IN THE SUPREME COURT

STATE OF MISSOURI

IN RE:	)	
	)	
DAVID R. SWIMMER,	)	**Supreme Court #SC94235**
	)	
Respondent.	)	

INFORMANT'S BRIEF

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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.

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STATEMENT OF FACTS

This case is before the Court following Respondent's rejection of the disciplinary hearing panel's recommendation that he be indefinitely suspended from the practice of law with no leave to apply for reinstatement until after eighteen (18) months for commingling and transacting personal business from his client trust account in violation of Rules 4-1.15(c) and (e) and 4-8.4(c), and for misconduct arising out of his Title VII legal representation of Margo Webster in violation of Rules 4-1.4, 4-1.5, 4-1.16(d), and 4-8.4(a) and (d). **App. Vol. 3, pg. A449.**[1]

Background and Disciplinary History

Respondent is David R. Swimmer who was licensed as an attorney in Missouri on April 28, 1973, with Missouri Bar number 22827. **App. Vol. 1, pg. A149.** Respondent has a significant disciplinary history.

On June 25, 1992, Respondent was admonished for (1) failing to communicate to a client that Respondent intended to receive one-third of the insurance proceeds as a component of his contingent fee, (2) failing to clearly state the terms of a fee agreement to a client (prior to its alteration by Respondent), and (3) altering a copy of a fee agreement Respondent sent to the insurance company in a manner that misrepresented the terms of

[1]The facts contained herein are drawn from the record on appeal, the testimony at the hearing, and the exhibits received. Citations to the record are denoted by the appropriate Appendix page, for example **"App. Vol.__, pg. A__"**.

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the actual fee agreement in violation of Rules 4-1.5(b) and (c) and 4-8.4(c). **App. Vol. 3, pg. A378.**

On September 10, 1992, Respondent was admonished for (1) incompetent handling of an independent adoption and (2) misrepresenting a material fact to the court in violation of Rules 4-1.1, 4-3.3(a)(1), and 4-8.4(d). **App. Vol. 3, pg. A380.**

January 26, 1995, Respondent was admonished for (1) holding back a portion of settlement proceeds to pay the bill of a treating doctor, (2) not paying the doctor, and (3) commingling the monies held back with Respondent's personal funds in the client trust account in violation of Rules 1.15(a) and (b) and 4-8.1(b). **App. Vol. 3, pg. 382.**

On August 29, 1996, Respondent was admonished for charging his clients an additional $400 to conclude a guardianship, a task which was contemplated by Respondent in the original contingency fee agreement in violation of Rules 4-1.15(c), 4-1.4, and 4-1.5. **App. Vol. 3, pg. A384.**

On May 1, 2000, Respondent was admonished for "using [his] law office as a studio to take nude photographs of a client, indicat[ing] a complete lack of judgment as well as leading the client to believe that by posing nude for [him] in pursuit of [his] own interests would influence [his] willingness to assist her with her legal problems creating a potential conflict of interest" in violation of Rule 4-8.4(c). **App. Vol. 3, pg. A387.**

Also on May 1, 2000, Respondent was separately admonished for violating Rule 8.4(c) in the following respect:

> In your role as an attorney representing clients in personal injury cases, it is completely inappropriate for you to ask your

> client to disrobe so that you can look more closely at any of their alleged injuries. Such conduct would indicate that you have some type of advanced medical knowledge when in actuality your request for these women to disrobe in your office is in furtherance of your own interests. **App. Vol. 3, pg. A389.**

On January 28, 2003, Respondent was admonished for (1) failing to adequately determine a client's "right to sue" cut off date for an employment claim against the department of employment security and (2) for failing to return a client's file by wrongly asserting that the client must pay for a copy in violation of Rules 4-1.3 and 4-1.6(d). **App. Vol. 3, pg. A391.**

On September 27, 2007, this Court entered an Order (**App. Vol. 3, pg. A393**), based on a Joint Stipulation as to Discipline (**App. Vol. 3, pg. A399**), suspending Respondent for six (6) months, with the suspension stayed, and placing Respondent on probation for twelve (12) months for violating Rules 4-1.1, 4-1.4, 4-1.5, 4-8.4(c), and 4-1.16(d) by mishandling three legal representations:

- Respondent charged a non-refundable fee of $1,160 to recover sick leave owed to a client from the client's employer. Respondent prepared *pro se* pleadings and discovery for the client but did not clearly or timely communicate what was to be done by Respondent or by the client. Respondent then withdrew from the representation without filing the claim or refunding any monies.
- After an initial consultation with Respondent, a client filed a *pro se* employment lawsuit in federal court. Upon receiving a notice of the Rule 16 conference and

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the need for preparation of a Joint Proposed Scheduling Plan, the client hired Respondent on an hourly rate with the payment of a "minimum non-refundable fees and costs on account of $580." Also, Respondent asked the client to sign a contingency fee retainer agreement to supplement the hourly fee agreement. The next day, the client contacted Respondent and told him she wanted to cancel the contingency fee agreement and proceed only under the hourly contract. Respondent abruptly terminated the attorney-client relationship.

