg. Informant was represented by Gail Vasterling. **1 R. 48**. Informant's Exhibits 1-26 were admitted without objection. **Tr. 11-14, 25, 30, 34-35, 37, 39, 41-42, 44-49, 52, 54-55, 57, 61**. Informant's Exhibits 27-29 were admitted over Respondent's objection. **Tr. 239, 241-42**. Respondent's Exhibits A-D and G-AA were admitted without objection. **Tr. 106, 110, 111, 112, 161, 169, 179, 181, 182, 185, 187, 188, 191, 194, 202, 211, 215, 219, 224, 225, 229, 231**. The Panel rejected Respondent's Exhibits E and F based on Informant's hearsay objection. **Tr. 130-37**. Informant called Kelly Dillon. Respondent testified on his own

¹ Volume 1 of Record on Appeal, page 1.

behalf and called the following witnesses: Joseph Klenofsky, Jimmy Vaughn, Brandon Harris, Verleria Mason, and Tyrone Mason.

The Disciplinary Hearing Panel issued its decision on June 11, 2024, and recommended that Respondent be suspended without leave to apply for reinstatement for 24 months. **24 R. 2710-32.** Informant and Respondent both filed letters of rejection with the Advisory Committee. **24 R. 2733-35.**

Informant's Evidence

Kelly Dillon, Investigator and Certified Fraud Examiner for Informant, audited Respondent's trust account with Bank of America and Respondent's operating account with Bank of America. **1 R. 41.** When Ms. Dillon began her audit, Respondent's counsel informed her that Respondent would be producing an accountant's report, going back five years. **1 R. 74-84; Tr. 15-16.** Despite multiple requests for the accountant's report, Ms. Dillon never received an accountant's report. **1 R. 92; Tr. 17-20.** Ms. Dillon's request for records from Respondent's trust account went back five years because the accountant was supposedly creating a report that went that far back. When she started her audit, she began with the present day and worked back. When she reached 50 cases that she had concerns with, the chief counsel determined that was far enough, so most of her audit activity is in 2020 and 2021, and a little bit in 2022. **Tr. 57-58.**

From November 2021 through August 2022, Ms. Dillon made repeated requests from Respondent for records, repeated requests that Respondent organize the records he was producing, and repeated requests for records still missing from Respondent's productions. **1 R. 72-131; Tr. 16-22.** The Office of Chief Disciplinary Counsel (OCDC)

twice attempted to schedule a sworn statement of Respondent. Respondent was subpoenaed for a sworn statement on February 28, 2023, and again on March 21, 2023. The subpoena to Respondent included an attachment requesting specific copies of records relating to specific clients. Both times, Respondent's counsel called or emailed a few days before the scheduled statements, seeking to postpone the sworn statements for medical reasons. Both times, OCDC requested medical records confirming the reason for the postponement. No medical records were received in response to these requests. **1 R. 118-31; Tr. 23.**

Based on the financial records OCDC received, Ms. Dillon testified that Respondent did not keep a general ledger. She did receive some client ledgers from Respondent, but testified that some were inaccurate and sometimes she received more than one ledger for the client containing different information. She testified she did not believe that these client ledgers were being maintained during the course of business, but were created after the fact. **Tr. 24.**

During the audit period, Respondent deposited client settlement funds into his operating account. In most instances, Respondent later transferred the funds to trust for disbursement. On one occasion, on May 4, 2020, Respondent deposited client funds into his operating account that were never transferred to trust, but the client and third parties were paid from trust, from money that belonged to other clients. **1 R. 41, 132-62; 2 R. 163-167; Tr. 28-31.** Ms. Dillon testified that Respondent indicated that he was unable to make deposits to his trust account during COVID; he had to deposit client funds to his operating account and then transfer them to trust. That explanation did not make sense to

Ms. Dillon. It was the first time she had ever had an attorney tell her that he was unable to make a deposit to his client trust account. Also, during this same time frame, Respondent made two deposits that went directly to his client trust account. **Tr. 28-29.**

Respondent at times failed to disburse his earned fees and/or expenses from the client trust account. Specifically, Respondent failed to disburse his earned fees and/or expenses as to the following clients during the audit period (ending October 2022):

- A. Alvin S (settlement deposited to trust September 10, 2021),
- B. Devin S (settlement deposited to trust September 10, 2021),
- C. Rian C (settlement deposited to trust July 29, 2021),
- D. Christopher M (settlement deposited to trust May 4, 2021),
- E. Crystal J (settlement deposited to trust December 2, 2021),
- F. Crystal J-F (settlement deposited to trust January 25, 2021),
- G. Derek D (settlement deposited to trust January 25, 2021),
- H. Precious W (one settlement deposited to trust December 2, 2020 and another settlement deposited to trust June 24, 2020), and
- I. Bridgette D (settlement deposited to trust June 2, 2020).

