

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

JUSTIN LAMAR MASON

Respondent.

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Case No. SC100685

RESPONDENT'S BRIEF

Respectfully submitted,

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	3
STATEMENT OF FACTS.....	6
POINT RELIED ON	9
ARGUMENT.....	10
I. Standard of Review.....	10
II. The disciplinary hearing panel erred in recommending suspension because the American Bar Association Standards for Imposing Discipline support imposing suspension stayed for a period of probation.	10
CONCLUSION	15
CERTIFICATE OF COMPLIANCE	17
CERTIFICATE OF SERVICE.....	17

TABLE OF AUTHORITIES

Cases

<i>In re Frick</i> , 694 S.W.2d 473 (Mo. banc 1985)	11
<i>In re Littleton</i> , 719 S.W.2d 772, 777 (Mo. banc 1986)	11
<i>In re McMillin</i> , 521 S.W.3d 604 (Mo. banc 2017)	11
<i>In re Pryor</i> , 864 So. 2d 157 (La. 2004)	13
<i>In re Riggs</i> , 869 P.2d 170 (Ariz. 1994)	14
<i>In re Schuessler</i> , 578 S.W.3d 762 (Mo. banc 2019)	10
<i>In re Storment</i> , 873 S.W.2d 227 (Mo. banc 1994)	10
<i>In re Zink</i> , 278 S.W.3d 166 (Mo. banc 2019)	10
<i>Lawyer Disc. Bd. V. Chittum</i> , 689 S.E.2d 811 (W.Va. 2010)	14

Statutes

Section 484.040 RSMo. 2018	5
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Rules

Rule 4-1.15(a)	10
Rule 4-1.15(d)	10, 15
Rule 4-1.15(f)	10, 15
Rule 4-8.4(c)	10, 15

Treatises

ABA Standard 3.0	11
ABA Standard 4.11	12

ABA Standard 4.12.....	12
ABA Standard 4.13.....	12
ABA Standard 9.22.....	14, 15
ABA Standard 9.32.....	14, 15
Annotated Standards for Imposing Lawyer Sanctions	passim
Constitutional Provisions	
Article V § 5 of the Missouri Constitution.....	5

JURISDICTIONAL STATEMENT

This Court has jurisdiction over attorney discipline matters under Article V § 5 of the Missouri Constitution and Section 484.040 RSMo. 2018.

STATEMENT OF FACTS

Justin Mason (“Respondent”), Bar No. 62571, was admitted to the Missouri Bar on April 21, 2010. (R. Vol. 1 at 13-14, ¶¶ 3-4). Respondent is currently suspended for failure to pay taxes, and he petitioned for reinstatement on October 26, 2021. (R. Vol. 1 at 14, ¶¶ 7-8). As part of its investigation for reinstatement, the Office of Chief Disciplinary Counsel (“OCDC”) initiated an audit of Respondent’s trust account at Bank of America (****2164) and Respondent’s operating account at Bank of America (****2177) from February 2017 through October 2022. (R. Vol. 1 at 15, ¶ 12). Respondent acknowledge that at times, “he deposited client settlement funds into the operating account” and in most instances “he later transferred the funds to the trust account for disbursement.” (R. Vol. 1 at 15, ¶ 13).

On ten occasions, Respondent did not disburse his earned fees from the trust account to his operating account, and in effect, failed to pay himself for work performed. (R. Vol. 1 at 14-15, ¶ 14). On separate occasions, Respondent did not timely pay clients or third parties money owed as a result of settlement or medical payments. (R. Vol. 1 at 16-17, ¶ 16). Additionally, Respondent inadvertently purchased checks and paid his bar dues from his trust account. (R. Vol. 1 at 17, ¶ 19).

Aggravating and Mitigating Factors

During the audit period, Respondent [REDACTED] on July 14, 2020, and was [REDACTED] Tr. 102-103, 117. Following his [REDACTED] Respondent was [REDACTED] Tr. 112. Respondent was [REDACTED] Tr. 112. Immediately after his [REDACTED]

Respondent's parents moved into his home [REDACTED]
[REDACTED]. Tr. 112-113.