- Respondent was hired to represent a client in various employment, unemployment, and worker's compensation matters and claims but did not complete the work. After receiving $450 from his client as a "minimum non-refundable fees and costs on account of $450" to pursue a claim for unemployment benefits, Respondent performed no such services and admitted having "minimal experience" in unemployment matters.

App. Vol. 3, pg. A399.

As a term of the Joint Stipulation as to Discipline, Respondent stipulated as aggravating factors his "many years in the practice of law and his prior disciplinary history involving issues of communication, excessive fees and termination of representation which are present in this case." **App. Vol. 3, pg. A404**. The terms of probation included full restitution to each client and law practice management education. **App. Vol. 3, pg. A405.**

In an Amended Order dated October 20, 2008, this Court found that Respondent had successfully completed the probationary period and terminated his probation. **App. Vol. 3, pg. A395.**

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The Information

In the instant disciplinary matter, Informant filed a First Amended Information on January 31, 2014. **App. Vol. 1, pg. A149**. With consent, paragraphs 9 and 12 were stricken by counsel for Informant. **App. Vol. 1, pg. A71**. Alleged are Count I: violations of Rules 4-1.15(c) and (e), Effective January 1, 2010, and 4-8.4(c) regarding the safekeeping of client funds, and Count II: violations of Rules 4-1.1 (competency), 4-1.4 (communication), 4-1.5 (excessive fees), 4-1.16(d) (termination of representation), and Rule 4-8.4(a) and (d), regarding the representation of Margo Webster in a Title VII employment discrimination matter. **App. Vol. 1, pg. A149**.

At the disciplinary hearing on March 4, 2004, testimony was adduced from Kelly Dillon from the Office of Chief Disciplinary Counsel and from Margo Webster, a former client of Respondent. Respondent testified in person under direct examination and from both Informant's counsel and his own counsel. **App. Vol. 3, pg. A420**.

Count I: Safekeeping of Client Funds

Kelly Dillon, the Investigative Examiner Paralegal for the OCDC,[2] testified that the office received a notification from the Bank of America that Respondent's client trust account was overdrafted on March 16, 2012. **App. Vol. 1, pg. A75**. The specific cause of the overdraft was a check payable to the Bar Association of Metropolitan St. Louis

[2] Ms. Dillon has testified over 50 times concerning trust account violations by attorneys licensed in the State of Missouri. **App. Vol. 1, pg. A75**. (*See* Kelly Dillon's CV at **App. Vol. 1, pg. A167.)**

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("BAMSL") for a payment of a fee due on a case referred to Respondent through the Lawyer Referral and Information Service. **App. Vol. 1, pg. A75**.

Due to Respondent's prior disciplinary history and previous Rule 4-1.15 violation, Ms. Dillon asked Respondent to produce copies of the prior twelve months of client trust account records. **App. Vol. 1, pg. A76**.

In his first written response, Respondent stated: "The Overdraft Notification Program this Office has already set up (sic) with my Bank requires that the Bank notifies (sic) me if there appears to be a math error. This occurred as so designed a week ago last Saturday evening and when I received same, this Account was immediately corrected by early Sunday morning, with no ISF checks." **App. Vol. 2, pg. A183**. In a subsequent written response, Respondent reiterated that the Overdraft Notification Program worked, and that he "transferred more than enough funds [in the client trust account] to cover this one withdrawal." **App. Vol. 2, pg. A185**. During a follow up call, Ms. Dillon learned from Respondent that the bank's program was either drawing money out of one of Respondent's other accounts or was providing him a line of credit tied to his trust account. She told Respondent that neither concept complied with the trust accounting rules because both of them would require Respondent's personal funds to be placed into the client trust account. **App. Vol. 1, pg. A77**.

Ms. Dillon collected the records, but only after having to send a subpoena to the bank. **App. Vol. 1, pg. A77**. She prepared a spreadsheet analyzing Respondent's trust account transactions from April 4, 2011 through March 22, 2013. **App. Vol. 2, pg. A171**. Ms. Dillon's analysis revealed the following:

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1. Seven (7) instances when Respondent wrote checks for personal expenses: (1) Check No. 9717 to Edward Jones in the amount of $5,130.00; (2) Check No. 9718 to Office Max in the amount of $75.27; (3) Check No. 9722 to Keith Haus in the amount of $35.00; (4) Check No. 9730 to U. City Alterations in the amount of $25.00; (5) Check No. 9756 to Befit Health in the amount of $30.00; (6) Check No. 9767 to St. Louis Mobile Tech in the amount of $150.00; and (7) Check No. 9777 to BAMSL for a case referral (which caused the overdraft) for $100.00. **App. Vol. 1, pg. A77; App. Vol. 2, pg. A180**.

