

IN THE SUPREME COURT OF THE  
STATE OF MISSOURI

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In re

RICK L. NELSON,

Respondent.

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Case No. SC100519

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BRIEF OF RESPONDENT

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... 4

JURISDICTIONAL STATEMENT..... 6

CASE SUMMARY ..... 7

STATEMENT OF FACTS ..... 8

Background..... 8

Education..... 9

Work Experience ..... 9

Local Community and Legal Community Involvement..... 10

Mr. Nelson’s Medical Issues ..... 11

References for Good Character ..... 12

Prior Discipline..... 15

Representation of P.J ..... 15

Mr. Nelson’s Dealings With Jamison S ..... 16

Trust Account Matters ..... 18

Issues With Mr. Nelson’s SBC Global Email Account..... 23

Hearing Panel Recommends Suspension ..... 24

POINT RELIED UPON ..... 25

POINT RELIED #1: INFORMANT HAS FAILED TO PROVE MR. NELSON  
ENGAGED IN MISCONDCUT RELATING TO OPERATING HIS TRUST  
ACCOUNT, MAINTAINING RECORDS FOR THAT ACCOUNT, OR  
COOPERATING WITH THE OCDC THAT WOULD JUSTIFY FURTHER DELAY  
IN ALLOWING MR. NELSON TO SEEK REINSTATEMENT OF HIS MISSOURI  
LAW LICENSE..... 25

POINT RELIED #2: EVEN IF THIS COURT CONCLUDES INFORMANT HAS  
PROVED THE CHARGED MISCONDUCT, THE APPROPRIATE SANCTION  
SHOULD NOT DELAY RESPONDENT’S ABILITY TO PURSUE  
REINSTATEMENT..... 25

ARGUMENT ..... 26

Preliminary Statement ..... 26

Standard of Review ..... 27

Standard for Imposition of Discipline ..... 27

POINT RELIED #1: INFORMANT HAS FAILED TO PROVE MR. NELSON

ENGAGED IN MISCONDCUT RELATING TO OPERATING HIS TRUST  
ACCOUNT, MAINTAINING RECORDS FOR THAT ACCOUNT, OR  
COOPERATING WITH THE OCDC THAT WOULD JUSTIFY FURTHER DELAY  
IN ALLOWING MR. NELSON TO SEEK REINSTATEMENT OF HIS MISSOURI  
LAW LICENSE..... 29

POINT RELIED #2: EVEN IF THIS COURT CONCLUDES INFORMANT HAS  
PROVED THE CHARGED MISCONDUCT, THE APPROPRIATE SANCTION  
SHOULD NOT DELAY RESPONDENT’S ABILITY TO PURSUE  
REINSTATEMENT..... 31

Conclusion..... 36

CERTIFICATE OF COMPLIANCE ..... 37

CERTIFICATE OF SERVICE ..... 38

**TABLE OF AUTHORITIES**

**CASES**

*In re Christian Cox*, Case No. SC96837 (December 20, 2017)..... 35

*In re Coleman*, 295 S.W.3d 857 (Mo. 2009) ..... 25, 27, 30

*In re Eisenstein*, 485 S.W.3d 759 (Mo. 2016) ..... 8, 27

*In re Elliott*, 694 S.W.2d 262 (Mo. 1985)..... 25, 34

*In re Eric Martin*, Case No. SC96121 (January 31, 2017) ..... 35

*In re Kwado Jones Armano*, Case No. SC9601 (Oct. 4, 2011)..... 34

*In re Madison*, 282 S.W.3d 850 (Mo. 2009)..... 27, 31

*In re Miller*, 568 S.W.2d 246 (Mo. 1978)..... 25, 34

*In re Paritosh Sheth*, Case No. SC95382 (March 15, 2016)..... 35

*In re Richard Haitbrink*, Case No. SC96298 (May 4, 2017) ..... 35

**STATUTES**

Missouri Revised Statute § 484.040..... 6

**OTHER AUTHORITIES**

ABA Standard for Imposing Lawyer Sanctions 9.1..... 27, 31

ABA Standard for Imposing Lawyer Sanctions 9.32..... 32, 34

**RULES**

Missouri Supreme Court Rule 4-1.15 ..... 34, 35

Missouri Supreme Court Rule 4-1.16 ..... 35

Missouri Supreme Court Rule 4-1.4 ..... 35

Missouri Supreme Court Rule 4-1.8 ..... 35

Missouri Supreme Court Rule 4-2.1 ..... 35

Missouri Supreme Court Rule 5..... 6

Missouri Supreme Court Rule 5.17..... 27, 31

Missouri Supreme Court Rule 55.03..... 37

Missouri Supreme Court Rule 84.04..... 8

Missouri Supreme Court Rule 84.06..... 37

**CONSTITUTIONAL PROVISIONS**

Article V, Section 5 of the Missouri Constitution..... 6

**JURISDICTIONAL STATEMENT**

Respondent Rick L. Nelson does not contest this Court's jurisdiction. This is a lawyer discipline case. Therefore, as stated in Informant's Brief, this Court has jurisdiction over this case pursuant to Article V, Section 5 of the Missouri Constitution; Missouri Supreme Court Rule 5; Missouri common law; and Missouri Revised Statute § 484.040. In addition, this Court has jurisdiction pursuant to its inherent authority to regulate the Missouri Bar.

## CASE SUMMARY

Respondent Rick L. Nelson is a seventy-year-old sole practitioner, currently on tax suspension, who comes before this Court on lawyer discipline charges arising from charges claiming mistakes in the management of his client trust account, his interactions with a purported Georgia attorney, and his representation of a client. Mr. Nelson believes that Informant did not prove the charges against him; Mr. Nelson believes that, at most, the evidence shows minor errors for which Mr. Nelson should receive comparatively light discipline. The Hearing Panel, however, felt a minimum two-year suspension was appropriate. Mr. Nelson elected not to reject that recommendation because he has already effectively been suspended approximately two years and he anticipated further adjudication would further delay his opportunity to pursue reinstatement.

Now that this Court has *sua sponte* requested full briefing and argument, Mr. Nelson sets forth below his arguments why this Court should resolve this case in a manner that allows Mr. Nelson to pursue reinstatement without further delay.

