IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
LISA D. KREMPASKY,	)	**Supreme Court #SC94158**
	)	
Respondent.	)	

INFORMANT'S BRIEF

OFFICE OF
CHIEF DISCIPLINARY COUNSEL

SAM S. PHILLIPS #30458
DEPUTY CHIEF DISCIPLINARY COUNSEL
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400
(573) 635-2240 (fax)
Sam.Phillips@courts.mo.gov

ATTORNEYS FOR INFORMANT

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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

Lisa Krempasky (Respondent) was licensed to practice law in Missouri in 1991. She has practiced in St. Louis County – mostly by herself – without previous discipline. She stopped actively practicing some time before January 28, 2013, when she requested inactive status, per Rule 6.03. Her license was suspended on March 1, 2013, for failure to comply with the MCLE requirements (Rule 15).

From 2002 through 2009 she was associated with another attorney, Scott Joggerst, but she managed her firm at all times.

Participation in Clients' Business Arrangements

In 2000, Respondent prepared a will and a trust for Charles Norman, a wealthy owner of a St. Louis radio station whom she had known for several years. Mr. Norman's documents named Respondent as his estate's personal representative and his successor trustee. When Norman died in 2004, Respondent accepted those responsibilities. **App. 20**.

During 2004, the same year that she began her fiduciary obligations for the Norman Estate and Trust, she was representing Doug Hartmann, a St Louis businessman. Hartmann's business was to buy, renovate, and lease or sell houses in the City of St. Louis. Hartmann's business plan included borrowing funds from individuals. Under the terms of the loans, Hartmann would borrow money for short terms, such as four months; the loans were to be secured by either a primary or a secondary deed of trust. The lenders (known as "hard money lenders") were told the principal would be repaid at the end of the four month term and that they would receive a substantial rate of return – twenty

percent (20%) – on their loan. Hartmann told some lenders the notes could be repaid upon demand. **App. 20**.

Hartmann and Thomas Huling retained Respondent to represent their interests in the real estate "rehab" business. She was given power of attorney and broader authority to sign documents on their behalf, to deposit and sign checks, and to transfer funds between their various entities. And, she agreed to be paid for facilitating loans. Respondent and Hartmann agreed that, each month, Respondent would receive – as a fee – one percent of all outstanding loan balances among the loans she facilitated. By example, between January and August 2005, outstanding loan balances of $5.3 million to $5.9 million were in place. Each of those months in that period Respondent received from $53,000.00 to $59,000.00 in fees from Hartmann, for facilitating the loans. **App. 23; 101-107**.

Investing entities included the Norman Trust, the Kuchar Charitable Trust and the Hamel Charitable Trusts I and II. **App. 21-22**. Respondent served as trustee for each of those trusts.

Individual investors included John Dantico, William Young, Bruce York, Thomas Huling, Gary Detmer, and Respondent. Those investors were familiar to Respondent and she talked with them about investing in Hartmann's plan. She told them they could invest with Hartmann's projects through her. **App. 118**. At Hartmann's direction, Respondent told the investors to make their investment checks payable to her. Hartmann received funds from the investors through her. **App. 118**.

Respondent told the investors that their investments (loans) would be secured by either a first or second deed of trust on the houses Hartmann was buying. And, she told them the loans would be limited to 65-70% of the fair market value of the secured property (calculated after renovation was complete). She also told the individual investors that the notes for the loans would include returns of up to twenty percent (20%). Finally, Respondent explained to the investors that repayment was available on request. **App. 22; 117-118**.

When meeting and communicating with the investors (lenders) Respondent did not tell them she represented Hartmann. She neither received nor sought conflict waivers from the investors. And, she did not reveal to her clients or other investors that she was being paid (by Hartmann) a percentage of the funds invested. **App. 23**.

Hartmann, as it turned out, did not secure the loans with first or second mortgages. Instead, he stacked six or seven mortgages together. He later confessed to falsely and fraudulently representing to the "hard money lenders" that the funds would be secured by a specific piece of property. He also admitted that he had assured the "hard money lenders" the loan would be secured by a first or second deed of trust on a specific piece of property. In reality, he would obtain and secure loans from several hard money lenders on the same piece of property. And, Hartmann completed only a portion of the renovations that were intended to be funded by the loans made through Respondent. **App. 21**. Hartmann depleted the investment funds. Several lenders lost their entire investment; among those, Respondent personally lost several hundred thousand dollars. **App. 23**.

Much of the Norman Trust assets invested (by Respondent) with Hartmann were lost. As a result, the Norman Trust beneficiaries, whose payouts were due at Mr. Norman's death, received only a portion of the amounts Mr. Norman intended they receive. **App. 23**.