According to Ms. Dillon's testimony, writing checks to personal creditors out of the client trust account is commingling. She stated: "Mr. Swimmer shouldn't have any of his own funds in the client trust account. So he should not have the source of funds to make personal payments from the client trust account, unless, of course, he was using client money, which would be an even worse scenario." **App. Vol. 1, pg. A77**. She also testified that the case referral fee to BAMSL should have come from the lawyer's earned fees, not out of the trust account. **App. Vol. 1, pg. A84**. She added: "The client trust account has what is like a protective veil over it. And this is where the lawyers keep client and third-party funds. And the protective veil keeps it safe from the lawyer's own creditors." **App. Vol. 1, pg. A77**. In her experience with the OCDC, Ms. Dillon knows of specific incidents where creditors of a lawyer have attempted to garnish a client trust account. **App. Vol. 1, pg. A77**.

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2. Three (3) instances when Respondent deposited personal funds into his client trust account: (1) an endorsed treasury check for $5130.00 payable to him and his wife, (2) $100.00 in funds to cover the overdraft; and (3) $2092.90 in earned fees from his representation of his client, Mr. Packer. **App. Vol. 1, pg. A78**.

Ms. Dillon testified that depositing personal funds into the client trust account is a violation of the rules. **App. Vol. 1, pg. A78**.

3. Three (3) instances when Respondent failed to "sweep out" all of his earned attorney's fees from his client trust account: (1) the Davis settlement when Respondent left behind $70.60; (2) the Packer settlement when Respondent left behind $210.50; and (3) the Tegeler settlement when Respondent left behind $773.20. **App. Vol. 1, pg. A79**.

According to Ms. Dillon's testimony, Rule 4-1.15 only permits a lawyer to deposit enough of his own funds in the client trust account to cover bank service charges. **App. Vol. 1, pg. A79**. There was no indication of any service charges for Respondent's Bank of America trust account. **App. Vol. 1, pg. A79**.

Ms. Dillon characterized Respondent's knowledge of the rule violations in this way:

> As far as his motivations with regard to the client trust account, I believe that his use of the client trust account was inappropriate. I believe that he was well enough aware of the rules to know that payments for personal expenses from the client trust account was inappropriate; that the deposit of

> personal funds to the client trust account was inappropriate; and that, obviously, he failed to sweep his earned fees from the client trust account, because that's what he used to fund his personal payments from the trust account. **App. Vol. 1, pg. A86**.

Respondent testified that he was advised by his accountant that he could keep firm money in his trust account to pay business expenses, and that is what he did. **App. Vol. 1, pg. A101**. Respondent believed what he did was appropriate. **App. Vol. 1, pg. A102**. His rationale was that it made tax recordkeeping easier and benefited "my tax picture if I can pay my business expenses with pretax money." **App. Vol. 1, pg. A102**.

In his closing memorandum, counsel for Respondent stated that Respondent violated the client trust account rules:

> Mr. Swimmer has conceded that he commingled funds in his trust account by leaving fees to which Mr. Swimmer was entitled in the trust account (instead of sweeping the funds outs) and using those (his) funds to pay expenses directly from the trust account. Mr. Swimmer also admitted that he sometimes disbursed funds from his trust account became "good." Such premature disbursements include the $100 payment to BAMSL that triggered the overdraft notice. Mr. Swimmer has therefore admitted to violating Missouri

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Supreme Court Rules 4-1.15(c) and (e). **App. Vol. 1, pg. A121**.

Count II: Margo Webster's Title VII and Employment Discrimination Matters

Margo Webster, an African-American female, graduated in 1986 from Bishop DuBourg High School in St. Louis and received her undergraduate degrees in computers, secretarial, and business from Forest Park Community College. **App. Vol. 1, pg. A108**. She went to work at the Collector of Revenue Office in the City of St. Louis in November of 1991 until she was terminated in July of 2005. **App. Vol. 1, pg. A108**. While working for the Collector, she achieved a Master of Business Management degree and eventually her MBA. **App. Vol. 3, pg. A108**.

Ms. Webster began her career as a seasonal employee during income tax season. She put in a request for a transfer to the earning tax floor which was granted by her supervisor and Assistant Collector, Rosemarie Storey. **App. Vol. 1, pg. A108**. Ms. Storey saw that Ms. Webster was excelling and told that to the Collector, Ronald A. Leggett. **App. Vol. 1, pg. A108**. Ms. Storey moved Ms. Webster to data processing and promoted her to supervisor. **App. Vol. 1, pg. A108**. She held that position for three years. **App. Vol. 1, pg. A108**. Ms. Storey was happy with Ms. Webster's work, as was Mr. Leggett. Mr. Leggett congratulated Ms. Webster upon her completion of her first master's degree, and stated: "You did a very good job. I really wish the rest of them would do that." **App. Vol. 1, pg. A108**.