## STATEMENT OF FACTS

Pursuant to Missouri Supreme Court Rule 84.04(c) and (f), Mr. Nelson offers the following Statement of Facts, which this Court considers *de novo*. *In re Eisenstein*, 485 S.W.3d 759, 762 (Mo. 2016).

**Background.** Mr. Nelson was born in St. Louis, Missouri on July 31, 1954. (Tr. 77-78)<sup>1</sup> Mr. Nelson is the youngest of five children. He has two brothers and two sisters. (Tr. 78) Mr. Nelson has been married to his second wife for twenty years. (Tr. 86)<sup>2</sup> Mr. Nelson has five adult-aged children, two sons and three daughters. His eldest daughter is an Assistant Principal at East Saint Louis Middle School. One son is a fireman for the federal government and three years from retiring from the reserves in the United States Army. Mr. Nelson's other two sons are attorneys employed by the Veterans Administration. One of these sons was a Marine who served in Desert Storm. Mr. Nelson's youngest daughter works at the Pentagon as an accountant. (Tr. 85-86) In addition to his own children, Mr. Nelson also raised his two great nephews for ten years until their mother was released from incarceration. (Tr. 85)

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<sup>1</sup> Volume 2 of the Record is the disciplinary hearing transcript and does not contain page numbers unique to the Record. Therefore, citations to the transcript are stated as "Tr. \_\_ (Transcript page number)." Citations to numbered pages of the Record are labeled "R. \_\_ (Record page number)." Exhibits found in transcripts are stated as "Exhibit \_\_ (Exhibit Letter/Number)"

<sup>2</sup> A marital dissolution proceeding has commenced since the hearing.

**Education.** Mr. Nelson earned his undergraduate degree from Lincoln University with a double major in military justice and law enforcement. **(Tr. 78)** Mr. Nelson then received a commission to enter the United States Army for three years, but sought and received an educational delay so he could attend law school. **(Id.)** Mr. Nelson attended Howard University School of Law in Washington, D.C., graduating in 1979. **(Id. 78-79)** While in law school, Mr. Nelson worked for the United States Department of Justice as an examiner, evaluating discrimination appeals. **(Tr. 81)**

**Work Experience.** After law school, Mr. Nelson served in the United States Army's Judge Advocates General ("JAG") Corps for three years. Mr. Nelson was commissioned as a First Lieutenant and earned promotions to Major. **(Tr. 78)** After three years of active military duty, Mr. Nelson obtained an Honorable discharge and served in the U.S. Army Reserve for approximately twelve years. **(Tr. 79, 81)** In the Army Reserves, Mr. Nelson represented service members charged with drug possession and other crimes, and he established plans for servicemembers deploying overseas during Operation Desert Storm. **(Tr. 80)** Mr. Nelson also served as the S4 supply person, maintaining the records of equipment such as trucks, rifles and gas masks for his Reserves Battalion. **(Tr. 79)**

In 1983, Mr. Nelson received an Honorable discharge from active service and joined the Equal Employment Opportunity Commission ("EEOC") as a Trial Attorney. **(Tr. 81-82)** Mr. Nelson worked for the EEOC for approximately one year before entering private practice with Richard Turner's law firm in St. Louis. **(Tr. 82)** Mr. Nelson worked as a general practitioner for Mr. Turner's firm, handling family law, probate, bankruptcy, and personal injury litigation matters. **(Tr. 83)**

A few years later, Mr. Nelson formed a law firm with Michael Radloff and Michael Kelly. (*Id.*) Mr. Nelson focused mostly on criminal law and family law matters. (*Id.*) During this period, Mr. Nelson also represented individuals seeking to challenge or expunge criminal convictions. (**Tr. 96-97**) In addition, Mr. Nelson handled cases that helped develop Missouri law relating to the presumption of paternity and extrinsic fraud in paternity cases. (**Tr. 94-95**)

Subsequently, Mr. Nelson opened his own law practice, Rick Nelson & Associates, LLC. Mr. Nelson operated this firm in University City, Missouri, until his tax suspension in 2022. (**Tr. 82-83, 86**)

***Local Community and Legal Community Involvement.*** Mr. Nelson has been heavily involved in helping lead and improve his community. In 2007, he created a non-profit corporation called Houses of Refuge that assists people who are unhoused in trying to obtain minimal housing. (**Tr. 86-87, 206-07**) Houses of Refuge is designed to provide transitional housing and other assistance for people living with drug addictions and help unite their families after obtaining treatment for the addiction. (**Tr. 207**) Mr. Nelson owns several buildings that Houses of Refuge uses to shelter qualified individuals while they restart their lives after treatment. (**Tr. 87-89**)

Mr. Nelson also provides many legal services to people in need *pro bono* or below market rate. (**Tr. 90-91**) Mr. Nelson estimates that, for the ten years prior to his tax suspension, approximately seventy percent of Mr. Nelson's law practice provided legal services for less than market rates. (**Tr. 91**) Mr. Nelson is well known for providing life

advice to marginalized individuals living in high crime and drug-infused areas of St. Louis City and County for the last 40 years, usually at little or no cost. (Tr. 93-94)

Mr. Nelson has also served as trustee on the boards of the New Cote Brilliance Church of God for five years and on the board of a senior citizen building for approximately two years. (Tr. 91-92) As part of his service to New Cote, Mr. Nelson has assisted the church with real estate issues and ensuring the food pantry is stocked. (Tr. 92-93) Mr. Nelson has also volunteered time with the Boy Scouts, assisting as a chaperone on overnight trips with his two nephews. (Tr. 93)

*Mr. Nelson's Medical Issues.* In or about August 2020, Mr. Nelson began experiencing medical issues that impacted his ability to practice law. [REDACTED]

[REDACTED]

[REDACTED] The OCDC was reluctant to grant extensions, often forcing Mr. Nelson to meet its original submission deadlines. (Tr. 23)

As discussed above, Mr. Nelson was diagnosed with [REDACTED] twice over an extended

period and was forced to reduce his practice to approximately one third of his original caseload. (Tr. 104-05) Mr. Nelson allowed his trust account to remain dormant during this period and concluded it was better to let the money sit idle until he could properly disburse the funds. (Tr. 106)