As the investment funds were depleted by 2007, Thomas Huling and his wife declared bankruptcy. Mr. Hartmann was indicted for bank and mail fraud in a real estate scheme. He was convicted in 2009 and sentenced to two years in federal prison. **App. 21**.

Meanwhile, Respondent was sued, either individually or as trustee, in at least twenty-three civil lawsuits involving activities with Mr. Hartmann. The majority of those lawsuits were quiet title actions to which Respondent consented to judgment. **App. 23-24**.

While investigating the relationship between Hartmann and Respondent, it was discovered that Respondent and her staff were given extensive authority to process and otherwise "facilitate" the investments, interest payments, and fee payments. For example, as attorney for Thomas Huling, Respondent was authorized – under a power of attorney – to execute documents in the real estate transactions. She held power of attorney documents for both Huling and Hartmann. Her staff had "blanket authority" from Huling and Hartmann to sign documents on their behalf. **App. 118.**

Also, the investigation revealed that Respondent's staff had "blanket authority" to sign her name to documents, and that the staff did sign her name to deeds and to checks payable from one of Hartmann's business accounts. That account, denominated as

Taylor Supply, was used by Hartmann to pay Respondent for facilitating the investments. The fee payments, in fact, were made from Hartmann's company (Taylor Supply); the payments were not made directly to Respondent or her law firm, but to another company she controlled. **App. 117**.

The investigation also revealed that Respondent directed her employees, who were also licensed as Notaries, to notarize her signature, as well as Hartmann's and Huling's signatures, even when they were not present. The employees would testify they confirmed the signatures by telephone. **App. 24**.

Investigations by the Securities Division and Law Enforcement

The Securities Division of the Missouri Office of the Secretary of State investigated the Respondent's role in the investment scheme. After investigation Respondent settled the matter under a Consent Order issued by the Commissioner of Securities. **App. 114-122**. She consented to several findings. Neither she, nor Huling, nor Hartmann, were registered as broker dealer agents or investment advisors. She acknowledged selling promissory notes to two investors, telling them they would receive twenty percent per year on the return. She did not disclose to investors that she was not registered to offer or sell securities, that the securities were not registered, that she was being paid by Huling and Hartmann or that there were risks associated with the investment. **App. 116**.

During the Securities Division investigation, Respondent admitted she represented real estate developers Hartmann and Huling and that those men purchased, sometimes repaired, and then sold depressed properties in St. Louis. She admitted facilitating the

loans for Hartmann and Huling; and she acknowledged receiving one percent (1%) of outstanding balances each month. She did not have a license to sell securities. The notes she sold were never registered as securities. Among the information not disclosed to the people who invested through her was: that no appraisals were to be completed on the properties; that Respondent would be paid by Hartmann; and, that there might be risks with the investments. Also, she didn't offer financial or sales information to support the claims of a twenty percent return in a short term. **App. 117-119**.

The Consent Order – entered between the Securities Division and Respondent – concluded that several actions were necessary to protect the public:

> 1. [Respondent, Respondent's] agents, employees and servants, and all other persons participating in the above-described violations with knowledge of this order are permanently enjoined and restrained from offering and selling unregistered, non-exempt securities, omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of Sections 409.3-301 and 409.5-501, RSMo. (Cum. Supp. 2011).
>
> 2. [Respondent] is barred from registering as a securities agent or investment adviser representative in Missouri.
>
> 3. [Respondent] will agree to the suspension of [Respondent's] license to practice law in the State of Missouri and shall not reapply to practice law in Missouri for a period of three years from the date of the effective date of this consent order.

4. [Respondent] is ordered to pay five thousand dollars ($5,000) in restitution. These payments shall be sent within thirty (30) days of the effective date of this Consent Order to the Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101, and shall be payable to the Missouri Secretary of State's Investor Restitution Fund. These payments will be distributed by that Fund to the investors in the amounts as stated in [a document agreed to and attached to the Consent Order].

5. [Respondent] shall pay a civil penalty of ten thousand dollars ($10,000). This payment will be suspended provided that Respondent comply with the terms of this Consent Order, and provided that Respondent does not violate the securities act for a period of three (3) years. The suspended payment shall, for three (3) years from the execution of this document, become immediately payable, under operation of law, upon Respondent's failure to comply with the terms of this order, and such immediately due payment shall be in addition to all other penalties then available under the law. The Commissioner may refer this matter for enforcement as provided in Sections 409.6-603 and 409-6-604, RSMo. (Cum. Supp. 2011).

6. Respondent is ordered to pay ten thousand dollars ($10,000) as the cost of this investigation. This payment will be suspended provided that Respondent comply with the terms of this Consent Order, and provided that Respondent does not violate the securities act for a period of three (3)

years. The suspended payment shall, for three (3) years from the execution of this document, become immediately payable, under operation of law, upon Respondent's failure to comply with the terms of this order, and such immediately due payment shall be in addition to all other penalties then available under the law. The Commissioner may refer this matter for enforcement as provided in Sections 409.6-603 and 409-6-604, RSMo. (Cum. Supp. 2011).