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Then, in 2002, Ms. Webster became the subject of a rumor at work that she made a threatening remark to someone. **App. Vol. 1, pg. A109**. Her new supervisor removed her from her office and transferred her to a different floor with different duties. **App. Vol. 1, pg. A109**. Ms. Webster was upset and used the lawyer referral service to locate an attorney. That attorney was the Respondent. **App. Vol. 1, pg. A109.** Ms. Webster paid Respondent the $30.00 referral fee and met with him. **App. Vol. 1, pg. A109**. According to Ms. Webster, Respondent "talked with me, and I explained to him what happened, and he said, You don't seem like a person who fits that criteria or character. And I assumed he was saying, I'm not a violent person." **App. Vol. 1, pg. A109**. Ms. Webster signed Respondent's Hourly Employment Contract for "legal counsel in connection with employment issues for $225.00/hour and a payment of a minimum, non-refundable fees and costs on account of $450 upon the signing of [the] Agreement." **App. Vol. 1, pg. A109**. Upon receiving payment, Respondent wrote to Ms. Webster's employer to offer to enter into discussions to "cooperate [with and] to continue Ms. Webster's contribution from her past career position with you." **App. Vol. 2, pg. A193**.

According to Ms. Webster, the letter did not do any good. She was never relocated, and her duties were never restored. **App. Vol. 1, pg. A109**.

Her situation at work in 2003 and 2004 continued to deteriorate. **App. Vol. 1, pg. A109**. She became the subject of another rumor that she had written letters to the St. Louis Sentinel disparaging Mr. Leggett. **App. Vol. 1, pg. A109**. Co-employees began to harass her:

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> Well, they were making statements like, Well, you got all that knowledge. You need to go find somewhere else to go. You don't -- you need to stay in your place. You need to stop going to school. I was hearing other things like, Niggers are not successful. I mean, just all kinds of horrible – I was cursed out several times. One young lady put dirt in my water, which I didn't know was in there, and I drink it and got sick later. One of the gentlemen literally almost pushed me down the steps. The same lady that put the dirt in the water, she was backing her car up on me. Another young lady from the earnings tax department walked behind me and told me
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> to go the F home. **App. Vol. 1, pg. A110**.

Co-employees were telling her "to get out." Her manager called her in his office and told her: "You need to get out. You don't need to be here." **App. Vol. 1, pg. A110**.

The situation was getting hard for Ms. Webster and she called and met with Respondent again. **App. Vol. 1, pg. A110**. She told Respondent she felt she was being discriminated against, that she didn't know what to do, and couldn't take it any more. **App. Vol. 1, pg. A110**. According to Ms. Webster, Respondent said: "I understand because you are in a patronage job, but this is something we can handle." **App. Vol. 1, pg. A110**. On December 23, 2004, Respondent had Ms. Webster sign a second Hourly Employment Contract for "legal counsel in connection with Title VII Investigation for $285.00/hour and

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a payment of a minimum, non-refundable fees and costs on account of $550 upon the signing of [the] Agreement." **App. Vol. 2, pg. A194**.

Ms. Webster obtained a copy of an EEOC Questionnaire from the St. Louis district office. **App. Vol. 1, pg. A110**. She testified that she typed out the charges, although Respondent in his testimony claimed he did. **App. Vol. 1, pg. A110; App. Vol. 1, pg. A93.** The Questionnaire had several sections and boxes. Ms. Webster filled out the "Harassment" section and indicated she was being discriminated and retaliated against based on her race, sex, and educational background. **App. Vol. 2, pg. A195**. Her attached narrative described how other women in the office were jealous and mistreating her because she was the only African–American female with a degree. **App. Vol. 2, pg. A200**. She listed Respondent as her attorney. **App. Vol. 2, pg. A195**.

There was a separate "Section F" on the form marked: "Retaliation" which was for reporting negative employment actions taken by the employer in response to the employee exercising her rights under the EEOC. Section F was left blank when the Questionnaire was signed by Ms. Webster and filed with the EEOC on January 6, 2005. **App. Vol. 2, pg. A199**. The filed EEOC Questionnaire is part of Respondent's client file. **App. Vol. 1, pg. A92**.

On February 25, 2005, both Ms. Webster and Respondent received a letter from an Investigator from the St. Louis EEOC District Office requesting additional information about Ms. Webster's charges. **App. Vol. 2, pg. A204**. On March 15, 2005, Respondent sent the Investigator a letter confirming telephone calls the previous day and requesting a "Right to Sue" letter for Ms. Webster. **App. Vol. 2, pg. A205**.

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In the meantime, Ms. Webster's problems at the Collector's Office were getting worse. On March 14, 2005, Senior Assistant Collector, James Whitmore, delivered to Ms. Webster a written "Reprimand" for allegedly using too much sick time and emergency leave time. **App. Vol. 2, pg. A208**. At no time in her 14 years with the Collector's office had Ms. Webster ever been accused of attendance issues. **App. Vol. 1, pg. A111**. Ms. Webster felt the Reprimand was unjustified because she had hundreds of hours of unused sick and vacation time. **App. Vol. 1, pg. A111.** She tried to explain that to Mr. Whitmore, but Mr. Whitmore insisted she sign the Reprimand. **App. Vol. 1, pg. A111**. On March 21, 2005, Mr. Whitmore delivered a second letter to Ms. Webster stating that if she failed to sign the Reprimand, she would "receive additional discipline action." The letter also stated that: "This action is due to your continue (sic) demonstration of poor work performance and insubordination." **App. Vol. 2, pg. A207**. At no time in her 14 years with the Collector's office had Ms. Webster ever been accused of such issues. **App. Vol. 1, pg. A111**. On March 22, 2005, Mr. Whitmore delivered a written three-day Employment Suspension "for your continue (sic) work deficiencies, abusive sick/emergency vacation usage," and insubordination. **App. Vol. 2, pg. A209**.