Mr. Nelson was ultimately diagnosed with [REDACTED] and received treatment through Washington University's [REDACTED] clinic. (Tr. 107-08) At the time of the hearing, Mr. Nelson was participating in a Washington University study to evaluate medications for treating [REDACTED]. (Tr. 108) Having [REDACTED] led to Mr. Nelson to reduce his work schedule per week. (Tr. 174)

Now seventy years old, Mr. Nelson has [REDACTED] and [REDACTED]. However, those conditions are being controlled with medication. (Tr. 77-78, 113-14) In March 2022, Mr. Nelson had a [REDACTED]. In June 2023, Mr. Nelson had a [REDACTED]. (Tr. 114-15)

As of September 2023, Mr. Nelson felt he is at or near "full capacity." (Tr. 192)

***References for Good Character.*** Six character witnesses testified in person about Mr. Nelson's character and reputation. These witnesses stated that they found Mr. Nelson to be of very strong character and reputation. Testimony from these six character witnesses includes:

- a. J [REDACTED] S [REDACTED] – Mr. S [REDACTED] is a minister who has known Mr. Nelson for more than thirty years. (Tr. 204-05) Mr. Nelson worships at [REDACTED] S [REDACTED] church House of Miracles. (Tr. 205) Mr. Nelson and [REDACTED] S [REDACTED] are also close friends and Mr. Nelson has represented [REDACTED]. S [REDACTED] and [REDACTED] S [REDACTED] family

*pro bono* on matters. (Tr. 205) ■■■ S■■■ believes that Mr. Nelson went above and beyond in the representation of ■■■ S■■■ son. (Tr. 208) ■■■ S■■■ testified that Mr. Nelson has a good reputation, particularly in the church community. (Tr. 207) ■■■ S■■■ also testified that Mr. Nelson is “probably more honest and upbeat than [■■■. S■■■ himself].” (Tr. 206)

- b. A■■■ J■■■ – ■■■ J■■■ is a retired nurse who has known Mr. Nelson for almost forty years, since approximately 1985. (Tr. 209) ■■■ J■■■ and Mr. Nelson previously worked together on real estate matters and have remained friends since that time. (Tr. 209-10) Mr. Nelson has also served as ■■■ J■■■ attorney. (Tr. 210) ■■■ J■■■ testified that Mr. Nelson provided excellent representation to her. (*Id.*) ■■■ J■■■ also believes that Mr. Nelson has a good moral character and has greatly served the community, particularly indigent clients. (Tr. 210-12) ■■■ J■■■ praised Mr. Nelson’s ethics and stated that Mr. Nelson has always been “fair” and would never “cheat anyone.” (Tr. 212) ■■■ J■■■ likened Mr. Nelson’s reputation in the community to that of a social work provider because he is always willing to assist those in need. (Tr. 213-14)

- c. A■■■ J■■■ ■■■ J■■■ has known Mr. Nelson for approximately forty years, since the 1980s. (Tr. 214) Mr. Nelson has helped three generations of ■■■ J■■■ family. (Tr. 215) ■■■ J■■■ testified that over 1,600 people from the University City neighborhood signed a petition in support of Mr.

Nelson and their need for Mr. Nelson to be able to practice as an attorney in the state of Missouri. (*Id.*) ■■■ J■■■ believes Mr. Nelson is honest, professional, a gentleman willing to help everyone, and a “pillar in [his] community.” (Tr. 216-17)

- d. A■■■ C■■■ – ■■■ C■■■ has known Mr. Nelson for approximately twenty years. (Tr. 219) ■■■ C■■■ met Mr. Nelson when ■■■ C■■■ was a young addict who benefited from Mr. Nelson’s charity and refuge. (*Id.*) Mr. Nelson taught ■■■ C■■■ how to be smarter and has acted like a second dad to ■■■ C■■■ (*Id.*) ■■■ C■■■ believes Mr. Nelson has a good moral character: Mr. Nelson’s reputation in his community is that of a good Samaritan because of Mr. Nelson’s willingness to help people of less fortunate means. (Tr. 220-21)
- e. M■■■ E■■■ W■■■ ■■■ W■■■ has personally known Mr. Nelson for approximately seven years. (Tr. 221-22) Mr. Nelson provided ■■■ W■■■ with a place to stay when ■■■ W■■■ was homeless. (Tr. 222-23) ■■■ W■■■ considers Mr. Nelson to have a good moral character because Mr. Nelson is benevolent and professional. (Tr. 223-24)
- f. P■■■ R■■■ – ■■■ R■■■ has known Mr. Nelson for approximately twenty years. (Tr. 226) Mr. Nelson has represented ■■■ R■■■ in various legal matters, including traffic tickets and personal injury cases. (*Id.*) ■■■ R■■■ now works for Mr. Nelson as a secretary.

(Tr. 226-27) [REDACTED] R [REDACTED] believes Mr. Nelson has a good moral character and helps people without hesitation. (Tr. 227-28)

**Prior Discipline.** Mr. Nelson received an admonition for failing to pay enrollment fees in 2000, and for failing to include a disclosure in a solicitation letter to a prospective client in 2005. (R. 108, 110) Mr. Nelson also received a reprimand with requirements in August 2017, including receiving two years of probation. (Tr. 57-59; R. 2)

Mr. Nelson's law license has been under a tax suspension since August 2022. (Tr. 116) Mr. Nelson has remedied the tax deficiency that resulted in his suspension. However, he has not applied for reinstatement based on his understanding he would need OCDC approval to be granted reinstatement. (R. 30)

**Representation of P.J.** In or about September 2020, a client P.J. engaged Mr. Nelson to represent P.J. with regard to closing her father's estate. (Tr. 136-37) P.J. initially paid Mr. Nelson \$1,000. (Tr. 137) Mr. Nelson requested certain documents from P.J., but P.J. only provided those documents to Mr. Nelson in January 2021, approximately four months after P.J. had first engaged Mr. Nelson and Mr. Nelson had requested the documents. (Tr. 138) Mr. Nelson warned P.J. that she needed to get him her materials soon, because he had three criminal cases heading to trial that would tie him up in the near future. (Tr. 138-39) P.J. agreed to the terms of the engagement. (*Id.*)

When Mr. Nelson eventually received the requested documents four months after his initial request, Mr. Nelson informed P.J. that he was busy with his mother's illness and some pending criminal cases, and that he would be delayed in working on her matter. (*Id.*)

