

**IN THE SUPREME COURT  
STATE OF MISSOURI**

**IN RE:**

**RICK L. NELSON**  
6822 Olive Blvd., 2<sup>nd</sup> Floor  
St. Louis, Missouri 63130-2520

Missouri Bar No. 29544

Respondent.

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**Supreme Court No. SC100519**

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**INFORMANT'S BRIEF**

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**STATEMENT OF JURISDICTION**

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 2000.

## **STATEMENT OF FACTS**

### **Procedural Summary**

On September 26, 2023, the Disciplinary Hearing Panel held a hearing at Lathrop, Gage, LLC in St. Louis, Missouri. Informant's Exhibits 1-47 were admitted into evidence, as were Respondent's Exhibits A - F. Informant put on testimony from one witness, and Respondent testified on his own behalf, and put on testimony from six-character witnesses.

The Panel issued a decision on February 1, 2024. They found that Respondent violated the Rules of Professional Conduct as alleged in the Information. The panel rejected Respondent's request for a stayed suspension with probation but accepted his recommendation for an indefinite suspension with no leave to reapply for two years; Respondent and Informant accepted the panel's recommendation for an actual (not-stayed) suspension. This court rejected the recommendation, placing the case before this court for a *de novo* review of the record under Rule 5.19.

### **Background and Disciplinary History**

Respondent, Rick L. Nelson, is a graduate of Howard University Law School and has been licensed to practice law in Missouri since 1980. **2 R 78, 1 R 29.** He began his career working as an attorney in the Army. **2 R 79.** In 1983, Respondent was honorably discharged from the Army, and he began working as an attorney for the Equal Employment Opportunity Commission. **2 R 81.** After a year of working for the Equal Employment Opportunity Commission, Respondent went into private practice working with several other attorneys. **2 R 82.** Respondent's private practice included work in criminal defense, family law, probate, bankruptcy, and personal injury litigation. **2 R 83.**

On August 14, 2000, Respondent accepted an Admonition for failing to pay his enrollment fees. **1 R 108**. On December 30, 2005, Respondent accepted an admonition for failing to include an advertising disclosure in a letter to a prospective client as is required by Rule 4-7.3(a). **1 R 110**.

On August 22, 2017, the Supreme Court issued a Reprimand with Conditions to Respondent for violations of Rules 4-1.15(a) (commingling of funds) and 4-1.15(b) (depositing own funds into trust account). **1 R 113**. Respondent was required to retain a Trust Account Mentor, to set up and organize a client trust account record system that complied with the Missouri Rules of Professional Conduct and to submit to random audits of his Trust Account by Informant. **1 R 30**. On January 22, 2020, Respondent accepted an Admonition for failing to abide by the terms of his Reprimand with Conditions. **1 R 30**. These audits revealed that Respondent failed to maintain adequate records of his trust accounts. As a result, Respondent was unaware that clients and third parties remained unpaid while his trust account balances held an amount insufficient to satisfy the obligations. **1 R 110 -112**. Informant admonished that Respondent's conduct violated Rule 4-1.15. The Admonition further reflected that Respondent repeatedly failed to respond to record requests while subject to the Missouri Supreme Court's Reprimand with Conditions and such failure amounted to a violation of Rule 4-8.1. **1 R 110 – 112**. Moreover, the Admonition provided that Respondent had not participated in the required trust account training opportunities. On August 31, 2022, this Court suspended Respondent's license, pursuant to Rule 5.245, for failing to pay his taxes. **1 R 115 – 116**. Respondent's license remains suspended.

**COUNT I**  
**CLIENT P.J.**

Respondent operated a small law firm in St. Louis, Missouri that handled family law matters, criminal cases, probate matters, and real estate matters. **1 R 31**. On or about September 3, 2020, Complainant P.J. retained Respondent to handle her father’s estate. **1 R 31**. On September 4, 2020, Respondent deposited \$1,000.00 from P.J. into his operating account. **1 R 31**. On September 10, 2020, Respondent depleted Complainant P.J.’s funds from his operating account. **2 R 194**. Respondent explained that he would begin work once he received Death Certificates for her father, brother, and stepmother. **1 R 121 – 123**.