Ms. Webster faxed the letters to Respondent, but he never discussed the situation with her, specifically that the reprimand and suspension could be in retaliation for filing an EEOC complaint. **App. Vol. 1, pg. A111**. Respondent testified that the faxed letters were part of his client file. **App. Vol. 1, pg. A92**.

On March 31, 2005, the EEOC issued Ms. Webster's Right to Sue letter, with a copy sent to the Collector's office. **App. Vol. 2, pg. A206**.

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On April 7, 2005, Respondent sent Ms. Webster a copy of her Right to Sue letter with a cover letter requesting that she pay him $1,350 (which included the $350 federal court filing fee) and complete the enclosed "Client Descrimination (sic) Pre-Litigation Homework" so that he could file the lawsuit. **App. Vol. 2, pg. A210**. The letter also stated there was a 90-day time limit in which to file the lawsuit. **App. Vol. 2, pg. A210**.

On May 19, 2005, Respondent sent Ms. Webster another letter saying that "you hadn't "retained this Office yet," and that there is a 90-day timeline to sue. **App. Vol. 2, pg. A214**.

On June 5, 2005, Respondent had Ms. Webster sign a third Hourly Employment Contract for "legal counsel in connection with Title VII federal district lawsuit for $285.00/hour and a payment of a minimum, non-refundable fees and costs on account of $1000 upon the signing of [the] Agreement." **App. Vol. 2, pg. A215**. On July 8, 2005, Ms. Webster made a partial payment toward the $1,000, and then on June 17, 2005 the final installment, which was enclosed with a letter to Respondent promising the homework Respondent had requested. **App. Vol. 2, pg. A217**. Respondent sent additional letters to Ms. Webster requesting the homework. **App. Vol. 2, pg. A216, A220**.

A few days before the deadline to file the lawsuit, Ms. Webster and her mother showed up at Respondent's office with nine pages of detailed homework. **App. Vol. 1, pg. A111**. During their meeting, Respondent related a story to Ms. Webster about another young, African-American female who was being harassed by an older female, but then he said that he didn't have time to help Ms. Webster, and she should go file the lawsuit herself. So, she and her mother left. **App. Vol. 1, pg. A112**.

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On June 29, 2005, Ms. Webster, on her own, completed a fill-in-the-blank Title VII Complaint alleging work discrimination, attached her detailed homework, and filed the lawsuit in the federal district court in St. Louis. **App. Vol. 2, pg. A222**.

The next day, June 30, 2005, Respondent received a written Warning Notice from Mr. Whitmore alleging errors were found in her processing work and stating, if there is a recurrence, she will face direct disciplinary action which could include termination. **App. Vol. 2, pg. A221**. Ms. Webster hand wrote at the bottom of the letter: "Dear Mr. Swimmer, there are other employees in the office making errors. He is not writing them up. This to me is a form of retaliation" and faxed it to Respondent. (emphasis included) **App. Vol. 2, pg. A221**. Respondent testified that the letter is part of his client file. **App. Vol. 1, pg. A92**.

On July 6, 2005, Ms. Webster was escorted out of the Collector's office and suspended without pay for allegedly going on break without Mr. Whitmore's permission. **App. Vol. 2, pg. A247**. She was suspended again on July 11, 2005. **App. Vol. 2, pg. A248**. Ms. Webster, on her own, filed a First Amended Complaint, specifically alleging a claim for retaliation for having exercised her rights under the EEOC. In the supplemental narrative she attached to her First Amended Complaint, Ms. Webster wrote: "All of this is an attempt to have me fired and is a form of Retaliation by James Whitmore, supervisor of the Water Department because of the Right to Sue letter and filing of a federal lawsuit." **App. Vol. 3, pg. A247**.

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On August 1, 2005, the Collector's office terminated Ms. Webster's employment for alleged poor work performance and insubordination. **App. Vol. 2, pg. A266**. She called Respondent on the telephone:

> I was still in the federal court office, and I said, Okay, I just got terminated. I just filed the second amendment. And he said, Well, okay. I tell you what. Do me this favor. You call the Bar Association and help me out and get this damn mark off my record, I can probably help you. And I will charge you $4000 to try this case. And I just kind of got quiet on the phone because I just got terminated. I didn't say it out loud, but I was thinking to myself like, I mean, where was he? At that point, it was – I just said, Okay. I left that office. **App. Vol. 1, pg. A112**.

Her Second Amended Complaint included the additional details of her termination. **App. Vol. 2, pg. A253**.