1 R. 41-42.

Respondent at times failed to disburse amounts due to clients/third parties from settlements received. Specifically, Respondent failed to disburse amounts due to client/third parties as to the following clients as of the end of the audit period (October 2022):

- A. Nicole Y (settlement check deposited on September 30, 2021),

- B. Brian T (settlement check deposited on August 6, 2021),
- C. Christopher M (settlement checks deposited on May 4, 2021 and May 14, 2021),
- D. Crystal J-F (settlement check deposited on January 25, 2021),
- E. James J (settlement check deposited on April 27, 2020),
- F. Anthony Z (settlement check deposited on March 24, 2020),
- G. Jerry M (settlement check deposited on February 21, 2020),
- H. Danny and Katie T (settlement check deposited on February 10, 2020), and
- I. Jeremiah H (settlement check deposited on September 29, 2020).

1 R. 42, 132-62; 2 R. 187-99, 213-22, 240-54, 265-306, 318-28; Tr. 37-38, 40-41, 44-56.

Respondent did not timely pay the following clients/third parties from settlements and/or med pay checks during the audit period:

- A. Abdul M (med pay check deposited to trust on April 16, 2018, Abdul M paid on August 1, 2022),
- B. Jennifer D (settlement checks deposited on October 5, 2021, Midwest Physicians Group paid on behalf of client on August 10, 2022),
- C. Katie B (settlement check deposited September 23, 2021, Oasis paid on behalf of client on October 14, 2022),
- D. Shaquita P (settlement check deposited on July 19, 2021, Oasis paid on behalf of client on September 2, 2022),
- E. Dakota D (settlement check deposited on April 5, 2021, Imaging Center of Alton paid on behalf of client on October 10, 2022),

F. Edric R (settlement check deposited on April 20, 2020, partial payments to client on June 22, 2020 and July 24, 2020),

G. Adrian N (settlement check deposited on July 19, 2021, Adrian N paid on January 19, 2022),

H. Danny L (settlement check deposited on February 26, 2021, Danny L paid on August 5, 2021)

1 R. 42-43, 132-62; 2 R. 168-86, 199-212, 223-39, 255-64, 307-17; Tr. 34-45, 53-54.

In the following instances, payments were made as result of inquiry from Informant during the course of the audit:

- A. Abdul M
- B. Jennifer D
- C. Katie B
- D. Shaquita P, and
- E. Dakota D

1 R. 16-17, 132-62.

Respondent failed to reconcile his trust account and failed to maintain accurate records which left him unaware that checks had been negotiated for amounts different from what they were written for and that some checks were never negotiated at all, causing him to sometimes over-disburse or under-disburse client funds from his trust account. **1 R. 17.**

Respondent made cash withdrawals from his client trust account during the audit period on July 28, 2021 and July 29, 2021. **1 R. 17, 132-62; Tr. 33.**

Respondent paid personal expenses from his client trust account during the audit period, including multiple check orders and, on January 15, 2020, Bar dues. **1 R. 17, 132-62; Tr. 32.**

At times during the audit period, Respondent's trust account balance fell below the amount necessary to satisfy client trust obligations. **1 R. 132-62; 2 R. 307-17, 329; Tr. 53-54, 56-59.** For single client Edric R, without considering funds being held for any other clients, on May 22, 2020, the balance of Respondent's trust account fell to \$6,763.69, below the amount necessary to satisfy the client obligation of \$8,280.07 held in trust for Edric R. **2 R. 307-17; Tr. 53-54.** When combined with certain other client trust obligations identified in the audit, Respondent's trust account fell below the amount necessary to satisfy those obligations on May 22, 2020 (unpaid client funds of \$18,614.30, trust account balance of \$6,763.69), and on October 28, 2022 (unpaid client fund of \$26,686.56, trust account balance of \$20,275.67). **1 R. 132-62; 2 R. 329; Tr. 56-59.**