On January 22, 2021, Complainant P.J. attached the requested documents in an e-mail sent to Respondent. **1 R 122**. Approximately a week later, Complainant spoke with Respondent on the phone and confirmed that Respondent had received the documents. **1 R 122**. Respondent explained that he had been unable to start work on her case, because he was busy with a criminal case. **1 R 122**. Approximately four months later, on May 4, 2021, Complainant P.J. called Respondent to check on the progress of her case, and Respondent informed her that he hadn’t started work on her matter, because he was busy on other probate matters. Respondent promised to begin work for Complainant that week. **1 R 121–123**.

On May 31, 2021, Complainant P.J. again called Respondent to check the progress on her case, and again, Respondent informed P.J. that he had not started work on her case. **1 R 124 – 125**. Respondent suggested that his “associate” might be able to handle her case, Respondent promised her that she would hear from someone on her case by the end of the



day. **1 R 124 – 125.** On June 21, 2021, Complainant P.J. had not heard from Respondent nor his “associate,” and she sent an e-mail to Respondent complaining that she had not received any service for approximately half a year, and she requested a refund. **1 R 124 – 125.**

Respondent acknowledged that Complainant P.J. ended the attorney/client relationship in an e-mailed response to P.J. **1 R 33.** As of the date Complainant P.J. filed her complaint with OCDC---July 12, 2021—she had not received a refund. **1 R 33.** On November 10, 2021, Respondent provided Complainant P.J. with a refund of her fee. **1 R 34.** In the letter to P.J. that contained her refund, Respondent included the following language, “please sign the enclosed Released [sic] and return to my office. I will submit the copy to the Office of Disciplinary Counsel.” Attached to the letter was a “Release” with the following language, “I [P.J.] hereby accept (One-Thousand dollars) \$1000.00 as settlement of all claims related to hiring of Attorney Rick L. Nelson to open an estate on behalf of my father. I do also hereby dismiss the complaint filed with the Office of the Disciplinary Counsel, November 21, 2021.” **3 R 209.**

## **COUNT 2**

### **Sharing Legal Fees with a Non-Lawyer**

J.S. (a non-lawyer) referred L.C.’s personal injury case to Respondent. **3 R 251-252.** Respondent represented L.C., and Respondent obtained a \$90,000.00 settlement. **3 R 251 – 252.** In return for the referral on L.C.’s case, Respondent paid J.S. \$21,350.00 of the settlement proceeds on October 14, 2020. **3 R 251 – 252, Ex. 34.**

**COUNT 3**  
**Lack of Cooperation**

As part of the investigation into Complaint 21-920, (P.J.'s case) Informant audited Respondent's trust, operating, and personal accounts. **1 R 38**. On September 7, 2021, OCDC called Respondent and obtained the account numbers for his trust accounts. **1 R 38**. During their conversation, OCDC requested that Respondent supply OCDC with client ledger forms. **1 R 38 – 39**. On September 7, 2021, Respondent admitted that he was not maintaining client ledgers. **3 R 195**. On September 7, 2021, OCDC subpoenaed the applicable bank records from Busey Bank where Respondent maintained his trust and operating accounts. **1 R 39**. On September 29, 2021, OCDC emailed Respondent and requested that he provide settlement sheets for four clients by October 7, 2021. **1 R 190**. OCDC also directed Respondent to acknowledge receipt of the OCDC email. **1 R 190**. Respondent did not acknowledge receipt of the email. **2 R 64 - 65**. Accordingly, OCDC staff re-sent the request for settlement sheets for four clients to Respondent on September 30, October 1, 4, 5, and 7, 2021. **3 R 191 – 201**. Respondent never acknowledged receipt of the OCDC request. On October 7, 2021, Respondent provided OCDC with the four settlement statements that were requested. **3 R 207**. On December 14, 2021, OCDC issued a subpoena to Respondent, directing him to appear at OCDC's office on January 25, 2022, for the taking of his sworn statement. **Ex. 35**. On January 19, 2022, and January 25, 2022, OCDC staff emailed Respondent asking him to confirm that he intended to appear at OCDC's office for his sworn statement. **Ex. 36 and 37**. Respondent did not respond to OCDC emails. Despite his subpoena, Respondent did not appear on January 25, 2022, for

his sworn statement. Respondent eventually gave a sworn statement on February 22, 2022. **Ex. 39.** During the sworn statement, Staff Counsel for OCDC asked Respondent to produce additional records. **1 R 40.** On February 23, 2022, Investigator for OCDC emailed the list of documents Staff Counsel had requested Respondent produce to Respondent's attorney and directed Respondent to produce the documents by March 4, 2022. **Ex. 40.** OCDC made additional requests for the same records from Respondent's counsel on March 24, 2022, and on April 4, 2022. **Ex. 41 and Ex. 42.** Respondent never produced the records.