At no time during his representation of Ms. Webster, or after, did Respondent advise Ms. Webster that she should go back to the EEOC office and amend her EEOC charges by completing "Section F Retaliation" and describing the reprimand, suspensions, and termination which occurred after she filed her complaint with the EEOC, or risk losing her right to argue retaliation in federal court. **App. Vol. 1, pg. A112**.

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On July 25, 2006, United States Magistrate Judge Audrey G. Fleissig granted summary judgment against Ms. Webster. With respect to Ms. Webster's claim for retaliation, the judge stated:

> The Court agrees with Defendant that Plaintiff has failed to exhaust her administrative remedies with respect to her claim that her suspension and termination were retaliatory, in violation of Title VII. In Wedow v. City of Kansas City, Mo., 442 F.3d 661 (8th Cir. 2006), the Eighth Circuit reaffirmed its position that "retaliation claims are not reasonably related to underlying discrimination claims," such that a retaliatory termination that occurred subsequent to a timely filed EEOC charge of discrimination is not covered by the EEOC charge, unless that charge is amended to include the discreet subsequent act. Id. at 672-73; see also Shelton v. Boeing Co., 399 F.3d 909, 913 (8th Cir. 2005) (holding that filing of discrimination charge with EEOC regarding plaintiff's layoff was insufficient to meet exhaustion requirement regarding employer's subsequent failure to rehire plaintiff); Boge v. Ringland-Johnson-Crowley Co., 976 F.2d 448, 451 (8th Cir. 1992) (affirming district court's dismissal of plaintiff's claim arising out of his termination, where the administrative charge

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only alleged discrimination in a previous termination). **App. Vol. 2, pg. A276**.

At his disciplinary hearing, Respondent testified that he had specialized in claimant's Title VII litigation for at least the last twenty (20) years. **App. Vol. 1, pg. A88**. In his opening statement, Respondent's counsel stated: Respondent "gets a lot of cases that are straw and tries to turn them into gold." **App. Vol. 1, pg. A73**.

In his testimony, Respondent confirmed that for a Title VII claim there is an administrative process which must be exhausted before a civil case can be filed in federal court. **App. Vol. 1, pg. A88**. He stated that if "the client doesn't [check the right box on the EEOC Questionnaire], "that is used against them (sic)." **App. Vol. 1, pg. A89**. Respondent acknowledged that there are two types of retaliation, one as a form of discrimination, and the other as a response to filing an EEOC claim. **App. Vol. 1, pg. A89-A90**. Respondent acknowledged that in 2005, there were federal district court judges in St. Louis who would dismiss post-EEOC retaliation claims on the basis that the plaintiff failed to exhaust administrative remedies by not first having gone to the EEOC and filing amended charges. **App. Vol. 1, pg. A91**.

Respondent testified that he didn't remember Margo Webster very well. **App. Vol. 1, pg. A92**. He did confirm that the Title VII investigation and lawsuit retainer agreements and the multiple letters Ms. Webster faxed him were part of his client file. **App. Vol. 1, pg. A92**. For the federal court lawsuit representation, he confirmed he was paid the full $1,000 retainer by Ms. Webster. **App. Vol. 1, pg. A96**. Respondent did not produce billing records at the hearing, but claims he met with Ms. Webster, talked to her on the

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telephone, placed telephone calls, wrote her letters, received materials from her, and did research on the pleadings. **App. Vol. 3, pg. A97**. He recalled trying to get the completed homework from Ms. Webster and that, if she provided it, he could help her. **App. Vol. 1, pg. A98**.

The Disciplinary Hearing Panel's Decision

On April 3, 2014, the Disciplinary Hearing Panel ("DHP") filed with the Advisory Committee its unanimous Decision finding Respondent in violation of multiple rules and recommending Respondent be suspended indefinitely from the practice of law with no leave to apply for reinstatement for a period of eighteen (18) months. **App. Vol. 3, pg. A420**.

As to Count I, the DHP made the following findings:

1. Respondent's payment from the trust account of the $100 referral fee to BAMSL, which caused the overdraft, and the deposit of the check from the United States Treasury payable to Respondent and his wife constituted commingling in violation of Rule 4-1.15(c). **App. Vol. 3, pg. A438.**
2. Respondent's retaining of random amounts of money in his trust account from the proceeds of client funds received in settlement of a representation were improper deposits in violation of Rule 4-1.15(e). **App. Vol. 3, pg. A439.**
3. Respondent's misuse of his trust account was a violation of Rules 4-8.4(c) and (d). **App. Vol. 3, pg. A441.**
4. Respondent has been practicing law in Missouri for over 40 years, and the evidence presented at the hearing illustrated that he has not taken the time or

energy to understand fully his obligations in maintaining a client trust account pursuant to Missouri Rule 4-1.15. **App. Vol. 3, pg. A442.**

5. Aggravating factors included a previous Rule 4-1.15 admonition for settling an injury claim for a client and holding back a portion of the settlement proceeds to pay the bill of a treating doctor, but not paying the doctor, and instead commingling the monies held back with his own funds. **App. Vol. 3, pg. A442.**
6. Aggravating factors also included the prior six (6) letters of admonition and a stayed suspension with probation. **App. Vol. 3, pg. A442**.
7. The sole mitigating factor was the absence of injury or loss to a client. **App. Vol. 3, pg. A442**.