Ms. Dillon testified that, whether the attorney makes payment with a cashier's check or a check from the client trust account, it is the attorney's obligation to make sure that the parties receive their money so the client's debts are satisfied. **Tr. 75.** Ms. Dillon testified she believed Respondent attended a trust accounting CLE that she taught at last fall [Fall of 2023], and that was a good thing. **Tr. 76.**

Respondent's Evidence

Respondent is 43 years old, not married, and has two daughters aged 23 and 25. **Tr. 78.** Respondent has an undergraduate degree in chemistry from St. Louis University.

He received his law degree from St. Louis University in December 2009. He is licensed to practice law in Illinois. **Tr. 78-83.** He worked for Brown & James briefly. He did foreclosure work for a lawyer in St. Peters for a couple of months, but did not like it. Then he began his own solo practice. He shared office space with the Meyerkords, who would feed him personal injury cases. **Tr. 84-87.**

Respondent testified he had about 110 cases at the peak of his practice – pre COVID. He testified he did not have any fee disputes with clients; he did not have any clients that made complaints against him relative to how he handled their personal injury cases; and he did not have any clients that complained that a medical provider had not been paid. **Tr. 90-91, 176, 182, 184, 186, 188, 190, 194, 200, 202, 204, 212.**

Respondent is the only signatory on his trust account. He did not have a bookkeeper and testified that was a bad decision. He was doing the bookkeeping on his own but then got so busy he could not keep up. He endeavored to use settlement statements in all of his personal injury and worker's compensation cases. **Tr. 93-99.**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 3 R. 3 346-97; 4 R. 398-485; 5 R. 486-562; 6 R. 563-632; 7 R. 633-709; 8 R. 710-780; 9 R. 781-852; 10 R. 853-919; 11 R. 920-977; 12 R. 978-1057; 13 R. 1058-1133; 14 R. 1134-1258; 15 R. 1259-1403; 16 R. 1404-1525; 17 R. 1526-1647; 18 R. 1648-1815; 19 R. 1816-1945; 20 R. 1946-2062; 21 R. 2063-2150; 22 R. 2151-2341;

23 R. 2342-2544; 24 R. 2545-2645. Respondent did not produce evidence from an independent, licensed mental health professional that a mental disorder caused or had a direct and substantial relationship to the professional misconduct as required by Rule 5.285(e).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] He testified attorney Joe Klenofsky and Respondent's legal assistant, Katie Farrell, were taking care of his cases and that a majority of his clients were in treatment at that point. **Tr. 113-14.**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **Tr. 116-19, 22 R.**

2200; 23 R. 2459; 24 R. 2639. [REDACTED]

[REDACTED]

[REDACTED] **Tr. 120.**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Tr. 124, 12 R. 1001, 1015.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Tr. 126, 15 R. 1273, 1291; Ex. B 925, 943, 21 R. 2064. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Tr. 127-28, 20 R. 1998-99.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 19 R. 1941, 1943.

[REDACTED]

[REDACTED]

[REDACTED] . Tr.

128, 18 R. 1782.

Respondent testified that he feels great now. [REDACTED]. He works out at 5 a.m. everyday. [REDACTED]

[REDACTED] **Tr. 145.**

Respondent still has his license in Illinois and still represents clients in Illinois. He puts their client money into the same Missouri trust account that was audited, which remains open. **Tr. 145-46.** With regard to his client trust account, Respondent admitted that he was not making sure that his books were correct. He did not reconcile his books. He testified he did not do that stuff because he was busy running a business. **Tr. 159.**

Respondent testified with regard to a check written to a provider that had not cleared the bank, “I pay the check. At that point I feel like I’ve washed myself of what I’ve done. I paid the -- I’ve sent the check to the – to the treater.” He added that if the treater did not call him and let him know there was an issue with that check, “I feel like I’ve done everything I can possibly – I’ve mailed you the check.” **Tr. 163.**

