IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
JOVANNA R. BEARDEN	)	**SC100642**
Missouri Bar No. 60294	)	
	)	
Respondent.	)	

RESPONDENT'S BRIEF

RYNEARSON, SUESS, SCHNURBUSCH
& CHAMPION, L.L.C.

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STATEMENT OF JURISDICTION

Respondent agrees with Informant's Statement of Jurisdiction.

STATEMENT OF FACTS

In addition to the facts set out in Informant's Brief, Respondent adds the following:

In addition to providing Respondent with forms, sample documents and language and with training, Fresh Start Funding (FSF) provided Respondent with research it stated it had compiled regarding the ethical ramifications of the use of its model. This included a decision that FSF claimed to have come out of the Western District of Missouri approving of bifurcated cases which Respondent believed to be legitimate. In 2019, there was little to no case law providing guidance about the propriety of bifurcated/factored bankruptcy cases. *See* Joint Stipulation of Facts. **R. at p. 46.**

Respondent filed the ten bifurcated Chapter 7 Bankruptcy cases between October 23, 2019 and May 22, 2020. (**R. at pp. 67-68.**)

At the March 27, 2024 Disciplinary Hearing, the Disciplinary Hearing Panel questioned Respondent under oath. Respondent testified that her practice included debt collection defense litigation and that by the time some individuals came to her for representation, they had garnishments or too many collection lawsuits to fight, so it made sense for them to file bankruptcy. The bifurcated payment plan made it possible to get the bankruptcy moving faster and to prevent judgments and garnishments against

Respondent's clients. **R. at pp. 187-189.** Respondent testified that her clients were interested in the bifurcated payment structure because it would have taken them months to come up with the money to file for bankruptcy (during which time they would have been subject to garnishment). **R. at pp. 184-186.** The appeal of the bifurcated payment plan to Respondent was that it would prevent her clients from being garnished. **R. at pp. 188-189.**

Respondent testified that on a call with FSF personnel, she was advised that they had a case where Judge Norton discussed bifurcation. FSF told Respondent they would send her the case. Respondent cannot find the case and now believes FSF either lied or misrepresented the contents of that case. **R. at pp 189-190.**

Respondent further testified that when she received a Show Cause Order from the Bankruptcy Court with respect to the bifurcated bankruptcy cases, she was unfamiliar with the process of how to respond and so she relied too heavily on the legal counsel provided to her by FSF. **R. at p. 193.** She now regrets that reliance. **R. at p. 194.** Respondent testified that she has no plans to engage in any future relationship with FSF. **R. at p. 187.**

Respondent also testified that during the time she was filing the bankruptcy cases at issue and completing and filing the inconsistent forms about payment of attorney fees, she was dealing with undiagnosed bipolar illness. She now believes that her condition affected her more than she realized at the time and it made it difficult for her to be

consistent in completing the forms. **R. at pp. 191-192.** Her subsequent diagnosis has caused her to step back from her practice and she is now working in a supporting role to the other attorneys in her office. **R. at pp. 186-187.**

ARGUMENT

THE COURT SHOULD CONSIDER ITS DECISIONS IN PREVIOUS ATTORNEY DISCIPLINE CASES, AS WELL AS THE ABA SANCTION GUIDELINES AND SHOULD FIND THAT PUBLIC REPRIMAND IS THE APPROPRIATE DISCIPLINE IN THIS MATTER

A. Standard of Review

The Missouri Supreme Court has "inherent authority to regulate the practice of law and administer attorney discipline." ***In re Gardner***, 565 S.W.3d 670, 675 (Mo. banc 2019). In determining the appropriate discipline for attorney misconduct, the Court relies on its prior cases and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (ABA Standards). ***In re Kayira***, 614 S.W.3d 530, 533 (Mo. 2021).

The 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 Farris***, 472 S.W.3d 549, 557 (Mo. 2015). The Court treats Disciplinary Hearing Panel's findings of fact and conclusions of law as advisory, but the findings are entitled to "considerable weight." ***In re Donaho***, 98 S.W.3d 871, 873 (Mo. 2003).

When imposing discipline, the Court must be guided by the principle that the purpose of attorney disciplinary proceedings "is not to punish the attorney, but to protect the public and maintain the integrity of the legal profession." ***In re Schuessler***, 578 S.W.3d 762, 772-773 (Mo. 2019). Additionally, this Court has a history of adhering 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).