7. Respondent shall pay Respondent's own costs and attorneys' fees with respect to this matter.

App. 120-121.

The Secretary of State has not taken further action. After extensive investigation, law enforcement decided not to pursue criminal charges against Respondent. **App. 24**.

Civil lawsuits against Respondent have resulted in her confession of judgment in Quiet Title actions, in judicial dismissals of actions brought by investor John Dantico and a dismissal of an action brought by investor Bruce York. **App. 23**.

Admitted Violations of Rule 4

Respondent admitted that her conduct resulted in these violations of the Rules of Professional Conduct:

a. Rule 4-1.1 on competence by serving as attorney and trustee for the Charles Norman Trust and dissipating the assets thereof;

b. Rule 4-1.7 on conflicts of interest by representing different clients with different interests in real estate transactions without written

disclosure or obtaining conflict waivers, and/or arranging fee payments by one client (Hartmann) via a percentage of investment money received from other clients;

c. Rule 4-1.8(a) by entering to business transactions with clients without disclosing the nature of the transaction in writing and giving clients the opportunity to seek independent counsel in the matter;

d. Rule 4-1.15 on safekeeping client property by failing to protect the assets of the Charles Norman Trust while serving in a fiduciary capacity as attorney and trustee.

e. Rule 4-1.16(d) by failing to return all property due and owing to clients at the termination of the attorney and fiduciary relationship;

f. Rule 4-8.4(c) by engaging in misrepresentation in not advising clients in writing of the conflicts of interest and the amount of the fee that Respondent was generating from client investments;

g. Rule 4-8.4(d) by engaging in conduct prejudicial to the administration of justice in permitting employees of Respondent to notarize documents not in the presence of the signators.

App. 24-25.

Agreed Sanction Recommendation

Informant and Respondent agreed to recommend that Respondent's license be suspended indefinitely, and that she not be eligible for reinstatement for three years. **App. 30**. In support of the joint recommendation, the parties listed four aggravating

circumstances and three circumstances in mitigation. In aggravation, the parties stipulated that:

a. Respondent had a selfish or dishonest motive in that she was receiving payment as a percentage of client investment without disclosing that payment arrangement to other clients;

b. Respondent engaged in a pattern of misconduct;

c. Respondent had substantial experience; and

d. Respondent failed to make restitution to Bruce York (one of the investors).

In mitigation, the parties stipulated that:

a. Respondent had no disciplinary history;

b. Respondent resolved the lawsuits with many investors; and

c. Respondent cooperated with the Office of Chief Disciplinary Counsel and the Secretary of State Securities Division.

App. 26. A disciplinary hearing panel reviewed and accepted the Stipulation. **App. 124-230**.

POINTS RELIED ON

I.

AS STIPULATED, RESPONDENT VIOLATED THE FOLLOWING RULES OF PROFESSIONAL CONDUCT:

A. RULE 4-1.1 ON COMPETENCE BY SERVING AS ATTORNEY AND TRUSTEE FOR THE CHARLES NORMAN TRUST AND DISSIPATING THE ASSETS THEREOF;

B. RULE 4-1.7 ON CONFLICTS OF INTEREST BY REPRESENTING DIFFERENT CLIENTS WITH DIFFERENT INTERESTS IN REAL ESTATE TRANSACTIONS WITHOUT WRITTEN DISCLOSURE OR OBTAINING CONFLICT WAIVERS, AND/OR ARRANGING FEE PAYMENTS BY ONE CLIENT (HARTMANN) VIA A PERCENTAGE OF INVESTMENT MONEY RECEIVED FROM OTHER CLIENTS;

C. RULE 4-1.8(a) BY ENTERING INTO BUSINESS TRANSACTIONS WITH CLIENTS WITHOUT DISCLOSING THE NATURE OF THE TRANSACTION IN WRITING AND GIVING CLIENTS THE OPPORTUNITY TO SEEK INDEPENDENT COUNSEL IN THE MATTER;

D. RULE 4-1.15 ON SAFEKEEPING CLIENT PROPERTY BY FAILING TO PROTECT THE ASSETS OF THE CHARLES

NORMAN TRUST WHILE SERVING IN A FIDUCIARY CAPACITY AS ATTORNEY AND TRUSTEE;

E. RULE 4-1.16(d) BY FAILING TO RETURN ALL PROPERTY DUE AND OWING TO CLIENTS AT THE TERMINATION OF THE ATTORNEY AND FIDUCIARY RELATIONSHIP;

F. RULE 4-8.4(c) BY ENGAGING IN MISREPRESENTATION IN NOT ADVISING CLIENTS IN WRITING OF THE CONFLICTS OF INTEREST AND THE AMOUNT OF THE FEE THAT RESPONDENT WAS GENERATING FROM CLIENT INVESTMENTS;

G. RULE 4-8.4(d) BY ENGAGING IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE IN PERMITTING EMPLOYEES OF RESPONDENT TO NOTARIZE DOCUMENTS NOT IN THE PRESENCE OF THE SIGNATORS.