Mr. Nelson recalled that P.J. was cooperative and agreed to wait for Mr. Nelson's schedule to become less busy. (*Id.*)

P.J. followed up with Mr. Nelson in May 2021 about his availability, and Mr. Nelson and P.J. ultimately decided that Mr. Nelson would not handle the matter but would instead refund the prepaid funds to P.J. (**Tr. 139**) Mr. Nelson agreed to mail the refund check to P.J. within one month. P.J. called a month later and stated she would pick up the check when she came to St. Louis, although P.J. had no specific plans at the time regarding when she was going to travel from New York to St. Louis. (**Tr. 139-40, 196**) Months passed, however, and Mr. Nelson had not heard from P.J. about when P.J. intended to pick up the check, so Mr. Nelson decided to mail and did mail the refund check to P.J. in November 2021. Mr. Nelson provided a full refund to P.J. in November 2021. (**Tr. 140**) P.J. was not called to testify as a witness in this case. Therefore, OCDC did not controvert the evidence that P.J. had agreed to delay her receipt of the refund several months, as Mr. Nelson testified. Mr. Nelson's representation of P.J. is further discussed below.

*Mr. Nelson's Dealings With J. [REDACTED] S.* On or about May 28, 2020, Mr. Nelson met J. [REDACTED] S. ("J.S.") in the St. Louis City courthouse, while Mr. Nelson was in court challenging a tax foreclosure for a client. (**Tr. 142**) J.S. approached Mr. Nelson in court and suggested a case strategy to Mr. Nelson. (**Tr. 142-43**) Mr. Nelson later suggested to his client that they retain the firm where J.S. was working so that J.S. could help pursue the strategy that J.S. had suggested. Mr. Nelson's client took Mr. Nelson's advice and engaged the firm and J.S., ultimately resulting in Mr. Nelson's client being able to keep the property by using the strategy that J.S. had suggested. (*Id.*)

Mr. Nelson also saw J.S. in court on several occasions with other Missouri attorneys whom Mr. Nelson knew. **(Tr. 144-45)** J.S. told Mr. Nelson that J.S. was a Georgia-licensed attorney who was in the process of obtaining Missouri admission by reciprocity. **(Tr. 144)**

On or about May 28, 2020, Mr. Nelson paid J.S. \$500 to research an issue for Mr. Nelson's client W.B. **(Tr. 145-46)** Subsequently, Mr. Nelson paid J.S. for research services for other clients including T.F. and A.D. **(Tr. 146-49)**

On or about October 14, 2020, Mr. Nelson paid J.S. \$21,350 for J.S.'s work on a case involving a truck driver's molestation of a teenager. **(Tr. 150)** Mr. Nelson had mediated the case and was able to obtain a settlement of \$100,000. **(Id.)** At the time Mr. Nelson believed he was sharing his fee with J.S. as an attorney licensed in Georgia. **(Tr. 150-151)** The records and the files demonstrated that J.S. had thoroughly investigated the claims of the child, including investigating the truck driver's background and trucking company's procedures, before asserting a claim that the company was negligent for allowing the teenager being in the driver's truck. All of this work was done prior to J.S. and the client asking Mr. Nelson to work on and mediate the case. **(Tr. 151)** Mr. Nelson shared the attorney fee because Mr. Nelson reasonably believed that J.S. was a lawyer and because the client requested that Mr. Nelson honor the client's agreement to pay J.S. by sharing the fee. **(Tr. 150-151, 170-71)**

Several months after making the October 2020 payment to J.S., Mr. Nelson became concerned that J.S. was not actually an attorney licensed in Georgia. Mr. Nelson asked J.S. why it was taking J.S. so long to obtain his Missouri license and found J.S.'s response questionable. **(Tr. 152, 199-200)** Mr. Nelson then ceased working with J.S. Before that

time, Mr. Nelson worked only sporadically with J.S. and – outside the truck driver molestation case, where J.S. had done his work prior to Mr. Nelson’s involvement. After this time, Mr. Nelson only asked J.S. to perform services that it would be appropriate for a legal assistant to handle. **(Tr. 152-53; 188)**

***Trust Account Matters.*** Kelly Dillon is a forensic accountant employed by OCDC as an investigator to conduct trust account investigations. **(Tr. 17)** Ms. Dillon was the only witness that Informant called at the Hearing.

Ms. Dillon testified that, on or about July 22, 2021, she began auditing Mr. Nelson’s trust accounts as well as certain non-trust accounts belonging to Mr. Nelson. **(Tr. 22, 25)** Ms. Dillon’s audit included a review of the trust accounts’ statements as well as items presented, deposited items, and deposit slips. **(Tr. 31)** Ms. Dillon examined all the transactions in Mr. Nelson’s Trust Account for the audit period of 2019 to July 2021. **(Id.)**

The OCDC took Mr. Nelson’s sworn statement on February 22, 2022. **(R. 229)** During that sworn statement, OCDC counsel presented Mr. Nelson with four trust deposit slips that did not include a reference indicating the client or reason for the deposit. **(R. 372)** This surprised Mr. Nelson, because his long-standing policy was to include the client’s name and purpose on the deposit slip. **(R. 374-75)**

Mr. Nelson subsequently communicated with Busey Bank and learned that, instead of accepting the deposit slips Mr. Nelson had prepared, tellers were preparing deposit slips that included only the teller’s initials and employee number and the date and amount of the deposit. **(Tr. 157-59)** Busey Bank did not provide notice to Mr. Nelson or other customers

about this change in procedure. (*Id.*) Mr. Nelson believed this change in policy resulted in an incorrect belief that Mr. Nelson was not properly tracking client deposits.

During the OCDC trust account audit, Mr. Nelson contacted Ms. Dillon with concern that a third-party had improperly accessed his client trust account ending in 9490. (**Tr. 69-70, 73**) The thief had written and received payment on a check. (**Tr. 154-55**) Mr. Nelson learned of this and stopped payment on the remaining forged checks. (*Id.*) Ms. Dillon directed Mr. Nelson to close this trust account and file a police report. (**Tr. 70**) Neither Mr. Nelson nor his clients were harmed by this improper access because Mr. Nelson caught the unauthorized checks and placed a hold on the account prior to disbursement. (**Tr. 74**) Moreover, obviously, Mr. Nelson did not authorize or ratify the thief's misconduct, and thus should not be disciplined for it.