As to Count II, the DHP made the following findings:

1. The evidence before the DHP does not provide sufficient basis for it to conclude that Respondent is guilty of professional misconduct as a result of violating Rule 4-1.1 (competency) in this particular field of employment law. "In the absence of expert testimony to the contrary, the DHP cannot make a determination as to whether his practices constitute competent representation." **App. Vol. 3, pg. A446**.
2. The evidence supports that Respondent did not provide the services to justify retention of his fees. "Respondent is guilty of professional misconduct as a result of violating Rule 4-1.5 for charging excessive fees because he was unable to justify the fees that were charged." **App. Vol. 3, pg. A446**.

3. Respondent failed in his obligation to communicate to the client adequately to advise the client of the status of her action and his involvement as her attorney. The client repeatedly returned to Respondent for assistance and Respondent failed to provide that assistance. "Respondent did not terminate the representation but led the client to believe that he would continue to represent her." **App. Vol. 3, pg. A446**.
4. While Respondent's May 19, 2005 memorandum to Ms. Webster states, "however, you haven't retained this office yet," it does not condition that representation on the receipt of the "homework" as Respondent would suggest. "It was reasonable for the client to believe that she would be represented by Respondent upon her subsequent payment of the requested retainer. Respondent is guilty of professional misconduct as a result of violating Rules 4-1.4 and 4-1.16(d)." **App. Vol. 3, pg. A446-47**.
5. The concept of progressive discipline does not apply with respect to conduct which occurred after the charged misconduct. **App. Vol. 3, pg. A447**.
6. Aggravating factors included the previous letters of admonition. Of particular concern to the DHP was "that the conduct complained of is exactly that which was the subject of Respondent's suspension in 2007. The conduct subject to those actions occurred coincidentally with the conduct that is the subject of Ms. Webster's complaint." **App. Vol. 3, pg. A447-48**.

For its recommendation of discipline, the DHP found that the misconduct described in Count II would warrant only a public reprimand, but that the misconduct in Count I was

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"much more egregious." Therefore, the DHP, "based upon its findings of fact, conclusions of law, and balancing the aggravating and mitigating factors as described in the ABA Standards, particularly 4.12, 9.22 and 9.3, unanimously recommended that, pursuant to Rule 5.16, Respondent be suspended indefinitely with no leave to apply for reinstatement for a period of eighteen (18) months." **App. Vol. 3, pg. A448**.

The DHP did not recommend probation because Respondent had previously been presented with sufficient education and resources to manage client property, but has not done so. **App. Vol. 3, pg. A448**.

POINTS RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE HAS:

(A) MISUSED HIS CLIENT TRUST ACCOUNT IN VIOLATION OF RULES 4-1.15(c) AND (e), AND 4-8.4(c); AND

(B) MISHANDLED A TITLE VII LEGAL REPRESENTATION WHICH PREJUDICED A CLIENT IN VIOLATION OF RULES 4-1.4 (COMMUNICATION), 4-1.16(d) (TERMINATION OF EMPLOYMENT), RULE 4-1.5 (EXCESSIVE FEES), AND RULE 4-8.4(a) AND (d).

In re Adams, 737 S.W.2d 714 (Mo. banc 1987)

In re Ehler, 319 S.W.3d 442, 448 (Mo. banc 2010)

In re Witte, 615 S.W.2d 421, 422 (Mo. banc 1981)

Wedow v. City of Kansas City, Mo., 442 F.3d 661 (8th Cir. 2006)

Rule 4-1.5

Rule 4-1.15

Rule 4-1.16

Rule 4-8.4

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POINTS RELIED ON

II.

UNDER A PROGRESSIVE DISCIPLINARY SCHEME AND THE AGGRAVATING FACTORS PRESENT IN THIS CASE, THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LICENSE INDEFINITELY, WITH NO LEAVE TO REAPPLY FOR REINSTATEMENT FOR EIGHTEEN (18) MONTHS.

In re Ehler, 319 S.W.3d 442, 451 (Mo. banc 2010)

Standards for Imposing Lawyer Sanctions (1991 ed.)

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE HAS:

(A) MISUSED HIS CLIENT TRUST ACCOUNT IN VIOLATION OF RULES 4-1.15(c) AND (e), AND 4-8.4(c); AND

(B) MISHANDLED A TITLE VII LEGAL REPRESENTATION WHICH PREJUDICED A CLIENT IN VIOLATION OF RULES 4-1.4 (COMMUNICATION), 4-1.16(d) (TERMINATION OF EMPLOYMENT), RULE 4-1.5 (EXCESSIVE FEES), AND RULE 4-8.4(a) AND (d).