Respondent testified with regard to another check written to a provider that was not presented for payment that he would assume that the provider had the check. He added that the provider had not called and said there was an issue with that check. He testified: “I guess when they receive those checks my thing is, like, the accounting is on your part, not mine, but if they wanted me to write another check, then yes, I would – I could follow up with them, but if it doesn’t – if the check doesn’t come back, my practice is like, hey, I’ve given you the check.” When asked if that money would just sit in his trust account for years potentially, he responded: “Potentially, yes. I don’t know what to

do with that money if the treater doesn't do with that money, they don't cash those checks." **Tr. 173-74.**

Respondent testified he hired an accountant to audit his accounts "when he started this process with the OCDC." He testified he will make sure that she "does all of that monthly." He testified he is "pretty sure she has done that." **Tr. 226, 244.**

Joseph Klenofsky

Joseph Klenofsky, a Missouri attorney who practices in St. Louis, testified that he met Respondent while working at the Meyerkords. He had good interactions with Respondent. They would collaborate and go to seminars together. **Tr. 261-66.** Mr. Klenofsky testified that he and Respondent did not have discussions about financial recordkeeping and accounting and all that stuff. **Tr. 267.**

He testified he got a call from Respondent in June or July 2020. He could hear Respondent attempting to talk to him, he thought they had a bad connection.

[REDACTED]

Tr. 269. Respondent's assistant, Katie Farrell, reached out to him within a month and wanted to make sure there were no deadlines that were going to be missed. He gave her some advice on that. **Tr. 268, 270.**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **Tr. 269-70.** [REDACTED]

[REDACTED]

[REDACTED] **Tr. 271.**

Mr. Klenofsky testified that Respondent was a very good, credible attorney. He knows how to research and write. He was honest with clients, with his opinions, with the options he gave them. He would never call his loyalty into question. **Tr. 272.**

Bishop Jimmy Vaughn

Bishop Jimmy Vaughn, a clergy affiliated with Perpetual Praise and Worship Ministries, testified that one of the elders of the church introduced him to Respondent. Respondent became active in his church service. He participates in Sunday school, prayer service, and Sunday service. **Tr. 274-77.** He testified Respondent has never done anything to question whether he is a trustworthy person. **Tr. 278.**

Brandon Harris

Brandon Harris testified that he met Respondent in the seventh grade. Mr. Harris is a contractor who has lived in St. Louis since August 2022. He was in Atlanta for ten years before that. **Tr. 279-80.**

[REDACTED] **Tr.**
281.

He has never used Respondent's services as a lawyer. He is not familiar with any friends or family that have utilized Respondent's services. **Tr. 281-82.**

He described Respondent as solid. "[H]e'll tell you the truth and – and also go out and have a blast with you at the same time." **Tr. 281.** He testified he never knew Respondent to take advantage of anyone. **Tr. 283.**

Mr. Harris has gotten together socially with Respondent maybe a couple of times since he has been in St. Louis. He never went to Respondent's doctors' appointments. He does not talk to Respondent much about his health. They just talk about "man stuff."

Tr. 283.

Verleria Mason

Verleria Mason, Respondent's mother, testified she lives in Sansea, Illinois. She graduated from St. Louis University with a communications degree in 2001. She worked for IBM for about 21 years. Currently she has her retirement job as a customer service agent for Southwest Airlines. **Tr. 284-87.**

She testified she had referred some traffic cases to Respondent, but no personal injury cases. **Tr. 290.**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **Tr. 291.** [REDACTED]

[REDACTED]

[REDACTED] **Tr. 292.** [REDACTED]

[REDACTED]

[REDACTED] **Tr.**
293.

[REDACTED]

[REDACTED]

Tr. 293. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Tr. 295, 299.

Ms. Mason testified that Respondent has not done anything since he has been in the law practice that caused her concern about his trustworthiness. She stated she has not heard of any problems he has had with any accounts or financial accounting. Tr. 300. She testified Respondent had one accountant and he realized he was not getting what he needed from that accountant. Ultimately, he hired a different accountant that he said was doing things much better. That is the accountant Respondent has now as far as she knows. Tr. 301.

Tyrone Mason

Tyrone Mason, Respondent's father, testified he has a bachelor's degree from St. Louis University in management information systems and a master's degree from the University of Phoenix in computer information systems. He served twenty years in the United States Air Force and retired in 1998 as an E-6. Then he worked for IBM for a little while. Tr. 301-02.