Mr. Nelson cooperated with the OCDC including by responding to their requests timely. There were instances where Mr. Nelson sought extensions to respond to OCDC's requests. (**Tr. 99-100**) Mr. Nelson was able to and did comply once he was granted additional time to produce the requested items. (**Tr. 99-100**) If his request for additional time was denied, Mr. Nelson would still meet the original deadline. (**Tr. 100-02**).

Ms. Dillon asserted she found a few issues with Mr. Nelson's trust account, but virtually all these issues arose during and were related to (a) the COVID-19 pandemic and (b) Mr. Nelson's own Long COVID and related problems. Specifically, Ms. Dillon testified that Mr. Nelson:

1. Sometimes held funds longer in trust than was usually appropriate, including still having \$33,000 at the end of the audit period. (**Tr.**

**43-45, 48, 61-62)** All or almost all cited instances were during the COVID-19 pandemic, including when Mr. Nelson himself had serious, debilitating COVID-19. **(Tr. 105-06)** Moreover, Mr. Nelson ultimately disbursed all those funds to the appropriate recipients. **(Tr. 125, 134-36)**

2. Ms. Dillon asserted that Mr. Nelson did not keep appropriate client ledgers **(Tr. 29, 35)** Mr. Nelson did keep and submitted 48 functional client ledgers as requested by OCDC *(see, e.g., Tr. 122)*. No evidence proved these ledgers were inadequate.
3. Mr. Nelson had transferred \$40,000 from his client trust account without proper explanation. **(Tr. 39)** Mr. Nelson testified at his sworn statement that he transferred the approximately \$40,000 when he opened a new trust account after there was suspicious activity on his prior account. **(R. 351-54)** Mr. Nelson also explained that he was still negotiating and trying to resolve case matters for his clients that had an interest in those funds. **(Id.)**

Mr. Nelson also demonstrated that he had received training on operation of his trust account, and adopted procedures that complied with Rule 4-1.15. *(See, e.g., 158-60)* Moreover, Mr. Nelson had provided evidence that an unknown third party had attempted to take funds from his trust account, requiring Mr. Nelson – at Ms. Dillon’s direction – to open a trust account. Informant’s charges reflected in the Information against Mr. Nelson did not reflect these circumstances. **(R. 1-20)**

Informant also did identify certain client transactions where Ms. Dillon identified issues, but Informant's charges and evidence ignored the full circumstances and evidence on those client matters. Specifically:

**Client R.B.** Mr. Nelson admittedly used a cashier's check to pay the litigation lender Oasis \$15,000 for client R.B. in August 2023. (Tr. 119-21) Mr. Nelson did so, however, because he was closing his trust account (Tr. 74) Also, prior to this payment for R.B., Mr. Nelson paid a debt to Oasis on behalf of another client in the same amount. (Tr. 118-22) This initially caused confusion as to whether the \$15,000 was paid on behalf of R.B. or on behalf of another client (Tr. 121-23). Mr. Nelson's [REDACTED] and the death of his mother also delayed Mr. Nelson's resolution of R.B.'s payment to Oasis. (Tr. 122-23, 201) Mr. Nelson has now paid all amounts owed to third parties on R.B.'s matter. (Tr. 121)

**Client C.W.** Informant alleged that Mr. Nelson had not timely disbursed funds to client C.W. from C.W.'s April 2020 \$25,000 settlement. Mr. Nelson countered with uncontroverted testimony that he had timely contacted C.W. about her settlement, and that C.W. had voiced reluctance to receive the payment because it reminded her of a vicious attack she had suffered. (Tr. 126-27, 175) Mr. Nelson had timely disbursed his own funds and payments to lienholders Missouri Baptist Hospital, Pro Imaging, St. Louis Orthopedic Specialists, and West End Chiropractic. (Tr. 124-25) C.W. apparently felt the settlement put a value on the injuries from the attack, even though it was

not the same incident. **(Tr. 175)** C.W.’s response understandably left Mr. Nelson unsure how to deal with C.W.’s settlement, causing him to hold the funds while trying to sort out C.W.’s situation. **(Tr. 126, 175)**

**Client P.T.** Informant charged that Mr. Nelson had not timely disbursed the funds to client P.T. from P.T.’s \$5,300 February 2020 settlement. Mr. Nelson had in fact timely disbursed funds to P.T. and all third-party lien payments to Florissant Medical, Equian, CIOX, and BJC Healthcare on P.T.’s matter. **(Tr. 130-31)** Ms. Dillon requested a copy of the check and settlement letter that Mr. Nelson had sent to P.T. Mr. Nelson provided a copy of P.T.’s cashed check, but he could not provide a copy of the settlement letter because his computer had crashed and technicians were unable to retrieve it. **(Tr. 131-32)** Mr. Nelson provided P.T.’s telephone number to OCDC, but OCDC offered no evidence they had attempted to contact P.T. or had contacted P.T. to confirm P.T. in fact had received the settlement letter with her check. **(Tr. 132)**

**Client L.T.** Mr. Nelson had timely disbursed L.T.’s \$21,000 March 2020 settlement, but third-party lienholder Ciox had apparently failed to deposit its \$38.56 check. **(Tr. 133)** Mr. Nelson explained he had spent a “great amount” of time trying to locate Ciox’s payment address to re-issue payment, and – including after COVID-19 delays –upon locating the address in July 2023 promptly made the appropriate payment. **(Tr. 132-34)**

Mr. Nelson received additional training on reconciling his trust account and had incorporated these suggestions into making his records clearer for review. Mr. Nelson denies his records were ever deficient in following accounting procedures, including that he used client ledgers similar to the 38 client ledgers submitted to the Informant and included in the Record. **(Tr. 158-60; R. 440-85)**

*Issues With Mr. Nelson's SBC Global Email Account.* Ms. Dillon also complained that she had some issues contacting Mr. Nelson using his @sbcglobal.net email address and receiving prompt responses when she was requesting client records. **(Tr. 40-41)** Ms. Dillon sent Mr. Nelson an August 2021 email at this address, and Mr. Nelson received that message. **(Tr. 43)** However, Ms. Dillon also sent emails to Mr. Nelson's @sbcglobal.net email address in September and October 2021, and Mr. Nelson did not receive or respond to these September and October 2021 emails. Ms. Dillon's emails requested Mr. Nelson "acknowledge receipt of this request." Mr. Nelson never received the emails and thus never sent acknowledgement of receipt. **(Tr. 65, 172-73)** Mr. Nelson was only able to respond to Ms. Dillon's October 2021 communication because Ms. Dillon also sent that communication by mail. **(Tr. 65-66)**