B. Analysis

Here, Respondent has admitted to several violations of the ethical rules as set out in the Joint Stipulation of Facts, Joint Proposed Conclusions of Law, Joint Recommended Discipline ("Joint Stipulation") related to ten bifurcated bankruptcy cases filed over a seven month period. **R. at pp 38-63.** Informant and Respondent jointly recommended that a reprimand be the discipline imposed on Respondent. After reviewing the Joint Stipulation and questioning Respondent, the Disciplinary Hearing Panel also recommended reprimand. **R. at p. 148.**

In determining what discipline to impose, this Court "considers the ethical duty that was violated, the attorney's mental state and any aggravating or mitigating factors". ***In re Ehler***, 319 S.W.3d 442, 451 (Mo. banc 2010). The appropriate discipline differs based upon the attorney's state of mind at the time of the misconduct. The Court also considers the extent of actual or potential injury to affected clients. ***In re Coleman***, 295 S.W.3d 857, 870 (Mo. 2009).

As the Informant's Brief states at 26, the most serious violation which Respondent has admitted to involves Rule 4-3.3. Respondent has admitted that she violated Rule 4-3.3 when she completed and submitted to the bankruptcy court Disclosures of Compensation Forms that contained inaccurate and incomplete information. Respondent

recognizes that ABA Standard 6.12 provides that suspension is generally appropriate when the lawyer knows that false statements or documents are being submitted to the Court or that material information is improperly being withheld and takes no remedial action and causes injury or potential injury to a party to the legal proceeding or causes an adverse or potentially adverse effect on the legal proceeding.

Here the Bankruptcy Court after considering Respondent's testimony and statements of the U.S. Bankruptcy Trustee found that Respondent "[d]id not actively intend to deceive the court, even though [she] made many, many mistakes and that [she]relied on the bad advice of Mr. Garrison in choosing to fight the Court's Order, rather than fully disclose and to file motions." (**R. at pp. 145-146.)**

Although suspension is the presumptive discipline for a Rule 4-3.3 violation, Respondent believes that there are a number of mitigating factors that support decreasing the level of discipline imposed in this matter.

Pursuant to ABA Standard 9.31 and 9.32, there are numerous factors which may justify a reduction in the degree of discipline to be imposed. Those factors include:

(a) Absence of a prior disciplinary record
(b) Absence of a dishonest or self motive,

* * *

(d) timely good faith effort to make restitution or to rectify consequences of misconduct;
(e) full and free disclosure to disciplinary board or cooperative attitude toward proceeding

* * *

(i) mental disability or chemical dependency (when certain conditions are met)

* * *

(l) remorse.

See also ***In re Belz***, 258 S.W.3d 38, 43-46 (Mo. 2008).

The Informant's Brief (at 28) addressed the existence of many mitigating factors in this matter, to wit:

a. Respondent has no history of prior discipline
b. Respondent self-reported and was cooperative with both the U.S. Bankruptcy Trustee and Informant throughout the investigative process
c. Respondent made a timely and good faith effort to make restitution or to rectify the consequences of her misconduct by reimbursing her clients for payments they made after the bankruptcy action was filed
d. Respondent has expressed remorse for these violations (*See also* **R. at pp. 62, 173.**)

Furthermore, at the time of her actions, Respondent had bipolar disorder which was undiagnosed but which in retrospect she believes affected her ability to practice law (**R. at pp. 186-17, 191-192.**)

Additionally, Respondent has ceased bifurcating cases and has ceased filing actions in the bankruptcy court. Moreover, Respondent is no longer involved with FSF. (**R. at pp. 186-187.**)

Moreover, Respondent notes that in making its recommendation for reprimand in the Joint Stipulation, although it is not a mitigating factor under the ABA Standards, Informant considered the fact that FSF was heavily marketing its services to attorneys and that when Respondent began the bifurcation program there was no case law providing clear guidance to bankruptcy attorneys about the use of the bifurcation model,

and that FSF touted its guaranty clause to Respondent and to the bankruptcy court, but in the end Respondent refunded her clients out of her own funds. **R. at p. 173.**

This Court has held that suspension is not appropriate when there is no evidence of a selfish or dishonest motive on the part of the Respondent, ***In re Gardner***, 565 S.W.3d 670, 679 (Mo. 2019) or when the Respondent "did not seek personal gain by his actions" and "there was no irreparable harm to the client". ***In re Staab***, 719 S.W.2d 780, 784 (Mo. 1986) (public reprimand). *See also* ***In re Kopf***, 767 S.W.2d 20, 23 (Mo. 1989) (public reprimand).