Respondent went to [REDACTED]
[REDACTED] Tr. 115.

After his [REDACTED], Respondent saw an [REDACTED] to
improve [REDACTED]. Tr. 115-116. During one particular
visit, Respondent's [REDACTED] worked on [REDACTED]
[REDACTED] Tr. 118. [REDACTED]
[REDACTED]
[REDACTED] Tr. 197. [REDACTED]
[REDACTED] (R. Vol. 24 at 2639).

Additionally, Respondent expressed remorse for his actions, recognized his mistakes, and has taken steps to prevent these mistakes from occurring in the future. Respondent attempted to reconcile his bank statements and was unable to keep up with his work, so he has not retained the services of a bookkeeper. Tr. 93-99, 159, 164-165, 226, 244. Respondent testified that: "I wasn't making sure that my books were correct. I didn't reconcile my books. . . . I won't sit here and say that I'm not. That was probably the biggest failures [sic] that I've had in my life is not having those systems in place." Tr. 159. Respondent recognized this was a "dumb" decision and acknowledged that as "a small business owner, you have to have a - - at least a minimum a bookkeeper or an accountant. You have to have these things." Tr. 96.

Respondent further acknowledged it was a mistake to have his trust account and operating account with the same bank, and going forward Respondent would have one bank for his operating account and a separate bank for his trust account. Tr. 248-49. Respondent also believes it is more beneficial to have a trust account with a smaller local bank. Tr. 249.

Respondent also attended a continuing legal education course taught by Kelly Dillon from the OCDC, which provided training on how to effectively manage a trust account and to comply with the Missouri Rules of Conduct. Tr. 257-58.

Furthermore, Respondent's parents, a fellow attorney, a pastor, and an elementary school friend testified that Respondent had a good reputation in the community.

Previously, Respondent was disciplined once for an unrelated admonition for violating rules pertaining to competence, diligence, and communications. (R Vol 24 at 2730). Respondent had engaged in a pattern of misconduct and there were multiple offenses. (R Vol 24 at 2730).

Disciplinary Hearing Panel's Recommendation

The Disciplinary Hearing Panel ("Panel") found 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 accounts." R. Vol. 24 at 2728. The Panel found that this conduct violated Rules 4-1-15(a), Rule 4-1.15(d), 4-1.15(f), and Rule 4-8.4(c). R. Vol 24 at 2727-28. The Panel recommended that Respondent be suspended with leave to reapply after twenty-four months. Both Respondent and OCDC filed a rejection of the Panel's Recommendation.

POINT RELIED ON

The disciplinary hearing panel erred in recommending suspension because the American Bar Association Standards for Imposing Discipline support imposing suspension stayed for a period of probation.

In re Zink, 278 S.W.3d 166 (Mo. banc 2019)

In re Howard, 912 S.W.2d 61 (Mo. banc 1995)

In re Littleton, 719 S.W.2d 772 (Mo. banc 1986)

Annotated Standards for Imposing Lawyer Sanctions

ARGUMENT

I. Standard of Review

Before this Court can impose discipline, “[p]rofessional misconduct must be proven by a preponderance of the evidence.” *In re Schuessler*, 578 S.W.3d 762, 770-71 (Mo. banc 2019). The disciplinary hearing panel’s findings of fact and conclusions of law are merely advisory, and this Court “reviews the evidence *de novo*, independently determining all issues pertaining to credibility of witnesses and the weight of the evidence and draws its own conclusions of law.” *Id.* “Stated more plainly, this Court is free to reject, wholly or in part, the recommendation of the disciplinary hearing panel’s findings of fact.” *In re Zink*, 278 S.W.3d 166, 169 (Mo. banc 2019).

II. The disciplinary hearing panel erred in recommending suspension because the American Bar Association Standards for Imposing Discipline support imposing suspension stayed for a period of probation.