**COUNT 4**  
**Trust Account Audit**

As part of the investigation into Complaint 21-920 (P.J.'s case), Informant audited Respondent's trust, operating, and personal accounts. During the trust account audit, Respondent admitted that he did not maintain a general ledger or individual client ledgers. **3 R 195.**

**Client P.T.**

On February 11, 2020, Respondent deposited a \$5,300.00 settlement from Safeco into the Busey Bank Trust Account, on behalf of Client P.T. **Ex. 44.** On February, 24, 2020, Respondent paid himself \$1,776.66. **Ex. 44.** On March 4, 2020, Respondent disbursed \$1,776.67 to P.T. **Ex. 44.** After March 4, 2020, \$1,776.00 remained in the account unpaid to any party. **Ex. 44, 3 R 392.** On October 7, 2021, Respondent provided Informant with a "draft only" letter, which suggested the remaining \$1,776.67 was owed to medical lienholders and he would be working to reduce the liens and pay the medical lienholders. **3 R. 396.** When informant took Respondent's sworn statement on February 22, 2022, he

had not paid the medical lienholders the money that Respondent had said was owed to them. **2 R 48**. In August of 2023, just before his disciplinary hearing, Respondent issued checks for obligations to third parties. **2 R 130 – 131**.

**Client L.T.**

On March 13, 2020, Respondent deposited \$21,000.00 from Gallagher Bassett in his Busey Bank Trust Account. **Ex. 34**. On March 27, 2020, Respondent paid himself \$7,000.00. On March 31, 2020, Respondent paid Client L.T. \$10,161.44. **Ex. 34**. On April 1, 2020, Respondent paid a medical provider \$3,800.00. **Ex. 34**. After April 1, 2020, \$38.56 remained in the account. **Ex. 34**. On October 7, 2021, Respondent provided Informant with a copy of Check No. 8 made out to CIOX for \$38.56, which had not been negotiated as of August 21, 2021; this check had not been presented for payment by February 22, 2022—the date of Respondent’s sworn statement. **2 R 47**. Respondent had not reconciled the account; he said that he was unaware this check had not been presented for payment. **2 R 47**. During his DHP hearing Respondent testified that he disbursed a check back in 2020, but CIOX “just never would cash the check.” **2 R 134**. Later in the same hearing, his attorney questioned Respondent on the CIOX check, “—CIOX was never presented a check for payment?” **2 R 135**. Respondent answered, “Correct”. **2 R 135**. While Respondent obtained a settlement for L.T. in March of 2020, he did not finish issuing checks for obligations related to this case until July of 2023, shortly before his disciplinary hearing.

**Client R.B.**

On March 27, 2020, on behalf of R.B., Respondent deposited \$100,000.00 from Western Auto into his Busey Bank Trust Account. **Ex. 33.** Oasis Financial had a lien on the settlement proceeds for \$25,573.72. **3 R 213.** On April 17, 2020, Oasis agreed to reduce its lien to \$15,000.00, provided it received payment by May 29, 2020. **3 R 213.** Respondent subtracted the \$15,000.00 lien held by Oasis Financial from R.B.'s settlement proceeds. **3 R 213.** The settlement sheet Respondent provided Informant shows that he had paid Oasis Financial. **3 R 213.** This was not accurate. Respondent did not pay the \$15,000.00 owed to Oasis Financial from Busey Bank Trust Account nor any other account Informant audited. **Ex. 33.** Informant requested Respondent to provide proof of payment to Oasis Financial and Respondent had not provided this proof before the Information was filed. **Ex. 33.** While Oasis Financial agreed to a settlement amount in May of 2020, Respondent issued a check to Oasis in July of 2023, a few months before his Disciplinary hearing. **2 R 122.**

**Client C.W.**

On April 24, 2020, Respondent deposited \$25,000.00 from Safeauto into his Busey Bank Trust Account on behalf of Client C.W. On June 5, 2020, Respondent paid himself \$8,333.33 from the proceeds, which left \$16,666.67 of the settlement proceeds remaining in his Busey Bank Trust Account. **Ex. 45.** On October 7, 2021, Respondent sent Informant a letter indicating that there were "no other liens due" on the C.W. issue, so he planned to issue the balance to C.W. next week. **2 R 49.** On February 22, 2022, when Informant took Respondent's sworn statement Respondent had not paid C.W. the money he owed her. **2**