He testified that he has not referred any legal cases to Respondent. Tr. 306.

[REDACTED]

[REDACTED]

[REDACTED] Tr. 307-08. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **Tr. 308.**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **Tr. 309-10.**

Tyrone Mason testified that he thinks there were a couple of Respondent's clients that complained he was not available to talk to them. They were referred to Joe Klenofsky or Katie Farrell. **Tr. 312.**

He testified that Respondent is doing well now. He believes Respondent is capable to practice law. He testified that there was nothing that would cause him concern about Respondent's ability to handle financial affairs with his law practice at the present time. He has not met the lady that is working as Respondent's accountant now. **Tr. 315.**

Disciplinary Hearing Panel's Decision

The Disciplinary Hearing Panel issued its decision and concluded that Respondent violated Rule 4-1.15(a)(1) and engaged in commingling when he retained earned fees in the client trust account and deposited client settlement checks into his operating account; Rule 4-1.15(a)(5) when he made cash withdrawals from the client trust account; Rule 4-1.15(a)(6) when he made payments to individuals out of the trust account with no corresponding proceeds from the matter; Rule 4-1.15(a)(7) when he failed to reconcile his trust account; Rule 4-1.15(d) when he failed to promptly deliver to clients or third persons any funds clients or third persons were entitled to receive; Rule 4-1.15(f) when

he failed to maintain complete records of the client trust account; Rule 4-8.4(c) and engaged in misappropriation when he over disbursed client settlements and used client funds for his own personal use and caused the client trust account balance to drop below the sum required to satisfy all client trust obligations. **4 R. 812-16.**

The Disciplinary Hearing Panel’s Recommended Discipline

The Disciplinary Hearing Panel concluded that Respondent “was negligent in managing client property because he did not reconcile his trust accounts, failed to timely disburse payments to clients and third parties, and failed to timely disburse his earned fees to his operating account.” The Panel concluded Respondent caused injury to clients by failing to timely disburse payment to clients. **4 R. 820.**

As to aggravating factors, the Panel found that Respondent had prior discipline, limited to an unrelated admonition (9.22(a)); there was a pattern of misconduct (9.22(c)); and there were multiple offenses (9.22(d)). **4 R. 823.**

With respect to mitigators, the Panel found that Respondent introduced evidence of his good character and reputation (9.32(g)). The Panel stated, “Respondent’s violations were due to negligence other than intentional conversion for selfish purposes.”

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **4 R. 823-24.**

The Disciplinary Panel recommended that Respondent be suspended without leave to apply for reinstatement for 24 months. **4 R. 826-27.**

POINTS RELIED ON

I.

**RESPONDENT VIOLATED RULES AS ALLEGED IN THE
INFORMATION.**

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

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

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

Rule 4-1.7

Rule 4-1.8

Rule 4-8.4(c)

Rule 4-8.4(d)

Rule 4-1.15

POINTS RELIED ON

II.

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

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

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

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

ABA Standards for Imposing Lawyer Sanctions (1992)

ARGUMENT

I.

RESPONDENT VIOLATED RULES 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.*

Rule 4-1.15

Rule 4-1.15(a) states that a lawyer shall hold property of clients or third persons that is in the lawyer’s possession in connection with a representation separate from the lawyer’s own property. Client or third-party funds shall be kept in a separate account designated as a “Client Trust Account.” Respondent violated Rule 4-1.15(a) and engaged in commingling when he retained earned fees in the client trust account and deposited client settlement checks into his operating account.

Rule 4-1.15(a)(5) states that withdrawals shall be made only by check payable to a named payee, and not to cash, or by authorized electronic transfer. Respondent violated Rule 4-1.15(a)(5) when he made cash withdrawals from the client trust account.

Rule 4-1.15(a)(6) states that no disbursement shall be made based upon a deposit if the lawyer has reasonable cause to believe that the funds have not actually been collected by the financial institution in which the trust account is held and 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 made payments to individuals out of the trust account with no corresponding proceeds from a matter. Specifically, Respondent over disbursed funds in certain matters, and Respondent deposited the client settlement check for one client into the operating account, and disbursed payments from the client trust account.