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

In re Wallingford, 799 S.W.2d 76 (Mo. banc 1990)

Rule 4-1.1 (2004)

Rule 4-1.7 (2004)

Rule 4-1.8 (2004)

Rule 4-1.15 (2004)

Rule 4-1.16 (2004)

Rule 4-8.4 (2004)

POINTS RELIED ON

II.

A. RESPONDENT'S LICENSE TO PRACTICE LAW SHOULD BE SUSPENDED; SHE SHOULD NOT BE ELIGIBLE TO APPLY FOR REINSTATEMENT UNTIL THREE YEARS AFTER THE COURT IMPOSES DISCIPLINE;

B. SUSPENSION IS APPROPRIATE BECAUSE:

1. ABA SANCTION STANDARDS SUPPORT A SUSPENSION;

2. PREVIOUS DECISIONS OF THIS COURT SUPPORT A SUSPENSION;

3. THE PARTIES HAVE AGREED THAT AN ACTUAL EXTENDED SUSPENSION IS APPROPRIATE; AND

4. THE DISCIPLINARY HEARING PANEL RECOMMENDED A SUSPENSION.

In re Charron, 918 S.W.2d 257 (Mo. banc 1996)

In re Weier, 994 S.W.2d 554 (Mo. banc 1999)

Matter of Lowther, 611 S.W.2d 1 (Mo. 1981)

In re Disney, 922 S.W.2d 12 (Mo. banc 1996)

ABA Standards for Imposing Lawyer Sanctions, (1991 ed.)

ARGUMENT

I.

AS STIPULATED, RESPONDENT VIOLATED THE FOLLOWING RULES OF PROFESSIONAL CONDUCT:

A. RULE 4-1.1 ON COMPETENCE BY SERVING AS ATTORNEY AND TRUSTEE FOR THE CHARLES NORMAN TRUST AND DISSIPATING THE ASSETS THEREOF;

B. RULE 4-1.7 ON CONFLICTS OF INTEREST BY REPRESENTING DIFFERENT CLIENTS WITH DIFFERENT INTERESTS IN REAL ESTATE TRANSACTIONS WITHOUT WRITTEN DISCLOSURE OR OBTAINING CONFLICT WAIVERS, AND/OR ARRANGING FEE PAYMENTS BY ONE CLIENT (HARTMANN) VIA A PERCENTAGE OF INVESTMENT MONEY RECEIVED FROM OTHER CLIENTS;

C. RULE 4-1.8(a) BY ENTERING INTO BUSINESS TRANSACTIONS WITH CLIENTS WITHOUT DISCLOSING THE NATURE OF THE TRANSACTION IN WRITING AND GIVING CLIENTS THE OPPORTUNITY TO SEEK INDEPENDENT COUNSEL IN THE MATTER;

D. RULE 4-1.15 ON SAFEKEEPING CLIENT PROPERTY BY FAILING TO PROTECT THE ASSETS OF THE CHARLES

NORMAN TRUST WHILE SERVING IN A FIDUCIARY CAPACITY AS ATTORNEY AND TRUSTEE;

E. RULE 4-1.16(d) BY FAILING TO RETURN ALL PROPERTY DUE AND OWING TO CLIENTS AT THE TERMINATION OF THE ATTORNEY AND FIDUCIARY RELATIONSHIP;

F. RULE 4-8.4(c) BY ENGAGING IN MISREPRESENTATION IN NOT ADVISING CLIENTS IN WRITING OF THE CONFLICTS OF INTEREST AND THE AMOUNT OF THE FEE THAT RESPONDENT WAS GENERATING FROM CLIENT INVESTMENTS;

G. RULE 4-8.4(d) BY ENGAGING IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE IN PERMITTING EMPLOYEES OF RESPONDENT TO NOTARIZE DOCUMENTS NOT IN THE PRESENCE OF THE SIGNATORS.

Respondent has admitted violating several Rules of Professional Conduct, including Rule 4-1.1 (competence), Rule 4-1.7 (conflicts with clients), Rule 4-1.8(a) (transactions with clients), Rule 4-1.15 (failure to safekeep property), Rule 4-1.16 (failure to return client property), Rule 4-8.4(c) (misrepresentations to clients), and Rule 4-8.4(d) (conduct prejudicial to the administration of justice).

