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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 48.040 RSMo 2000.

STATEMENT OF FACTS

I was licensed to practice law in Missouri in 1990. I practice in St. Louis, and my office is located in Clayton. In 2005, the Region X Disciplinary Committee issued an admonition to me; the admonition determined that I violated these rules: Rule 4-1.3 (diligence) in that I failed to perform any work on behalf of my client for over two years; Rule 4-1.4 (client communication) in that I did not reasonable communicate with my client and failed to return my client's complaint; Rule 4-5.5 (unauthorized practice of law) in that I practiced law after failing to complete my mandatory continuing legal education reporting requirements; and Rule 4-8.1 in that I failed to respond to lawful requests for information from the Chief Disciplinary Counsel and Region X Disciplinary Committee. I accepted the admonition. I was not disciplined before that case and I have not been disciplined since that case. **App. 130-132.**

In April 2010, the Office of Chief Disciplinary Counsel (OCDC) received three notices from Commerce Band that my trust account was overdrawn. Those notices were provided per the bank's obligation under Rule 4-1.15. **App. 119-120; 122-123.** The Office of Chief Disciplinary Counsel asked me to explain the overdraft. **App. 121.** I stated that on the day before I wrote the $500.00 check that bounced, I was told by Commerce Bank that the trust account held $7,173.99. I, therefore left the bank with the belief that there were sufficient funds to cover the items that caused the overdraft. I also informed OCDC later that I learned the bank's information was inaccurate, and I deeply regretted it, and that this was

the first time this had occurred, and I assured him that this would not happen again. **App. 117.**

I wrote a check for $1,2725.00 to Chowning Heating and Cooling for work on a house that I was rehabilitating for sale. The bank twice attempted to process that check, but there were insufficient funds; the bank therefore notified the OCDC of those two overdrafts. **App. 11; 25; 44; 78-80.** The OCDC asked me for additional bank records and client records. There was a delay in providing those records because I had not kept copies of some of the items. **App. 88.** Additional investigation and requests for information led to me supplying records for two clients whose funds were to have been held in his account at the time of the overdraft. **App. 74-75.**

The OCDC's subsequent audit revealed the following: The $500.00 check that led to the bank's overdraft notice was written to myself. **App. 11; 45.** At the time I wrote the check, I had also used my trust account for personal banking. **App. 11; 34-50.** Checks written on my trust account during that period (April – June 2010) primarily related to the home on Westminster Place in St. Louis that I owned and was preparing for sale. Trust account payments were made to landscaping companies, cash, Home Depot, Lowes, and Laclede Gas. Additionally, I wrote checks to myself, with check memos indicating the Westminster Place address. **App. 34-50; 84.**

I deposited $195,000.00 from the sale of the Westminster Place house on April 20, 2010. **App. 78-80; 102.** The checks were made before I sold the house and, before I

received the proceeds from the house sale. There were made, at times, with client funds. **App. 12.**

I represented two clients during the Spring of 2010 whose funds were placed into the trust account. Upon settling a $10,000.00 personal injury claim for Mark Thurman in February 2010, I promptly wrote a $5,000.00 check to Mr. Thurman, dated February 25, 2011. **App. 11-12; 78; 90-94.** I agreed to withhold $1,667.00 with a promise to negotiate a pending claim held by a hospital held against Mr. Thurman for treatment related to the case. The remaining funds were then held in my trust account. **App. 90.** But before I completed his negotiations with the hospital, I wrote checks from my trust account for my personal use. Those personal checks caused overdrafts in my trust account. I was, therefore, using Mr. Thurman's money for my own use. **App. 12; 93.**

I eventually settled Mr. Thurman's lien with the hospital for $1,850.00, but before the hospital was paid, I forwarded Mr. Thurman a check for $2,000.00. **App. 92.**

The payments to Mr. Thurman and his hospital were made after I deposited the $195,000.00 house sale proceeds into the trust account. **App. 92; 94.** Until I made that deposit, the account had been in a negative balance for about ten days. **App. 78-80.**

In March 2010, I settled a personal injury case for my client, Brian Harris, for $7,000.00. **App. 95.** In that case, I paid Mr. Harris $3,000.00 per an agreement. I withheld $1,667.67 to negotiate with Mr. Harris' medical provider. **App. 95; 106.**

At least one of the medical liens was settled by August 3, 2010. Before paying the

medical providers, I spend the remainder of Harris' funds that were to be held in the trust account; Harris' funds were used for my rehabilitation project on the property on Westminster Place. **App. 11-12.**

On March 4, 2010, I also deposited $8,200.00 into my trust account for Ben Asare, a client/relative for the purchasing of a car. I held the funds in escrow. **App. 78-80; 100-101.** The vehicle was purchased on March 11, 2010. **App. 114.**