Rule 4-1.15(a)(7) states that a reconciliation of the account shall be performed reasonably promptly each time an official statement from the financial institution is provided or available. Respondent violated Rule 4-15(a)(7) in that he failed to reconcile his trust account.

Rule 4-1.15(d) states that upon receiving funds or other property in which the client or third person has an interest, a lawyer shall promptly notify the client or third person and shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive. Respondent violated Rule 4-1.15(d) in that he failed to promptly deliver to the client or third persons any funds the client or third person was entitled to receive.

Rule 4-1.15(f) requires the lawyer to maintain complete records of client trust accounts. Respondent violated Rule 4-1.15(f) in that he failed to maintain and preserve complete records of the client trust account.

Rule 4-8.4(c)

Rule 4-8.4(c) states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Respondent violated Rule 4-8.4(c) and engaged in misappropriation when he over disbursed client settlements and used client funds for his own personal use and caused the client trust account balance to drop below the sum required to satisfy all client trust obligations.

ARGUMENT

II.

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

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

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

ABA Sanction Analysis

Here, Respondent violated a duty owed to clients – to preserve client property. ABA Standard 4.11 states that disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client. Respondent knowingly converted client property when his client trust account balance fell below the amount necessary to satisfy client trust obligations in May 2020 and again in October 2022. His conduct was knowing, defined as “the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.” ABA Standards, p. 17. He was not negligent in managing client property, as the Panel found. Throughout the audit period, from at least 2020 to 2022, he had no trust accounting procedures and failed to keep required records. With regard to his client trust account, Respondent admitted that he was not making sure that his books were correct. He did not reconcile his books. He testified he did not do that stuff because he was busy running a business. **Tr. 159.** He caused injury to clients by not timely paying and by failing to disburse amounts due to clients/third parties from settlements received.

Mitigating and Aggravating Factors

Although disbarment is the presumptive discipline, this Court considers mitigating and aggravating circumstances to see if any of these factors might suggest either increasing or decreasing the level of discipline. Mitigating factors do not serve as a defense to a finding of misconduct, but they may justify a downward departure from the presumptively proper discipline. *In re Farris*, 472 S.W.3d 549, 562 (Mo. banc 2015).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Those findings are contrary to the evidence. The OCDC audit began in November of 2021; it included repeated requests for Respondent to produce records through August of 2022. His inability to timely and fully respond to the OCDC's requests was a result of his failure to keep records required by the Rules. And, despite requests for and promises to produce medical records justifying Respondent's twice cancelling his scheduled sworn statement, he produced no such documentation.

Case Law

When determining what level of discipline to impose, Missouri case law is also instructive. While disbarment is not automatic when there is misappropriation, case law shows that disbarment is a baseline sanction for misappropriation. *In re Mentrup*, 665 S.W.2d 324 (Mo. banc 1984), *In re Belz*, 258 S.W.3d 38 (Mo. banc 2008); *See also Matter of Mendell*, 693 S.W.2d, 76, 798 (Mo. banc 1985). Per *In re Farris*, Respondent's reliance on inaccurate records offers no excuse, because he is "charged with knowledge of what the records required by Rule 4-1.15(d) [now (f)] would have showed had he kept them." *In re Farris*, 472 S.W.3d at 561."

CONCLUSION

For the reasons set forth above, Informant respectfully requests this Court should find that Respondent violated Rules 4-1.15(a), 4-1.15(a)(5), 4-1.15(a)(6), 4-1.15(a)(7), 4-1.15(d), 4-1.15(f), and 4-8.4(c), disbar Respondent, impose the \$2,000 fee and costs provided for by Rule 5.19(k), and require Respondent to comply with Rule 5.27.


Respectfully submitted,

LAURA E. ELSBURY

#60854

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 3rd day of October, 2024, a copy of Informant's Brief is being served upon Respondent's counsel through the Missouri Supreme Court electronic filing system pursuant to Rule 103.08.

Daniel F. Church
8330 Ward Parkway, Suite 300
Kansas City, MO 64114-2027

Brittain McClurg
Morrow Willnauer Church LLC
8330 Ward Parkway
Kansas City, MO 64114-2045

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 6,881 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



Carolyn Gail Vasterling