After Mr. Nelson learned that Ms. Dillon had been trying to send him emails on his @sbcglobal.net email address, Mr. Nelson contacted SBC Global about the issue and learned SBC Global was having problems with their email servers. **(Tr. 173)** Unbeknownst to Mr. Nelson – and apparently also to Ms. Dillon and OCDC – the SBC Global email server was experiencing outages that impacted the ability for recipients with @sbcglobal.net email addresses to receive emails. **(Tr. 100)** Mr. Nelson then created a

Gmail email address to replace his SBC Global email address and ensure he received future emails from OCDC. **(Tr. 103-04)** Mr. Nelson now only checks his SBC Global email address to see if there is anything from an old client or court communication. **(Tr. 173)**.

Ms. Dillon acknowledged that it was possible Mr. Nelson's email account did not receive her September and October 2021 emails. **(Tr. 65)** Informant never sought to introduce any evidence contravening Mr. Nelson's testimony about his SBC Global email account.

***Hearing Panel Recommends Suspension.*** Informant's case against Mr. Nelson was tried before a Hearing Panel on September 26, 2023, in St. Louis, Missouri. **(Tr. 10)** On February 1, 2024, the Hearing Panel issued a decision recommending Mr. Nelson be indefinitely suspended, with no leave to reapply for two years.

The Informant and Mr. Nelson accepted the Hearing Panel's recommendation. As indicated above, Mr. Nelson chose not to reject the Hearing Panel's recommendation because he did not want further litigation to delay his ability to regain his Missouri law license.

Despite both parties accepting the Hearing Panel's recommendation. This Court rejected that recommendation and ordered the parties to submit briefing for review under Rule 5.19.

**POINT RELIED UPON**

POINT RELIED #1: INFORMANT HAS FAILED TO PROVE MR. NELSON ENGAGED IN MISCONDCUT RELATING TO OPERATING HIS TRUST ACCOUNT, MAINTAINING RECORDS FOR THAT ACCOUNT, OR COOPERATING WITH THE OCDC THAT WOULD JUSTIFY FURTHER DELAY IN ALLOWING MR. NELSON TO SEEK REINSTATEMENT OF HIS MISSOURI LAW LICENSE.

*In re Coleman, 295 S.W.3d 857 (Mo. 2009)*

POINT RELIED #2: EVEN IF THIS COURT CONCLUDES INFORMANT HAS PROVED THE CHARGED MISCONDUCT, THE APPROPRIATE SANCTION SHOULD NOT DELAY RESPONDENT'S ABILITY TO PURSUE REINSTATEMENT.

*In re Miller, 568 S.W.2d 246 (Mo. 1978)*

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

*In re Coleman, 295 S.W.3d 857 (Mo. 2009)*

## ARGUMENT

*Preliminary Statement.* As set forth in the Statement of Facts, the prosecution of this case relates to three categories of conduct. First, Informant alleges that Mr. Nelson violated the Rules of Professional Conduct with regard to his handling of a single client matter, his representation of P.J., where ultimately Mr. Nelson and P.J. agreed to end the representation and Mr. Nelson provided a full refund.

Second, Informant charges Mr. Nelson with paying a referral fee to J.S. The uncontroverted evidence proves Mr. Nelson reasonably believed J.S. was an attorney licensed in Georgia. Mr. Nelson paid J.S. in accordance with the retainer agreement signed by all parties. This agreement took into consideration all investigative services that J.S. had provided to investigate and prepare the case before Mr. Nelson was retained by the client to assist with mediation.

Third, Informant charges Mr. Nelson for mistakes he allegedly made with his trust account. Mr. Nelson has proven that he generally complied with all obligations relating to operation of his trust account and that, to the extent he made mistakes, they were technical errors (like drawing funds through a cashier's check) or delays associated with Mr. Nelson dealing with his mother's death and his own [REDACTED], not circumstances that would support a finding he violated trust accounting rules. Further, Mr. Nelson has received additional training on operation of his trust account so he can better anticipate potential problem areas before they materialize. Therefore, particularly in light of the evidence of compliance and mitigating factors discussed below, Mr. Nelson believes this Court should

not further delay the ability of Mr. Nelson to regain his Missouri law license so Mr. Nelson could promptly seek reinstatement. A full explanation of all these points follows.

**Standard of Review.** In matters of professional misconduct, this Court “decides the facts *de novo*, independently determining all issues pertaining to credibility of witnesses and the weight of the evidence, and draws its own conclusions of law.” *In re Eisenstein*, 485 S.W.3d 759, 762 (Mo. 2016). Informant must prove professional misconduct “by a preponderance of the evidence before discipline will be imposed.” *Id.* A Hearing Panel’s “findings of fact, conclusions of law, and recommendations are advisory, and this Court may reject any or all of [the Hearing Panel’s] recommendation.” *Id.*

**Standard for Imposition of Discipline.** The twin aims of the Missouri lawyer discipline system are “**to protect the public and maintain the integrity of the legal profession,**” **not to punish the lawyer.** *In re Coleman*, 295 S.W.3d 857, 869 (Mo. 2009) (emphasis added) Thus, the focus here should be what is required to protect Mr. Nelson’s clients and the integrity of the legal system, not to impose punishment on Mr. Nelson.

In assessing any potential sanction, this Court has recognized that ABA Standards for Imposing Lawyer Sanctions (the “ABA Standards”) provide useful guidance for appropriate discipline. Rule 5.17 (b)(4); *see also In re Madison*, 282 S.W.3d 850, 860 (Mo. 2009) Consideration is given under the ABA Standards to the nature of the conduct at issue, as well as any evidence in aggravation or mitigation. ABA Standards at § 9.1.