I stipulated that my conduct consisted of commingling personal funds and client funds, in violation of Rule 4-1.15(c). I also stipulated that I violated Rule 4-1.15(d) by failing to maintain adequate records. **App. 13.** I explained that I knew that I was making personal payments from my trust account, but that the payments were made with the belief that funds in the trust account belonged to me. **App. 8.**

The Stipulation accurately reflects my violations of Rule 4-1.15 (trust accounting) in Paragraphs 17 and 18 in the "Stipulation as to Facts," but incorrectly reflects Rule 4-1.5 (fees) in the Stipulation's "Conclusions of Law." That error was corrected in a February 16, 2011, letter from the Region X Special Representative. **App. 133-134.**

Informant and I agreed that a Public Reprimand is an appropriate sanction in this case. **App. 13-14**. The parties' stipulation explains that recommendation with the following. "Mitigating factors include that no clients were ever aware or damaged by the violation, and that I have only received one other complaint which resulted in an admonition in 2005." **App. 14.**

POINT RELIED ON

I.

THE COURT SHOULD PUBLICLY REPRIMAND ME FOR VIOLATING RULE 4-1.15 BECAUSE:

I HAVE ADMITTED THAT VIOLATION;

AND;

A PUBLIC REPRIMAND IS APPROPRIATE UNDER APPLICATION OF BOTH THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS AND MISSOURI CASE LAW.

In re Belz, 258 S.W.3d 38 (Mo. Banc 2008)

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

In re Crews, 157 S.W.3d 355 (Mo. banc 2005)

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

Rule 4-1.15

ARGUMENT

I.

THE COURT SHOULD PUBLICLY ADMONISH ME BCAUSE:

I HAVE ADMITTED VIOLATION OF RULE 4-1.15;

AND,

A PUBLIC REPRIMAND IS APPROPRIATE UNDER THE CIRCUMSTANCES AND THE APPLICATION OF BOTH THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS AND MISSOURI CASE LAW.

I have admitted violations of Rule 4-1.15 (c) and 4-1-15 (d). The Informant and I have agreed that a Public Reprimand is an appropriate discipline in this matter. **App.10-126**. On January 10, 2001, the Disciplinary Hearing Panel also approved this recommendation. **App. 127-129**. This brief will therefore address the appropriateness of the recommended sanction.

This Court relies on the ABA standards when imposing sanctions to achieve the goal of attorney discipline. *In re Coleman*, 295 S.W.2d 857,869 (Mo. banc 2009); *In re Crews*, 159 S.W.3d 355,360-361 (Mo. banc 2005), reciting the ABA standards and noting that the court considers the ABA Standards "When determining what level of discipline to impose.

ABA Standard 3-0 states that courts should consider four primary factors when imposing sanctions after a finding that a lawyer has committed professional misconduct:

a) The duty violated;

b) The lawyers mental state;

c) The potential or actual caused by the lawyers misconduct; and

d) The existence of aggravating or mitigating factors.

In Belz, 258 S.W.3d 38,42 (Mo. banc 2005). In *Belz,* this court reiterated that "these four factors in Standard 3-0 provide the basic framework for all disciplinary matter, while the remaining standards provide guidance as to the appropriate sanction for specific types of misconduct". *Belz* at 42.

Per the ABA Standards, the attorney's mental state while committing a rule is examined. *Coleman* at 869. Three mental states are used by the ABA Standards. They are: intent, knowledge, and negligence." Intent, is when "a lawyer acts with the conscious objective or purpose to accomplish a particular result." *Coleman* at 869, quoting the ABA Standards. Knowledge is shown when "the lawyer acted with conscious awareness of the nature or attendant circumstances of his or her conduct both without the conscious objective or purpose to accomplish a particular result." *Coleman* at 869 quoting the ABA Standards. The least culpable mental state is negligence, shown when "a lawyer fails to be aware of a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation." *Coleman* at 869, quoting the ABA Standards.

The ABA Standards considers aggravating and mitigating factors. Aggravating factors increase the severity of the sanction and include prior discipline by the disciplinary

committee or vulnerability of the client. *Coleman* at 869, quoting the ABA Standards. Mitigating factors decrease the severity of the sanction and it includes inexperience in the practice of law, remorse, character and reputation, and absence of a selfish motive. *Coleman* at 869, quoting the ABA Standards.

ABA Standard 4-1 offers guidance when a lawyer fails to preserve their client's property. ABA Standard 4-13 provides that "reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client."

In applying these standards and prior case law, the Informant's recommendation of a public reprimand is an appropriate sanction in this case. Before I wrote the checks that caused the overdraft, I made a balance inquiry with the Commerce Bank branch on Chouteau in St. Louis. I was informed that the trust account had a balance of $7,173.99 **App. 8**. This amount exceeded the funds that were being held on behalf of Mr. Harris and Mr. Thurman. I therefore wrote those checks with the belief that they were being covered by my own funds left in the trust account. I later learned from the bank that the account balance I was given by the teller was inaccurate. The overdraft was therefore caused by sloppy bookkeeping, and I was clearly negligent in failing to reconcile the trust account. However, I did not intend to violate the rules or to act in a dishonest manner.