More specifically, she stipulated that the following misconduct resulted in the violations of the Rules of Professional Conduct:

a. As trustee of the Norman Trust, Respondent had a statutory and fiduciary duty to preserve and distribute trust assets per the trust terms. Instead of either preservation or distribution, Respondent invested trust funds in Hartmann's business scheme. She did not take steps to assure the loans to Hartmann were secured in a way to protect the trust assets. Apparently, she made no effort to discover whether Hartmann had stacked other mortgages along with her clients'. And, apparently she made no effort to learn whether Hartmann was actually spending the loan proceeds to improve the real estate's value. As is now known, Hartmann's scheme involved fraud. Several investors lost thousands of dollars. The unfortunate fact the Respondent also invested and lost her own money in the same scheme does not minimize her failure to fulfill her fiduciary obligations. She stipulated that "she violated Rule 4-1.1 on competence by serving as attorney and trustee for the Charles Norman Trust and dissipating the assets thereof."

b. Respondent represented Hartmann in his redevelopment/rehab business interests. She advised him, created business formations, and prepared (and signed) real estate documents on Hartmann's behalf. And, Respondent was paid substantial sums (as much as $59,000.00 per month) for facilitating loans from individual investors to Hartmann. Those investors learned of Hartmann's

business through Respondent. She prepared documents for them to sign; she explained the investments; she told them they would receive a twenty percent return; she explained the loans would be secured by a first or second deed of trust and that the loans would be limited to sixty-five to seventy percent of the property value; she told them they could invest through her; and, she advised them that repayment was available upon demand. She served as a trustee for three investors. Although she denies an attorney-client relationship existed between her and the other individual investors (Dantico, Young, York, and Detmer), she admitted in the Stipulations' Conclusions of Law that she represented "different clients with different interests in real estate transactions" without disclosure, and/or by "arranging fee payments by one client (Hartmann) via a percentage of investment money received from other clients." She stipulated that she "violated Rule 4-1.7 on conflicts of interest by representing different clients with different interests in real estate transactions without written disclosure or obtaining conflict waivers, and/or arranging fee payments by one client (Hartmann) via a percentage of investment money received from other clients."

c. Respondent received (through a company she owned) incentive payments from Hartmann's subsidiary, Taylor Supply, for facilitating loans from her clients to Hartmann's business. Her sales

of the loans to her clients constituted business transactions. As noted, she did not tell the lenders (clients) that she was receiving payments from Hartmann for arranging the sale. And, she did not offer them the opportunity to seek independent counsel. She stipulated that she "violated Rule 4-1.8(a) by entering into business transactions with clients without disclosing the nature of the transaction in writing and giving clients the opportunity to seek independent counsel in the matter."

d. As trustee of the Norman Trust, Respondent had a fiduciary duty to protect the trust assets. She failed in that responsibility by investing over a million dollars from that trust with Hartmann – without securing the investment. She stipulated that she "violated Rule 4-1.15 on safekeeping client property by failing to protect the assets of the Charles Norman Trust while serving in a fiduciary capacity as attorney and trustee."

e. Rule 4-1.16(d) requires attorneys to return client property at the close of the attorney-client relationship. When serving as a fiduciary, even if no attorney-client relationship exists, an attorney has a similar obligation to the beneficiary as to a client. *In re Belz*, 258 S.W.3d 38 (Mo. banc 2008). Respondent did not return the invested funds owed to either her clients or beneficiaries. She stipulated that she "violated Rule 4-1.16(d) by failing to return all

property due and owing to clients at the termination of the attorney and fiduciary relationship."

f. Respondent deceived her clients by failing to tell them that she was generating fees from Hartmann for facilitating her clients' investments. She did, in fact, receive substantial fees each month her clients' funds were invested. For each million dollars of trust funds invested with Hartmann, Respondent received ten thousand ($10,000.00) each month the funds were invested. In other words, Respondent not only lost the Norman Trust fund assets by investing with Hartmann, she personally profited by arranging those investments. She stipulated that she "violated Rule 4-8.4(c) by engaging in misrepresentation in not advising clients in writing of the conflicts of interest and the amount of the fee that Respondent was generating from client investments."

g. Among the tasks Respondent had in representing Hartmann was to approve documents and checks. Hartmann gave her authority to sign and otherwise process real estate documents and to sign checks from his business accounts. Respondent stretched that authority into permitting her staff to notarize those documents outside the presence of the signers. Similar misconduct resulted in a court imposed public reprimand in 1990. *In re Wallingford*, 799 S.W.2d 76 (Mo. banc 1990). Respondent stipulated that she "violated Rule 4-8.4(d)

by engaging in conduct prejudicial to the administration of justice in permitting employees of Respondent to notarize documents not in the presence of the signators."