**R 49, 3 R. 402, 3 R 382 – 383.** In August 2023, just before his disciplinary hearing, Respondent issued checks for the remaining proceeds relating to C.W.’s case. **2 R 125.** The August 2023 payment to C.W. was the first payment Respondent made to C.W. for a settlement that was obtained in April of 2020. **2 R 128.** Respondent testified that C.W. acted as if she didn’t want her settlement proceeds. **2 R 126 – 127.** When questioned about whether Respondent had documentation that supported the notion that C.W. wanted Respondent to delay payment, Respondent was only able to “recall” the situation. **2 R 127.**

### **Deluxe Check Order**

On March 17, 2020, “Deluxe” check printing company debited Respondent’s Busey Trust Account for \$55.00 and on March 24, 2020 “Deluxe” debited the account for an additional \$52.20. **Ex. 17, 2 R 34.** Respondent did not transfer funds from his operating account to reimburse the trust account for this expense. **Ex. 17, 2 R 34.**

### **Miscellaneous Transactions**

On the following dates, Respondent made cash deposits into his Busey Bank Trust Account, but he said that he cannot identify the client for whom the deposits were made: February 9, 2021 (\$100), March 2, 2021 (\$200), March 19, 2021 (\$215), and April 29, 2021 (\$184.50). **2 R 35.** On November 13, 2020, Respondent paid a \$226.50 filing fee from his Busey Bank Trust Account and on May 18, 2021, he paid a \$217 filing fee from his Busey Bank Trust Account. **Ex. 17.** Respondent said that he cannot identify for whom he made the payments. **2 R 35.** Evidently, Respondent’s accounting practices were so insufficient that he “ended up paying somebody, you know, who –who didn’t deserve it. And of course, you can’t ask for people for money back too well.” **2 R 106.**

### Evidence of Respondent's Reputation in the Community

Respondent presented evidence through six-character witnesses that he has a good reputation in his community for charitable work. **2 R 204 – 228.** The first character witness shared a faith community with the Respondent and he asserted that the Respondent enjoyed a good reputation in the community. This testimony was silent on information specific Respondent's rule violations in the Information. **2 R 204 – 208.** The second character witness believed that if Respondent failed in any respect, his failure was unintentional. **2 R. 212.** This second character witness did not offer any information related to Respondent's violation conduct. The third character witness organized a Facebook signature drive of support for Respondent, believed Respondent offered good advice, and she believed Respondent was an honest gentleman. However, the third character witness offered nothing specifically related to Respondent's violations as outlined in the Information. **2 R 214 – 218.** The fourth character witness appreciated that the Respondent offered him some guidance after the death of his father; he believed the Respondent to be of high moral character, and generous to people in the community. **2 R 218 – 221.** The fourth character witness did not offer information that related specifically to Respondent's violation conduct in the Information. The fifth character witness for Respondent likened the Respondent's wisdom to Plato or Socrates, and he believed Respondent to be a generous man. **2 R 224.** The final character witness was a former client of the Respondent who has known him twenty years, and she was a current employee for him answering phones. **2 R 226.** The final character witness believed the Respondent to have good moral

character, and she believes him to be generous. **2 R 227 - 228.** Again, this witness did not offer information unique to the rule violations alleged in the Information.

**Evidence of Respondent’s Medical Issues**

[REDACTED]



**POINTS RELIED ON**

**I.**

**RESPONDENT VIOLATED RULES 4-1.3, 4-1.15(b), 4-1.15(c), 4-1.15(d), 4-1.15(f)(2), 4-1.15(f)(4), 4-1.15(f)(9), 4-1.16(d), 4-5.4, 4-7.2(c), 4-8.1(c), 4-8.4(c), and 4-8.4(d) AS ALLEGED IN THE INFORMATION.**

Rule 4-1.3

Rule 4-1.15(b)

Rule 4-1.15(c)

Rule 4-1.15(d)

Rule 4-1.15(f)(2)

Rule 4-1.15(f)(4)

Rule 4-1.15(f)(9)

Rule 4-1.16(d)

Rule 4-5.4(a)

