

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

LISA D. KREMPASKY,

Respondent.

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Supreme Court #SC94158

INFORMANT'S REPLY BRIEF

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ARGUMENT

I.

THE PARTIES ARE BOUND BY ADMITTED FACTS, VIOLATIONS, AND A STIPULATED SANCTION RECOMMENDATION; SUFFICIENT FACTS AND VIOLATIONS ARE ESTABLISHED FOR THE COURT'S DETERMINATION OF A SANCTION. THE COURT IS NOT BOUND BY THE PARTIES' STIPULATION.

The Court is directed to Informant's initial brief for a recitation of facts, with extensive references to Respondent's admissions and other components of the record, and for a description of the stipulated conclusions of law – establishing violations of the Rules of Professional Conduct. Informant's initial brief also contains an argument for disposition in conformity with the agreed sanction: an actual, indefinite suspension with no leave to apply for reinstatement for three years.

This reply brief is intended to address issues raised in Respondent's Brief.

Respondent's Brief is Unsupported by the Record

Respondent's brief makes no references to the record in the case. Most of the assertions of fact made in Respondent's Statement of Facts and Argument could not be supported by the record. The claims have not been and cannot be verified; they should be afforded limited weight at this point.

Respondent Has Stipulated to Certain Facts

To the extent that any assertions in Respondent's brief are inconsistent with facts stipulated, or inconsistent with facts acknowledged in the Consent Order reached with the Securities Division, the stipulated facts should control.

The Record is Adequate for the Court to Determine Facts, Violations, and Sanctions

Respondent's brief includes unsupported assertions that, if proven, might add color to the record. But, nothing in the brief, even if proven, relieves Respondent of responsibility for misconduct established by the admissions in the Stipulation. The Stipulation itself proves facts essential to findings of serious misconduct. The Stipulation itself establishes that Respondent is guilty of violating the Rules of Professional Conduct in the following manner:

- (a) Rule 4-1.1 (competence) for dissipating the Norman Trust assets while serving as attorney and trustee; **App. 25**
- (b) Rule 4-1.7 (conflicts) by representing different clients with differing interests in real estate transactions without written disclosure or waiver and/or by arranging fee payments by one client via a percentage of investment funds received from other clients; **App. 26**
- (c) Rule 4-1.8 (conflicts) by entering business transactions with clients without disclosing the nature of the transaction in writing or giving the clients the opportunity to seek independent counsel; **App. 26**

(d) Rule 4-1.15 by violating fiduciary duty in that Respondent failed to protect the Norman Trust assets while serving as a trustee and attorney for the trust; **App. 26**

(e) Rule 4-1.16(d) by failing to return clients' property; **App. 26**

(f) Rule 4-8.4(c) by misrepresentation by failing to advise her clients of the conflicts and the fees generated by investing their funds; **App. 26**

(g) Rule 4-8.4(d) by permitting staff to notarize documents outside the presence of the signators. **App. 26.**

Further, regardless of any equivocation in the brief, Respondent has admitted "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." **App. 27**

Those facts and conclusions are finally determined. As this Court has explained, "[s]tipulations varying or altering trial procedure, or waiving the benefit of procedural statutes, have been consistently enforced by our courts in the absence of any claim of fraud, duress or mistake ..." *Akers v. City of Oak Grove*, 246 S.W.3d 916, 922 (Mo. 2008) citing *Pierson v. Allen*, 409 S.W.2d 127, 130 (Mo.1966). As importantly, the admitted facts provide sufficient grounds for an indefinite suspension. Respondent's equivocation should be discounted except as it may serve as an aggravating circumstance by indicating a refusal to acknowledge the wrongfulness of the misconduct.

The Parties' Stipulation Does Not Limit the Court

The parties are bound by the facts and conclusions admitted. Logically, the parties' recommendations for sanction should constrain either party from deviating from

that recommendation. But, the stipulation made no effort to bind the Court. Indeed in the stipulation, the parties explicitly recognize the Court's authority to find facts, determine violations, and impose a sanction without further process. In Paragraph 2(a) of the Stipulation, the parties agreed: "The Joint Stipulation as to Facts, Proposed Conclusions of Law and Joint Recommendation is not binding on the Court." **App. 19.** Paragraph 2(c) establishes more: "Regardless of whether the Court accepts or rejects the recommended discipline, Informant and Respondent agree to be bound by the stipulations contained in this Joint Stipulation of Facts, Joint Proposed Conclusions of Law and Joint Recommendation for Discipline." **App. 20.**

Respondent Has Agreed to an Indefinite Suspension

Respondent's brief suggests that the facts, circumstances, and case law might indicate a reprimand or a one year suspension. The brief also seeks a retroactive application of Respondent's suspension to March 1, 2013; it was on that date that Respondent was suspended (for failure to meet MCLE obligations under Rule 15).

Respondent has agreed in a Joint Stipulation to an indefinite suspension with no eligibility for reinstatement for at least three years. The parties should be held to their joint recommendation for discipline, *Akers v. City of Oak Grove*, 246 S.W.3d at 922.

CONCLUSION

Informant asks the Court to conclude this case on the basis of the parties' stipulation and the record. The admitted facts and conclusions support an actual lengthy suspension, as agreed. That stipulated sanction is appropriate and will protect the public and maintain the integrity of the profession. If the Court determines that the record supports a different sanction, Informant nevertheless asks the Court to conclude the case by imposing a sanction the Court deems fitting. Given the Court's authority to decide the case without regard to the recommended disposition and in light of Respondent's admission of serious misconduct, this case is ripe for disposition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of August, 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 1,196 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and



Sam S. Phillips