ARGUMENT

II.

A. RESPONDENT'S LICENSE TO PRACTICE LAW SHOULD BE SUSPENDED; SHE SHOULD NOT BE ELIGIBLE TO APPLY FOR REINSTATEMENT UNTIL THREE YEARS AFTER THE COURT IMPOSES DISCIPLINE;

B. SUSPENSION IS APPROPRIATE BECAUSE:

1. ABA SANCTION STANDARDS SUPPORT A SUSPENSION;

2. PREVIOUS DECISIONS OF THIS COURT SUPPORT A SUSPENSION;

3. THE PARTIES HAVE AGREED THAT AN ACTUAL EXTENDED SUSPENSION IS APPROPRIATE; AND

4. THE DISCIPLINARY HEARING PANEL RECOMMENDED A SUSPENSION.

Informant and Respondent have agreed to recommend that Respondent's license be suspended indefinitely. The agreement does not include probation. It provides that Respondent would need to wait three years after the Court imposes the sanction before becoming eligible to seek reinstatement.

An extended, indefinite actual suspension is a fair disposition where Respondent accepts responsibility and has not had previous discipline, even though she acted

dishonestly by failing to disclose the benefit accruing to her when she brokered sales of securities to her clients.

ABA Sanction Standards

This Court routinely considers ABA Sanction Standards in imposing discipline, *In re Snyder*, 35 S.W.3d 380 (Mo. banc 2000). Imposition of this sanction is consistent with the ABA Standards, specifically:

> **Standard 4.62**
>
> Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client, ABA Standards for Imposing Lawyer Sanctions, (1991 ed.).

Standard 4.61 could also be properly applied in this instance. Under that Standard, "disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another and causes serious injury or potentially serious injury to a client." Here, Respondent's deceit was by omission, in that she failed to disclose that she would receive payments for facilitating clients' loans. Although Informant suggests that either Standard 4.62 (suspension) or Standard 4.61(disbarment) could apply, the parties agreed to recommend an actual extended suspension.

> **Standard 4.12**
>
> Suspension is generally appropriate when a lawyer knows or should know that she is dealing improperly with client property and causes injury or potential injury to the client, ABA Standards for Imposing Lawyer Sanctions, (1991 ed.).

This Standard fits the facts of Respondent's case more than Standard 4.11, which calls for disbarment when a lawyer knowingly converts client property. Most courts apply Standard 4.11 in active theft cases, "where the lawyer's lack of integrity is clear." ABA Standard 4.11 (Commentary). Suspension, the ABA Commentary suggests, was appropriate when a "lawyer took a client's money to invest but did not pay her interest on a regular basis or pay over the client's money upon her demand." Significantly, that attorney acknowledged her indebtedness and had no intent to convert the client's funds. *Disciplinary Board of the Supreme Court v. Banks*, 641 S.W.2d 501 (Tenn.1982).

Standard 4.42(a)

> Suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, ABA Standards for Imposing Lawyer Sanctions, (1991 ed.).

Standards 4.41 to 4.44 primarily relate to diligence. Standard 4.41 calls for disbarment, but only when a lawyer abandons her practice, knowingly fails to perform services, or engages in a pattern of neglect. Facts in the instant case do not justify application of Standard 4.41.

Standard 4.52

> Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client, ABA Standards for Imposing Lawyer Sanctions, (1991 ed.).

Standards 4.51 to 4.54 relate to competence. Standard 4.51(disbarment) does not apply because no evidence is in either the record or otherwise suggested that Respondent does not "understand the most fundamental legal doctrines or procedures," as required under that Standard. Respondent should have known to secure her clients' loans; and, she should have disclosed the fees she was paid to facilitate loans. But, her failings seem not to have arisen from a lack of understanding of fundamental legal doctrines. Standard 4.52 applies here because Respondent failed to assure that her staff would not notarize documents unless the signers were present.

The ABA Standards also suggest courts consider aggravating and mitigating circumstances. Here, Informant and Respondent have agreed to four aggravators and three mitigators. Those are restated here.

Aggravation

1. Respondent had a dishonest or selfish motive in that she was receiving payment as a percentage of client investment without disclosing that payment arrangement to other clients. [Standard 9.22(b), ABA Standards for Imposing Lawyer Sanctions.]

2. Respondent engaged in a pattern of misconduct in the representation of numerous clients. [Standard 9.22(c), ABA Standards for Imposing Lawyer Sanctions.]

3. Respondent had substantial experience in the practice of law, having been licensed since 1993. [Standard 9.22(i), ABA Standards for Imposing Lawyer Sanctions.]