Mr. Nelson has already been unable to serve his community as a lawyer for two years, since his tax suspension in August 2022, for relatively minor matters that should be resolved.<sup>3</sup> Mr. Nelson's desire to resume law practice as soon as possible resulted in his accepting the Hearing Panel's recommended minimum two-year suspension, despite his belief that he did not commit – and that Informant did not prove – that he had engaged in misconduct for which he has been charged, conduct Mr. Nelson believes the Hearing Panel accepted without properly evaluating Mr. Nelson's evidence and defenses. Mr. Nelson understood, however, that further litigation in this Court and a possible lengthy reinstatement process would only limit the time that Mr. Nelson, now aged 70, would be able to resume the full scope of activities that he has provided as an attorney and counselor for his community.

Having been compelled to bring his case for full hearing before this Court, Mr. Nelson now asks that this Honorable Court find the Informant has not Mr. Nelson guilty of the charged conduct. In the event this Honorable Court does find Mr. Nelson guilty of any of any charged conduct, Mr. Nelson request a sanction that is reflective of his actions and one that allows him to resume his law practice without further delay. Mr. Nelson believes in such a sanction for two reasons.

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<sup>3</sup> Mr. Nelson has timely filed the applicable state (and federal) tax returns. The Missouri Supreme Court has indicated it must wait for the Missouri Department of Revenue to confirm compliance. **(Tr. 116)**

**POINT RELIED #1: INFORMANT HAS FAILED TO PROVE MR. NELSON ENGAGED IN MISCONDUCT RELATING TO OPERATING HIS TRUST ACCOUNT, MAINTAINING RECORDS FOR THAT ACCOUNT, OR COOPERATING WITH THE OCDC THAT WOULD JUSTIFY FURTHER DELAY IN ALLOWING MR. NELSON TO SEEK REINSTATEMENT OF HIS MISSOURI LAW LICENSE.**

First, particularly when mitigating factors including Mr. Nelson's health conditions are properly considered, Informant has not proved facts that support imposition of discipline. As noted earlier, Informant's case relates to three separate matters: (1) Mr. Nelson's dealings with P.J.; (2) Mr. Nelson's dealings with J.S.; and (3) Mr. Nelson's operation of his trust account. Informant has failed to prove Mr. Nelson engaged in misconduct in any of these situations as follows.

First, it was appropriate for Mr. Nelson and P.J. to terminate their attorney-client relationship when P.J. initially failed to get Mr. Nelson the documents he needed, and then P.J. became concerned – due to the press of other work – that Mr. Nelson would not be able to address her concerns as quickly as she wanted. The only question then is how Mr. Nelson handled the refund. And the evidence proves that Mr. Nelson provided a full refund, held the check as P.J. requested for her to pick it up when she traveled to St. Louis, and then mailed the check to P.J. after several months when P.J. still had not arrived in St.

Louis. (Tr. 139-40, 196) Informant has therefore failed to prove any misconduct in Mr. Nelson's representation of P.J.

Mr. Nelson's dealings with J.S. also involved no misconduct by Mr. Nelson. Mr. Nelson used J.S. as a paralegal researcher and investigator, a role permitted under Missouri law, whether J.S. was or (as was apparently the case) was not a Georgia-licensed attorney seeking a Missouri license. Informant cites, and undersigned counsel is aware of, no contrary authority. Informant does allege that Mr. Nelson improperly shared fees with J.S., but the evidence supports (a) Mr. Nelson (and several other Missouri attorneys ) had been misled by J.S. to believe J.S. was a Georgia-licensed attorney (**Tr. 144**), and (b) it was appropriate for Mr. Nelson to pay J.S. for the considerable time and effort J.S. had spent on the client's matter performing investigative and other work – work not specifically reserved for an attorney – before asking Mr. Nelson to, as Mr. Nelson reasonably understood it, step in and represent the client at a mediation. (**Tr. 150-53, 188**)

Finally, Informant has not proven any misconduct that justifies imposition of serious sanctions with regard to Mr. Nelson's handling of his trust account. Rather, the nature of the errors proven with Mr. Nelson's trust account were either (a) largely technical mistakes, such as using a cashier's check for the R.B. disbursement or (b) delays resulting from a combination of COVID-related and case-specific factors, like C.W. refusing to receive the payment or trouble locating another payment address for the CIOX \$38.56 reimbursement after the initial check was not cashed.

Informant has the burden of proving a respondent lawyer has engaged in the charged misconduct. As this Court demonstrated in *In re Coleman*, 295 S.W.3d 857 (Mo. 2009)

and other cases, where Informant has not made the necessary showing and there is insufficient evidence to support otherwise, the lawyer should not be disciplined. None of the conduct Informant has actually carried its burden and proven should rise to the level of supporting imposition of serious discipline, particularly in light of the significant role Mr. Nelson has played and seeks to continue playing in helping the people in his largely marginalized community navigate their legal issues and better their lives. (*Cf.*, Tr. 204-28 (testimony of six character witnesses))

**POINT RELIED #2: EVEN IF THIS COURT CONCLUDES INFORMANT HAS PROVED THE CHARGED MISCONDUCT, THE APPROPRIATE SANCTION SHOULD NOT DELAY RESPONDENT'S ABILITY TO PURSUE REINSTATEMENT.**

Even if this Court disagrees with Mr. Nelson and concludes Informant has made the requisite showing, the conduct proven should not result in discipline greater than a reprimand. In assessing the proper sanction, this Court has recognized that the ABA Standards should provide guidance for appropriate discipline. Rule 5.17(b)(4); *see also In re Madison*, 282 S.W.3d at 860. Consideration is given under the ABA Standards to the nature of the conduct at issue, as well as any evidence in aggravation or mitigation. *Id.* at § 9.1.

ABA Standard 9.1 specifically directs consideration of mitigating factors when assessing an appropriate sanction for mishandling client property. ABA Standard for

Imposing Lawyer Sanctions 9.32 lists numerous mitigating factors that support imposition of a lighter sanction than facts, circumstances, and precedent might otherwise indicate:

- (a) absence of a prior disciplinary record;
- (b) absence of a dishonest or selfish motive;
- (c) personal or emotional problems;
- (d) timely good faith effort to make restitution or to rectify consequences or misconduct;
- (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
- (f) inexperience in the practice of law;
- (g) character or reputation
- (h) physical disability;
- (i) mental disability or chemical dependency including alcoholism or drug abuse [];
- (j) delay in disciplinary proceedings;
- (k) imposition of other penalties or sanctions;
- (l) remorse; and
- (m) remoteness of prior offenses.