Respondent agrees that his professional misconduct has been proven by a preponderance of the evidence and he has violated Rules 4-1.15(a), Rule 4-1.15(d), Rule 4-1.15(f), and Rule 4-8.4(c).

As such, the question for the Court is the appropriate discipline under the facts. Since, *In re Storment*, 873 S.W.2d 227 (Mo. banc 1994), this Court has consistently turned to the Annotated Standards for Imposing Lawyers Sanctions (2019) (“ABA Standards”) for guidance in deciding what discipline to impose. “The purpose of discipline is not to punish the attorney, but to protect the public and maintain the integrity of the legal

profession.” *In re Littleton*, 719 S.W.2d 772, 777 (Mo. banc 1986) (citing *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985)). “[D]isbarment should be reserved for those cases in which it is clear that respondent is one who should not be at Bar.” *Id.* “Reprimand, on the other hand, is appropriate where the attorney’s breach of discipline is an isolated act and does not involve dishonest, fraudulent, or deceitful conduct on the part of the attorney.” *Id.* Suspension is appropriate when the Court believes a reprimand is insufficient to protect the public and integrity of the profession and when the acts are not such that the attorney should not be at Bar. *Id.* Under these facts, the appropriate discipline is a suspension, however, the suspension should be stayed pending successful completion of probation.

When imposing sanctions this Court considers: (a) the duty violated; (b) *the lawyer’s mental state*; (c) the potential or actual injury caused by the lawyer’s misconduct; and (d) the existence of aggravating or mitigating factors. *In re McMillin*, 521 S.W.3d 604, 610 (Mo. banc 2017) (emphasis added); *accord* ABA Standard 3.0.

The OCDC represents that Respondent’s violations were *knowing* violations, however, the Panel found that Respondent’s violations were the result of negligence. Under the ABA Standards, “knowledge, occurs when a lawyer ‘acts with conscious awareness of the nature or attendant circumstances’ of the conduct, ‘without the conscious objective or purpose to accomplish a particular result.’” Annotated Standards for Imposing Lawyer Sanctions at 135. However, “[n]egligence occurs when a lawyer lacks awareness of a ‘substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the

situation.” *Id.* at 136-37. The attorney’s mental state is highly relevant to the discipline imposed.

Standard 4.11 provides that: “Disbarment is generally appropriate when a lawyer *knowingly* converts client property and causes injury or potential injury to a client.” Annotated Standards for Imposing Lawyer Sanctions at 145. Even if the conduct is knowing, “Suspension is generally appropriate when a lawyer *knows or should know* that he is dealing improperly with client property and causes injury or potential injury to a client.” ABA Standard 4.12. “Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a [c]lient.” ABA Standard 4.13.

OCDC provides no evidence to support the contention that Respondent *knowingly* converted client property. The Panel and the evidence supports a finding that Respondent *negligently* mismanaged client funds. Respondent failed to meet the standard of care for attorneys in similar situations, but he did not have a conscious objective to remove money from his client trust account for his own benefit. In fact, part of the OCDC’s claim hinges on the fact that Respondent left money that he was owed in his trust account instead of moving it to his operating account. An attorney with the intent to steal funds from his client would remove all the money that is properly owed him and then take more. This is clear evidence that Respondent negligently misappropriated funds as opposed to knowingly misappropriating funds.

In *In re Pryor*, 864 So. 2d 157, 166 (La. 2004), the Court suspended an attorney for twenty-four months, with eighteen months deferred for suspension for similar misconduct. In these instances, several clients paid fees for criminal representation, which were never returned after the attorney did little or no work on behalf of the client. *Id.* at 157-60. The attorney was charged by disciplinary counsel with eighteen violations including, as relevant here, the misappropriation of funds and conduct involving dishonesty, fraud, deceit, or misrepresentation. *Id.* at 162. The attorney stipulated to the violations and presented only evidence of mitigating factors before the disciplinary panel. *Id.* The Court held that the attorney's misconduct was "negligent rather than intentional and stemmed in large part from poor office management skills." *Id.* at 165.