4. Respondent has failed to make restitution to all former clients. [Standard 9.22(j), ABA Standards for Imposing Lawyer Sanctions.]

Mitigation

1. Respondent has no prior disciplinary history. [Standard 9.32(a), ABA Standards for Imposing Lawyer Sanctions.]

2. Respondent resolved lawsuits with many investors. [Standard 9.32(d), ABA Standards for Imposing Lawyer Sanctions.]

3. Respondent has cooperated fully with the Informant in the proceedings, and also has cooperated with the Missouri Secretary of State Securities Division in its investigation. [Standard 9.32(e), ABA Standards for Imposing Lawyer Sanctions.]

Missouri Cases

Guidance might also derive from this Court's analysis of its own cases involving similar ethics rules, even where the facts are not so similar.

In a 2000 case, *In re Snyder*, 35 S.W.3d 380 (Mo. banc 2000), the Court indefinitely suspended an attorney who accepted an interest in his clients' property in payment of his attorney's fees, noting that such an arrangement is subject to "heightened scrutiny and notice requirements," *Id.* at 383. The Court noted that Snyder violated Rules 4-1.7 and 4-1.8 for constructing fee arrangements that created pecuniary interests in derogation of the attorney-client fiduciary relationship, *Id.* at 385. Per the discipline order, Attorney Snyder was permitted to seek reinstatement after six months, *Id.* at 385.

The Respondent's misconduct in the instant case is significantly more serious than that involved in the *Snyder* case. In *Snyder*, the attorney engaged in misconduct in an attempt to recover his attorney's fees. The misconduct in the instant case is exacerbated by the fact that Respondent's scheme involved dishonest and deceitful conduct and violated other provisions of the Rules of Professional Conduct.

In 2008, the Court issued an indefinite suspension - with no leave to apply for reinstatement for three years - to Attorney Mark Belz. He had misappropriated significant funds from an estate and a trust. The Court found that case unique because of several mitigating circumstances, including self-report, restitution, a bi-polar condition that was then found to have caused his misconduct, and apparent successful management of that condition after the misconduct. Except for partial restitution, these mitigating factors do not exist in the instant case. On the other hand, Belz admittedly and directly misappropriated fiduciary funds. While this Respondent's receipt of fees for facilitating investments by her clients and the trusts is unacceptable, it was not a conversion of client funds. *In re Belz*, 258 S.W.3d 38 (Mo. banc 2008).

In the 1999 *Weier* case involving conflicting business interests, a dissenting judge would have imposed an extended suspension for an attorney who failed to disclose his personal financial interests with his clients who were negotiating a substantial business relationship. The Court, upon analysis, issued a public reprimand to Attorney Weier. Not surprisingly, in both *Weier* and the instant case, the business owners and the attorneys offered differing views on the existence of an attorney/client relationship. This analysis from the *Weier* majority opinion offers guidance:

> In light of Mr. Weier's cooperation in the investigation of this matter, his excellent reputation among his colleagues in his community, and the absence of any serious harm to his clients, this Court hereby publicly reprimands Mr. G. William Weier for his failure to disclose his financial involvement in the Doctors Stone Group. This result is consistent with the comments following *A.B.A. Standards for Imposing Lawyer Sanctions,* § 4.33[10] which note that reprimand is the most appropriate sanction where, "a lawyer engages in a single instance of misconduct involving a conflict of interest when the lawyer has merely been negligent and there is no overreaching or serious injury to the client."

In re Weier, 994 S.W.2d 554, 558-59 (Mo. banc 1999).

Two opinions from the Spring of 1996 should be helpful. In the first, *In re Charron*, the Respondent served as trustee for a deceased client's trust and as personal representative of the client's estate. In his position as Personal Representative, Respondent placed his own interests, as a creditor of the estate, ahead of other estate interests and failed to seek the appointment of a Guardian ad Litem. The majority determined that, though Respondent was owed certain funds, his conduct constituted misappropriation because he failed to separate himself from the decision making process. For that misconduct he was charged with a conflicts violation (Rule 4-1.7); he was also charged with a competence violation (Rule 4-1.1), and a diligence violation (Rule 4-1.3) because a business owned by the trust lost value while under his watch. Finally, he was charged with violating Rule 4-1.15 (failing to return client property) for his failure to

deliver the client file and for misappropriating $20,000.00 from the probate estate. The majority's analysis that Charron was actually owed the funds served as a key mitigating factor. Mr. Charron's license was suspended indefinitely. He was permitted to seek reinstatement after one year. *In re Charron*, 918 S.W.2d 257 (Mo. banc 1996).