Rule 4-7.2(c)

Rule 4-8.1(c)

Rule 4-8.4(c)

Rule 4-8.4(d)

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

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

*In re Shelhorse*, 147 S.W.3d 79, 83 (Mo. banc 2004)

**POINTS RELIED ON**

**II.**

**UPON CONSIDERATION OF THIS COURT'S DECISIONS IN PREVIOUS ATTORNEY DISCIPLINE CASES AND THE ABA SANCTION GUIDELINES, RESPONDENT SHOULD RECEIVE, AT LEAST, AN INDEFINITE ACTUAL SUSPENSION WITH NO LEAVE TO REAPPLY FOR TWO YEARS.**

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

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

*In re Waldron*, 790 S.W.2d 456 (Mo. banc 1990)

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

ABA Standards for Imposing Lawyer Sanctions (1992)

## ARGUMENT

### I.

**RESPONDENT VIOLATED RULES 4-1.3, 4-1.15(b), 4-1.15(c), 4-1.15(d), 4-1.15(f)(2), 4-1.15(f)(4), 4-1.15(f)(9), 4-1.16(d), 4-5.4, 4-7.2(c), 4-8.1(c), 4-8.4(c), and 4-8.4(d) AS ALLEGED IN THE INFORMATION.**

#### Standard of Review

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

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

The Disciplinary Hearing Panel concluded Respondent violated the Rules of Professional Conduct as described in the Information and as described here. Respondent accepted the Panel's Findings and Conclusions.

#### Rule 4-1.3

Rule 4-1.3 (Diligence) provides a lawyer shall act with reasonable diligence and promptness in representing a client. Respondent violated Rule 4-1.3 when he accepted the

representation of P.J. on September 4, 2020, but failed to perform any work on her case by June of 2021.

Rule 4-1.15(b)

Rule 4-1.15(b) (Trust Accounts and Property of Others) allows lawyers to deposit their own funds into their client trust account for the sole purpose of paying service charges imposed by the financial institution, but only in an amount necessary for that purpose. Respondent violated Rule 4-1.15(b) when “Deluxe” checks debited Respondent’s Busey Bank Trust Account ending in number 0464 for \$55.00 and \$52.50 and he failed to transfer funds from his operating account to reimburse this expense.

Rule 4-1.15(c)

Rule 4-1.15(c) (Trust Accounts and Property of Others) establishes that a lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred. On March 17, 2020 and March 24, 2020, Deluxe withdrew funds from Respondent’s operating account that were not fees to Respondent or expenses of Respondent’s clients’ litigation. Respondent violated Rule 4-1.15(c) when he failed to replace funds that Deluxe withdrew from his client trust account on March 17, 2020, and March 24, 2020.

Rule 4-1.15(d)

Rule 4-1.15(d) (Trust Accounts and Property of Others) provides that on receipt of funds in which a third party has an interest, the lawyer shall promptly notify the party and promptly deliver to the third party any funds that the third party is entitled to receive. Respondent violated Rule 4-1.15(d) when he failed to promptly pay lienholders in the P.T.

matter, failed to promptly pay Oasis Financial in the R.B. matter, and failed to promptly pay C.W. after he received a settlement on her case.

Rule 4-1.15(f)(2)

Rule 4-1.15(f)(2) (Trust Accounts and Property of Others) provides that a lawyer shall keep and maintain complete records of client trust for a period of six years after termination of representation or the date of last disbursement of funds, whichever is later, and these records be readily accessible to the lawyer. Respondent violated Rule 4-1.15(f)(2) when he admitted that he did not maintain client ledgers and when he admitted that he made cash deposits in his trust account on February 9, 2021 (\$100), March 2, 2021 (\$200), March 19, 2021 (\$215), and April 29, 2021 (184.50) without identifying for whom the deposits were made. Respondent further violated Rule 4-1.15(f)(2) when he paid filing fees from his trust account on November 17, 2020 (\$226.50) and May 17, 2021 (\$217) and could not identify for whom these payments were made. Additionally, on September 30, 2020, Respondent's trust account had a balance of \$40,770.45 and Respondent failed to produce a precise accounting regarding who he was holding funds for on the date of his sworn statement. Respondent's failure to produce an accounting for the \$40,770.45 in his Busey Trust Account ending in 9450 represents an additional violation of Rule 4-1.15(f)(2).