In the past, I had kept a portion of my attorney's fees in the trust account for periods of time after clients have been paid following settlements. My reason was to prevent an overdraft. However, I learned from the investigator at the OCDC when I met her on July 21,

2010, that this was improper and violates the rules. Under ABA Standard 4-13, reprimand is appropriate in this case because I was negligent in dealing with the clients' property. I am also in agreement with the informant that a public reprimand will protect the public because it will remind me to avoid using the trust account to hold personal assets, and that I am ethically responsible for reconciling the trust accounts.

There are also mitigating circumstances that make a public reprimand appropriate in this case. First, although comingling of my personal funds in the trust account is improper and could have caused injury, the Informant is in agreement that no clients were ever aware or damaged by the violations. Additionally, I have only received one admonition in 2005, for violations involving communication, diligence, failure to respond to disciplinary authorities and practicing law while suspended from MCLE, and should serve as a mitigating factor.

Furthermore, I would not have deposited the $195,000.00 proceeds from the sale of the real estate had I known that doing so constitutes commingling and a violation of the rules of professional conduct. My actions in this matter arose out of ignorance of the rules instead of an intention to violate the rules or to act in a dishonest manner. In *Coleman*, this Court stayed a suspension because the lawyer's violation "arose out of ignorance, and was likely that his conduct could be remedied by education and supervision." *Coleman* at 871. Consequently, a public reprimand is appropriate under the circumstances.

Since this overdraft matter arose, I have taken steps to prevent this from ever occurring. On August 10, 2010, I attended an ethics seminar organized by the National Bar

Association in New Orleans. It was titled "Meeting ethical requirements of your bar". The seminar dealt extensively with the disciplinary process and the strict rules governing attorney trust accounts. It also covered common mistakes lawyers make that leads into ethical difficulties. The lessons learned from the seminar will prevent this from ever occurring.

Moreover, following my meeting with the investigator at the OCDC, I visited the website of the Missouri Trust Account Foundation. I printed and read the foundation's Trust Account Handbook and I am now familiar with the various forms and ledgers. I am incorporating these forms to reconcile my trust account in the future. An Affidavit supporting these steps are attached to this brief.

In my first response to the OCDC, I expressed my deep regret for the overdrafts. **App. 117**. I again deeply apologize to this Court for my conduct, and respectfully request the Court to accept the agreed Public Reprimand as the appropriate sanction and for any other remedy under the circumstances.

CONCLUSION

I respectfully request the Court to accept the agreed Public Reprimand as the appropriate sanction and to enter the Order stated in the Informant's brief.

Respectfully submitted,

By:_____
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RESPONDENT

AFFIDAVIT

STATE OF MISSOURI)

CITY OF ST. LOUIS)

I, Kwadwo J. Armano state under oath that on August 10, 2010, I attended an

ethics seminar organized by the National Bar Association in New Orleans. It was titled "Meeting ethical requirements of your".

The seminar dealt extensively with the disciplinary process as well as the strict rules governing attorney trust accounts. The seminar also covered common mistakes lawyer make the lead into ethical difficulties. I received 2-4 CLE hours for the seminar and was reported to the Missouri bar.

Additionally, following my meeting with the investigator at the office of the chief disciplinary counsel on July 21, 2010, I visited the website of the Missouri Lawyer Trust Account Foundation. I have printed and read the Lawyer Trust Account Foundation Handbook, and am now familiar with the Trust Account Reconciliation sheet, the Trust Account Receipts Journal, the Trust Account Disbursement Journal, Client Trust Account Ledger, and the Trust Account Receipts/Disbursement Control Sheet. I am incorporating the forms to help reconcile the trust account.

_____

AFFIANT and RESPONDENT, Kwadwo J. Armano

Notary:

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on this_____ day of _____, 2011.

_____

NOTARY PUBLIC

MY COMMISSION EXPIRES:

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of June, 2011, two copies of Respondent's Brief and a diskette containing the brief in Microsoft Word format have been sent via Priority mail to:

Sam Philips
Deputy Chief Disciplinary Counsel

3335 American Avenue
Jefferson City, MO 65109

Kwadwo J. Armano

CERTIFICATION: RULE 84.06 (c)

I certify to the best of my knowledge, information and belief, that this brief

1. Includes the information required by Rule 55.03;

2. Complies with the limitations contained in Rule 84.06 (b);

3. Contains 2,836 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and

4. That Trend Micro software was used to scan the disk for viruses and that it is virus free.

Kwadwo J. Armano