Just as in *In re Pryor*, Respondent did not have an ulterior motive or any evil intent to remove funds from his operating account. Instead, he had poor skills in managing his office and financial accounts. Respondent acknowledges that he did not reconcile his books or ensure that his records were correct. Respondent offers no case law or any ABA Standard to support its conclusion that the violations were committed knowingly. Instead, these instances of negligence are better addressed through a probationary plan that provides both oversight and education to improve these skills. Suspending or disbaring Respondent does neither. "Courts sometimes note that a supervised probationary period imposed with a sanction of reprimand or admonition can help ensure that the lawyer's misconduct will not recur and may be more effective than unsupervised suspension." Annotated Standards for Imposing Lawyer Sanctions at 91.

“Reprimand is appropriate, for example, for lawyers who negligently fail to follow established trust account procedures or fail to return client property.” *Id. See In re Riggs*, 869 P.2d 170 (Ariz. 1994) (reprimanding lawyer for sloppy and inadequate financial practices and imposing one year of probation); *Lawyer Disc. Bd. V. Chittum*, 689 S.E.2d 811 (W.Va. 2010) (reprimanding attorney who commingled personal and client funds in his “Attorney at law Trust Account” and paid personal expenses out of trust account, but “requiring supervised practice for a period of two years with a supervising attorney.”).

Even if suspension is the appropriate discipline, it can be paired with probation. Annotated Standards for Imposing Lawyer Sanctions at 90. Here, the evidence clearly demonstrates that Respondent was negligent in his financial matters, and that probation is appropriate. “Probation is a sanction that should be imposed when a lawyer’s right to practice law needs to be monitored or limited rather than suspended or revoked.” *Id.* at 88. “Probation is appropriate when a lawyer can perform legal services but has problems that require supervision, *such as improper maintenance of books and records*, lack of timely communication with clients, mental or physical disabilities, or alcohol and chemical dependency.” *Id.* (emphasis added).

Finally, the ABA provides for consideration of aggravating and mitigating factors, which are set forth in ABA Standard 9.22 and ABA Standard 9.32 respectively. In their brief, the OCDC identifies the following aggravating factors: prior disciplinary offenses (9.22(a)); pattern of misconduct (9.22(c)); multiple offenses (9.22(d)); and substantial

experience in the practice of law (9.22(i)). Respondent does not challenge these aggravating factors.

However, the Panel and the OCDC agree that Respondent introduced evidence of his good character and reputation (9.32(g)). The panel further found that “Respondent’s violations were due to negligence other than intentional conversion for selfish purpose, which supports the absence of a dishonest or selfish motive as set forth in Standard 9.32(b). Furthermore, Respondent expressed remorse and had identified necessary practices that he would implement to avoid similar mistakes in the future. *See* Standard 9.32(l).

The parties dispute whether the Court should consider evidence of Respondent’s [REDACTED] and its impact on his failure to comply with the Rules of Professional Conduct. The evidence before the Court clearly establishes that Respondent [REDACTED]

[REDACTED] Now that Respondent has [REDACTED], the Court should give him the opportunity to practice law with the supervision of a licensed attorney who can facilitate law firm management and trust account oversight.

CONCLUSION

For the reasons stated herein, this Court should find that Respondent negligently violated Rules 4-1.15(a), 4-1.15(d), 4-1.15(f), and 4-8.4(c), suspend Respondent for a period of two years stayed upon successful completion of probation under the supervision of a mentoring attorney and for such further relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Respondent's Brief includes the information required by Rule 55.03, was served on Informant through the electronic filing system pursuant to Rule 103.08, complies with the limitations contained in Rule 84.06(b), and contains 2,893 words, according to Microsoft Word, which is the word processing system used to prepare this brief.

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of December 2024 the above and foregoing was filed with the Clerk of the Supreme Court of Missouri using the Case.Net electronic filing system which serves a copy via electronic mail to counsel of record.

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