There is no evidence that Respondent did not act in good faith when she began using the bifurcated method. She relied on information provided by FSF. Respondent began using the process of bifurcating bankruptcy cases because she believed it benefited her clients. It benefited those clients who did not immediately have the funds to pay Respondent upfront for filing a bankruptcy action and who would be subject to garnishments and/or ongoing collection efforts by their creditors while they tried to save up the necessary funds to pay for a bankruptcy. The bifurcation model brought many debtors relief sooner than they would have obtained using the traditional payment method. While Respondent did charge $500 more in fees to clients who opted to use the bifurcated process than those who paid in full upfront – the additional $500 all went to FSF to cover its financing costs and she disclosed in writing the fact that there was an additional charge for using the bifurcated option and explained the reasons for the extra

charges and who received the additional charges to all clients before they signed any agreements. **R. at pp. 48, 69-81.** She did not seek personal gain by those charges.

Furthermore, there was no irreparable harm to Respondent's clients from the bifurcation. Respondent did not steal any money from her clients and she did not abandon them during their bankruptcies. All but one obtained a discharge from the Bankruptcy Court.[1] Moreover, Respondent personally reimbursed her clients for payments they made to FSF pursuant to the bifurcation model.

This Court has held that mental illness can and should be considered a mitigating factor in determining the extent of discipline imposed. ***In re Belz***, 258 S.W.3d 38, 44 (Mo. 2008). In some instances psychological disorders that affect an attorney's ability to practice law responsibly may properly suggest leniency. ***Id.***

Here, Respondent was diagnosed as being bipolar in the Spring of 2020. She believes she was experiencing symptoms in 2019 and earlier and that her undiagnosed illness affected her ability to complete forms consistently and with proper detail. Respondent briefly raised her mental illness to the Disciplinary Hearing Panel. (*See* **R. at pp. 186-187, 191-192**.)

Informant's Brief (at p. 28) sets out what it contends are aggravating factors, to wit:

a. There were multiple offenses;

[1] The one client who did not receive a discharge failed to provide all the information required by the Bankruptcy Court.

b. Respondent's clients should be considered vulnerable due to the complexity of bankruptcy matters and inherent reliance upon the bankruptcy attorney; and

c. Respondent has substantial experience in the practice of law.

As established above, all of the offenses to which Respondent has admitted related to using the bifurcated payment method in ten Chapter 7 Bankruptcy cases that Respondent filed in a relatively short time period. Although Respondent had been practicing law for about 11 years in 2019, the bifurcation model was new, and there was little to no case law addressing this model. Respondent relied on personnel at FSF who led her to believe that this model had been approved by courts (including Judge Norton) and who provided her with forms, documents and training which they represented complied with all bankruptcy and local rules. **R. at pp. 156-157.** Moreover, Respondent attempted to explain the process to her clients and provided them with forms that explained the differences (including the additional costs) of a traditional pay up front bankruptcy from a bifurcated bankruptcy. **R. at pp. 145-146, 158-160.** Respondent relied on FSF and thought she was providing a benefit to her clients. Ultimately, she learned that FSF had misled her and the bankruptcy court. **R. at pp. 162-163, 193.**

In light of the above, Respondent believes that the mitigating factors applicable to this matter justify a downward departure from the presumptive discipline of suspension. As the Informant explained in its Brief (at 29), probation or a stayed suspension with a term of probation is unnecessary. Respondent respectfully requests that this Court accept

the agreement between Respondent and Informant which was adopted by the Disciplinary Hearing Panel and impose the sanction of public reprimand.

CONCLUSION

For the above and foregoing reasons, Respondent respectfully requests that this Court impose the sanction of public reprimand.

CERTIFICATE OF SERVICE

I hereby certify that on 23rd day of October, 2024, a copy of Respondent's Brief is being served upon Informant through the Missouri Supreme Court electronic filing system pursuant to Rule 103.08:

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CERTIFICATION: RULE 84.6(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. Was served on Informant through the Missouri electronic filing system pursuant to Rule 103.08;
3. Complies with the limitations contained in Rule 84.06(b);
4. Contains 2,255 words, according to Microsoft Word, which is the word processing system used to prepare this brief.

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