Rule 4-1.15(f)(4)

Rule 4-1.15(f)(4) (Trust Accounts and Property of Others) requires that attorneys keep, at a minimum, accountings to third persons showing the disbursement of funds to

them or on their behalf. Respondent violated Rule 4-1.15(f)(4) when Respondent did not produce a settlement sheet for the case of P.T.

Rule 4-1.15(f)(9)

Rule 4-1.15(f)(9) (Trust Accounts and Property of Others) requires attorneys to regularly reconcile client trust accounts. In the case of L.T., when Respondent failed to reconcile his client trust account such that he said that he did not know a check written on October 7, 2021, to CIOX had not been presented for payment by February 22, 2022, Respondent violated 4-1.15(f)(9).

Rule 4-1.16(d)

Rule 4-1.16(d) requires that a lawyer, upon termination of representation, to the extent reasonably practicable, shall protect a client's interest and return unearned fees. Respondent violated Rule 4-1.16(d), when he did not promptly return an unearned fee to P.J. after she terminated the representation and requested a refund.

Rule 4-5.4(a)

Rule 4-5.4(a) provides that a lawyer shall not share legal fees with a nonlawyer. Respondent violated Rule 4-5.4(a) when he paid J.S. \$21,350.00 from settlement proceeds on October 14, 2020.

Rule 4-7.2(c)

Rule 4-7.2(c) provides that a lawyer shall not give anything of value to a person for recommending a lawyer's services. Respondent violated Rule 4-7.2(c) when he paid J.S. \$21,350 in return for a referral on L.C.'s case.

Rule 4-8.1(c)

Rule 4-8.1(c) provides that it is professional misconduct for a lawyer, in connection with a disciplinary matter, to knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority. Respondent violated Rule 4-8.1(c) when he failed to produce documents that Informant requested and when he failed to appear for his sworn statement.

Rule 4-8.4(c)

Rule 4-8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Respondent violated 4-8.4(c) on October 7, 2021, when he represented to Informant that he was going to pay medical lienholders in the P.T. matter, and he did not. Respondent again violated Rule 4-8.4(c) when Respondent represented to Informant that he had paid Oasis Financial in the R.B. matter when he had not. Respondent violated Rule 4-8.4(c) for a third time when he represented to Informant that he would pay the balance owed to C.W. during the week of October 7, 2021, but then did not pay the balance in the following week. Respondent violated Rule 4-8.4(c) for a fourth time when he took P.J.'s funds from his operating account without performing any work on her case.

Rule 4-8.4(d)

Rule 4-8.4(d) provides that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. Additionally, Formal Advisory Opinion 122 provides that an attorney who enters into, or attempts to enter into, a settlement that includes a term that a party to the agreement will withdraw a complaint

under Supreme Court Rule 5 violates Rule 4-8.4(d) and engages in conduct prejudicial to the administration of justice. When Respondent attempted to enter an agreement that would have P.J. dismiss her complaint in return for a \$1,000.00 fee that Respondent had not earned, he violated Rule 4-8.4(d).



## II.

### **TAKING INTO ACCOUNT THE COURT’S PREVIOUS DECISIONS IN ATTORNEY DISCIPLINE CASES AND THE ABA SANCTION GUIDELINES, THE COURT SHOULD IMPOSE AN APPROPRIATE SANCTION.**

The purpose of attorney disciplinary proceedings is “to protect the public and maintain the integrity of the 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 and aggravating factors that tend to shed light on the Respondent’s moral and intellectual fitness to practice law. *In re Wiles*, 107 S.W.3d 228, 229 (Mo. banc 2003).

This Court often looks to ABA Standards for Imposing Lawyer Sanctions (ABA Standards) for guidance in deciding what discipline to impose. *In re Stormont*, 873 S.W.2d 227, 231 (Mo. banc 1994). ABA Standard 3.0 contends that when imposing a sanction, courts should consider the (1) duty violated, (2) lawyer’s mental state, (3) potential or actual injury caused by the lawyer’s misconduct, (4) the existence of aggravating or mitigating factors. When an attorney commits multiple acts of misconduct, the imposed sanction should be consistent with the sanction for the most serious instance of misconduct. *In re Ehler*, 319 S.W.3d at 451.

### ABA Sanction Analysis

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). In this case, one ABA Standard supports disbarment as discipline, while most others support a suspension.