Mitigation is appropriate under ABA Standard 9.32(b), (d), (e), (g), and (l)

The entire case record reflects that Mr. Nelson did not act with a selfish motive. In no instance, for example, was there a claim or evidence that Mr. Nelson held onto or used client funds for his own personal purposes.

Mr. Nelson also cooperated with OCDC and their requests. **(Tr. 99-100)** Sometimes communication difficulties slowed his responses, but Mr. Nelson offered uncontested evidenced that these issues largely resulted from problems with his @sbcglobal.net email account. **(Tr. 40-43, 65-66, 172-73)** Even Ms. Dillon testified that she did not believe Mr. Nelson tried to impede the OCDC investigation. **(Tr. 75)**

Mr. Nelson has also sought to rectify the circumstances that gave rise to the discipline charges. Mr. Nelson has improved his trust accounting knowledge and the way he handles client and third-party funds. He also now conducts monthly reconciliations of his trust account even if the only activity is the credit and transfer of interest to the IOLTA Foundation. **(Tr. 157)** Mr. Nelson is now better suited to avoid making the decisions that led to his previous involvement with OCDC and this current proceeding. **(Tr. 158)** This includes that Mr. Nelson now understands that he needs to ensure that he follows up with people when they do not present checks for payment. **(Tr. 159-60)** Mr. Nelson has ensured that clients and third-parties with an interest in funds held in his trust account will receive their funds timely or inform them of any necessary delays. **(Tr. 124-25, 130-34)**

Six character witnesses appeared in person and testified about Mr. Nelson's character and reputation. These witnesses stated that they found Mr. Nelson to be of very strong character and reputation. All six character witnesses testified that Mr. Nelson had a good reputation and strong character, including providing critical legal and other services – usually at minimal cost – to often marginalized in his high crime and drug-infested community. **(Tr. 206-07, 210-12, 216-17, 220-21, 223-24, 227-28)**

Finally, during much of the conduct at issue, Mr. Nelson was suffering [REDACTED] and the lingering symptoms of [REDACTED]. Mr. Nelson testified that his symptoms made it difficult for Mr. Nelson to work because he lacked the ability to focus and was constantly fatigued. (Tr. 105-06) This physical condition should be considered as excusing any delays Mr. Nelson had in responding to the OCDC and as a mitigating factor under ABA Standard 9.32(h).

Missouri precedent also supports a penalty of no more than a reprimand. In *In re Kwado Jones Armano*, Case No. SC9601 (Oct. 4, 2011), for example, this Court only reprimanded Armano when he was found to have violated Rule 4-1.15(c) and 4-1.15(d) for using his trust account for personal transactions. This conduct is much more serious than Mr. Nelson’s alleged conduct: in its appellate brief, the Office of Chief Disciplinary Counsel described that Armano “routinely us[ed] his trust account for personal banking.” Nevertheless, this Court imposed only a sanction on the respondent in *Armano*, despite evidence of significantly more serious trust accounting issues than Informant is alleging against Mr. Nelson.

In addition, there has been established precedent where attorneys received reprimands for conduct much worse than Mr. Nelson’s. For instance, in *In re Miller*, 568 S.W.2d 246 (Mo. 1978), this Court imposed a reprimand despite finding that the attorney Miller had misappropriated \$30,000 in client funds purportedly held in trust for a client. The misappropriation forced the client to transfer an interest in real estate to the client’s wife. Additionally, in *In re Elliott*, 694 S.W.2d 262 (Mo. 1985), the Court reprimanded a lawyer where the lawyer, in addition to maintaining poor records and having insufficient

funds in his trust account, the Court found that the lawyer mishandled deposits, failed to timely forward payments to a client, and failed to respond to client inquiries. Both *Miller* and *Elliott* involved conduct much more egregious than Mr. Nelson's. Again, each of these lawyer's misconduct was much more serious than the charged conduct against Mr. Nelson, and these lawyers lacked any excuse or mitigating evidence that Mr. Nelson has offered, including his own illness and a global pandemic. Yet in both *Elliott* and *Miller* the charged attorney received only a reprimand.

In the past five years, there have also been numerous cases where the lawyer was charged with and proven to have engaged in more serious misconduct than Mr. Nelson but that attorney received only a reprimand or reprimand with requirements from the Court. In *In re Paritosh Sheth*, Case No. SC95382 (March 15, 2016), for example, the respondent was found to have violated Rules 4-1.15(a), (b), (f), and 4-8.4(d) of the Rules of Professional Conduct where the attorney had placed both personal funds and earned fees into the trust account, commingled his own and client funds, and failed to maintain appropriate trust account records. Yet this Court imposed only a reprimand. Similar cases include *In re Christian Cox*, Case No. SC96837 (December 20, 2017) (violation of Rule 4-1.15(a)); *In re Richard Haitbrink*, Case No. SC96298 (May 4, 2017) (reciprocal reprimand for violation of Rules 4-1.4(a); 4-1.8(h); 4-1.15(a); 4-1.16(d); 4-2.1)); and *In re Eric Martin*, Case No. SC96121 (January 31, 2017) (reprimand with requirements for violation of Rules 4-1.15(a), (b), (c)).

In light of these precedent cases, even if this Court finds Informant has proven the charged conduct, Mr. Nelson should not receive a sanction that prolongs his inability to practice law.

**Conclusion.** Mr. Nelson therefore asks this Court to resolve this matter by finding that the Informant has not shown by a preponderance of the evidence that Mr. Nelson violated any attorney rules of misconduct regarding his dealings with P.J. and J.S. or in cooperating with OCDC's investigation, maintaining client records, and handling and disbursements trust account of funds. Mr. Nelson therefore requests to be allowed to promptly seek reinstatement, having already been prevented from practicing law for two years due to his August 2022 tax suspension.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

The undersigned certifies that this brief includes the information required by Missouri Supreme Court Rule 55.03. It was drafted using Microsoft Word. The font is Times New Roman, proportional 13-point font, which includes serifs. The brief complies with Missouri Supreme Court Rule 84.06(b) in that it contains 7,938 words.

*/s/ Michael P. Downey*

**CERTIFICATE OF SERVICE**

The undersigned certifies that copy of the foregoing was filed on this 14<sup>th</sup> day of August, 2024, to the following counsel of record:

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