One month after the Court decided the *Charron* case, another opinion was issued involving fraud, conflicts, and failures of diligence and communication. The Court found no violations of the conflicts, communication, and diligence rules because no attorney-client relationship was established and therefore, those duties were not owed. But, that lawyer's dishonesty and fraud did constitute violations; the Court referenced earlier cases that "questions of honesty go to the heart of fitness to practice law" and that discipline for violation of Rule 4-8.4(c) – involving dishonesty – "does not depend on the existence of an attorney-client relationship." *In re Disney*, 922 S.W.2d 12, 15 (Mo. banc 1996).

Attorney Disney used a client's trust to shield assets from his ex-wife, who held a judgment against him. He also borrowed funds from a person named Stauffer, who believed that Disney was his attorney at that time. Disney told Stauffer that he would record a deed of trust on the property that was purportedly intended to secure his loan from Stauffer, but he did not. Also, he failed to pay taxes or insurance premiums on the property, although he had also promised to do that. Upon finding Disney had engaged in dishonesty and fraud, the Court suspended his license indefinitely. Per the order, he was allowed to seek reinstatement after six months. *In re Disney*, 922 S.W.2d at 15-16.

In a 1981 case involving conflicting business arrangements and self-dealing, the Court suspended a lawyer indefinitely and prohibited his reinstatement for one year. In

that case, Attorney Lowther was found to have negotiated a personal stake in an investment loan being made by a corporation he represented. He was a shareholder and board member of that Springfield corporation; and, he had helped the corporation invest in two New Mexico mining companies. The mining companies' principal owner needed additional funds to proceed. In exchange for the loan from the corporation, the principal owner gave Respondent and four other board members an additional two percent interest in the mining companies. Other board members and the corporation were not aware that Respondent and the four had received the two percent bonus.

The Court found "that in December 1968, respondent used his position as an attorney for Founders of American Investment Corporation to obtain one-fifth of 2% of certain mining interests as a condition precedent to the corporation's guaranteeing certain loans." In a second count, the Court found "that between 1972 and 1974, respondent, a partner in the law firm of Miller, Fairman, Sanford, Carr and Lowther, deposited to his own account increases in retainers paid by two corporate clients of the firm," without sharing the amounts per the partnership agreement. *Matter of Lowther*, 611 S.W.2d 1 (Mo. 1981).

In writing the Lowther opinion, the Court identified problems occurring when lawyers do business with their clients; the analysis is aptly suited to the instant case:

> The matter before the Court illustrates the inherent danger of becoming personally involved with the affairs of clients, self dealing with clients, and of "taking a piece of the action". The attorney, with his superior knowledge and education, can pursue this course only at his peril. It is an

> area wrought with pitfalls and traps and the Court is without choice other than to hold the attorney to the highest of standards under such circumstances.

Matter of Lowther, 611 S.W.2d 1, 2 (Mo. 1981).

Attorney Lowther, as noted, received an indefinite suspension and was permitted to apply for reinstatement after one year. *Matter of Lowther***,** 611 S.W.2d 1, 11-12 (Mo. 1981).

In the instant case, Respondent's conduct is of a nature that could warrant disbarment. However, she cooperated with the Informant and with the Securities Division of the Missouri Secretary of State. Respondent essentially stopped practicing law a number of years ago. She has not been charged with a crime. With the exception of one pending case, the civil litigation has been resolved. Whether Respondent were to receive a disbarment or a substantial suspension, the barrier to reinstatement would be high. Restitution to clients, and any money owed to the Missouri Bar Client Security Fund, would be significant issues in any reinstatement application. Finally, whether a lawyer is disbarred or suspended, Rule 5.28 permits the Court to determine - at the time of the reinstatement application - whether the best interests of the public will be served by reinstatement.

CONCLUSION

Informant respectfully asks the Court to find that Respondent, Lisa Krempasky, violated the Rules of Professional Conduct, as stipulated, and to indefinitely suspend Respondent's license to practice law, with no leave to apply for reinstatement for three years. An actual, extended suspension will protect the public and maintain the integrity of the profession. Upon balancing the aggravating and mitigating circumstances, a suspension is in conformity with sanctions imposed by this Court in other cases involving self dealing. It is also supported by application of the ABA Standards for Imposing Lawyer Sanctions.

Respectfully submitted,

ALAN D. PRATZEL #29141
Chief Disciplinary Counsel

By: _____
Sam S. Phillips #30458
Deputy Chief Disciplinary Counsel
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400 – Phone
(573) 635-2240 – Fax
Sam.Phillips@courts.mo.gov

ATTORNEYS FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of July, 2014, a true and correct copy of the foregoing has been sent to Respondent via first-class mail to:

Lisa D. Krempasky
PO Box 21718
St. Louis, MO 63109

Sam S. Phillips

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 6,635 words, according to Microsoft Word, which is the word processing system used to prepare this brief.

Sam S. Phillips