Standard 5.11(b) (Failure to Maintain Personal Integrity) states that disbarment is generally appropriate when a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice law. Here, Respondent intentionally did not appear at a sworn statement while under OCDC's subpoena. Furthermore, Respondent represented to Informant that he would pay obligations to third party vendors and he failed to make those payments and Respondent depleted fees from client P.J. before he performed any work on her case.

Standard 4.12 (Failure to Preserve the Client's Property) states that 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. In this case, the Respondent had several serious instances of failing to pay third party obligations that might have injured his clients. Additionally, the Respondent clearly did not keep records in the way Rule 4-1.15 requires.

### Mitigating and Aggravating Factors

While disbarment may be the presumptive discipline, the Court must consider mitigating and aggravating circumstances before determining whether to depart from this discipline in a particular case. *In re Belz*, 258 S.W.3d 38, 42 (Mo. 2008). Mitigating factors

cannot offer a defense, but they may warrant a downward departure from the presumptive discipline. *In re Farris*, 472 S.W.3d 549, 562 (Mo. banc. 2015).

Additionally, “this Court adheres to a practice of applying progressive discipline when imposing sanctions on attorneys who commit misconduct.” *In re Forck*, 418 S.W.3d 437, 444 (Mo. 2014). *In re Ehler* offers an instance, like this case, where this court confronted the prospect of disciplining an attorney for professional misconduct after an effort was made to modify her conduct and where the Respondent was facing challenges in her personal life that were contemporaneous to violation conduct. *In re Ehler*, 319 S.W.3d 442, 445 (Mo. 2010). Here, Respondent was reprimanded for violations of 4-1.15(a) and 4-1.15(b) in 2017, and Informant was tasked with monitoring Respondent and educating him. **Ex. 5**. Still further, while Informant was trying to help Respondent, he again failed to keep adequate trust account records and ensure third parties are paid; he was admonished for this conduct. **Ex. 5**. The allegations set out in Informant’s most recent Information represent additional instances of Respondent violating Rule 4-1.15 after Informant has attempted to help Respondent. However, “to disbar an attorney it must be clear that the attorney is not fit to continue in the profession; disbarment is reserved only for clear cases of severe misconduct.” *In re Waldron*, 790 S.W.2d 456, 461 (Mo. 1990). Suspension is an intermediate sanction this court uses when it finds a reprimand is insufficient to protect the public and protect the integrity of the profession, but where the Court also does not believe the acts of a respondent are such that he should not be at bar. *In re Littleton*, 719 S.W.2d 772, 777-8 (Mo. banc 1986).



### Aggravators

Here, there are a number of aggravating factors. The case involves multiple offenses. The Respondent was previously admonished and the subject of a Reprimand with Conditions (imposed by this Court), which also involved a failure to protect client funds in violation of Rule 4-1.15. Respondent is currently suspended for failure to pay taxes. Respondent has substantial experience in the practice of law and has engaged in a pattern of mishandling third-party funds in his trust account.

When both mitigating and aggravating factors are considered, the number and severity of the aggravating factors outweigh the mitigating factors. Based on previous rulings of this Court and the ABA Sanction Standards, Respondent should at least be the subject of an indefinite suspension with no leave to reapply for two years. However, disbarment might also be appropriate.

**CONCLUSION**

For the reasons set forth above, Informant respectfully requests that this Court find that Respondent violated Rules 4-1.3, 4-1.15(b), 4-1.15(c), 4-1.15(d), 4-1.15(f)(2), 4-1.15(f)(4), 4-1.15(f)(9), 4-1.16(d), 4-5.4(a), 4-7.2(c), 4-8.1(c), 4-8.4(c), and 4-8.4(d), indefinitely suspend Respondent with no leave to reapply for at least two years, impose the \$1,000 fee and costs provided for by Rule 5.19(h) (Information pending before January 1, 2023), and require Respondent to comply with Rule 5.27.

Respectfully Submitted,

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**ATTORNEYS FOR INFORMANT**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6<sup>th</sup> day of June, 2024, the Informant’s Brief was sent to Respondent’s counsel via the Missouri Supreme Court e-filing system to:

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**CERTIFICATION OF COMPLIANCE: 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’s counsel through the Missouri electronic filing system pursuant to Rule 103.08.
3. Complies with the limitations contained in Rule 84.06(b);
4. Contains 6,162 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



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David L. Brengle