Standard of Review of Disciplinary Hearing Panel Decision

"Although this Court gives considerable weight to the panel's suggestions, it is well-settled that a Disciplinary Hearing Panel's recommendations are advisory in nature." *In re Donaho*, 98 S.W.3d 871, 873 (Mo. banc 2003). In a disciplinary proceeding, this Court reviews the evidence *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 Crews*, 159 S.W.3d 355, 358 (Mo. banc 2005). "Professional misconduct must be proven by a preponderance of the evidence before discipline will be imposed." *In re Ehler*, 319 S.W.3d 442, 448 (Mo. banc 2010).

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(A) The Safekeeping Client Property Violations

Missouri Supreme Court Rule 4-1.15, Effective January 1, 2010 states:

* * * * * * * * *

> (c) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.
>
> * * * * * * * * *.
>
> (e) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

This Court agrees with the rationale that the rule against commingling is to provide against the probability in some cases, the possibility in many cases, and the danger in all cases that such commingling will result in the loss of clients' money. *In re Witte*, 615 S.W.2d 421, 422 (Mo. banc 1981). Misuse of a client trust account has been held to be misconduct in violation of Rule 4-8.4(c). *See In re Adams*, 737 S.W.2d 714 (Mo. banc 1987). Kelly Dillon, Chief Investigative Paralegal for the OCDC, testified that she knew of instances when personal creditors of a lawyer have attempted to garnish a lawyer's client trust account in situations when a lawyer used the account for his personal purposes.

In Respondent's circumstances, his commingling and misuse of his client trust account were triggered by an overdraft payment to BAMSL for a referral fee, which in and of itself was an admitted, improper personal payment.

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The audit revealed that Respondent made seven personal expenses out of his trust account. Also, in four distinct cases, Ms. Dillon testified that Respondent received client funds into his trust account, paid the appropriate amount owing to the client, paid other amounts presumably for fees to himself, paid third parties, including his personal creditors, but left behind amounts of money varying from $70.00 to as high as $773.20. There was no attempt by any witness to explain the amounts left in trust or the reason why those amounts were allowed to remain in trust.

On cross-examination of Ms. Dillon, counsel for Respondent elicited testimony that it is only proper to leave a certain amount of money in trust for payment of bank charges and other fees associated with the account. Respondent, however, did not testify that that was his intention in leaving these amounts in his trust account nor did he offer any testimony as to why he left any amount in his trust account after allocation of the client monies. Ms. Dillon testified that the records showed there were never any bank service charges assessed to Respondent's trust account. Failing to "sweep out" those monies is the prohibited commingling of client and attorney funds.

In addition, the evidence was that Respondent deposited a check from the United States Treasury in the sum of $5,130.00 to his trust account. The check was payable to Respondent and his wife. On the same day of the deposit, a check was written in the same amount to Edward Jones. Respondent offered no reasons or motives for these transactions, which constituted an improper commingling of Respondent's personal funds.

Moreover, Respondent believed it was acceptable to keep additional, personal money in the trust account for personal expenses because his accountant said it was

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permitted. Respondent believed that it made tax accounting easier and benefited his tax picture if could pay business expenses with pretax money. Respondent did not offer any written statement or offer any oral testimony from his accountant to verify these assertions. According to the DHP, the lack of such a written statement, the contrariness of these assertions to common business accounting practices, the lack of specificity offered by Respondent, and the context in which these comments were made led the DHP to its conclusion that such a statement was never actually offered to Respondent, or, at best, Respondent severely misconstrued his accountant's advice. **App. Vol. 3, pg. A425**.

Regardless of the efficacy of his accountant's advice, Respondent is under an obligation to know and familiarize himself with Rule 4-1.15 and not rely on the advice of an accountant not licensed to practice law in Missouri. The fact that Respondent emphasized to Ms. Dillon that the "overdraft notification system" he had in place with Bank of America acted as a protective mechanism against the overdraft is a disturbing testimonial from a veteran lawyer and indicative that he has not taken the time or energy to understand fully his obligations in maintaining a client trust account pursuant to Missouri Rule 4-1.15. The overdraft system by its very nature causes improper commingling.

In his closing memorandum, counsel for Respondent conceded that Respondent violated Rules 4-1.15(c) and (e).

(B) The Title VII Employment Representation

Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against an individual with respect to her compensation, terms, condition, or privileges of employments, because of such individual's race, color, religion, sex, or national origin.

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Hesse v. Avis Rent A Car Sys., 394 F.3d 624 (8th Cir. 2005). In addition, the participation clause of Title VII prohibits retaliation against any employee for making a charge or participating in an investigation with the EEOC. *Eliserio v. USW, Local 310,* 398 F.3d 1071 (8th Cir. 2005).

A person claiming to be aggrieved by a violation of Title VII may not maintain a suit for redress in federal court until she has first unsuccessfully pursued administrative relief with the EEOC. *See Love v. Pullman Co.*, 404 U.S. 522, 523 (1972).

For a claim of retaliation for having made a charge of discrimination with the EEOC, the Eighth Circuit, unlike most of the other circuits, requires the aggrieved employee to amend her EEOC complaint or file a second EEOC complaint alleging the discreet act(s) of retaliation prior to making the claim in federal court. *See Wedow v. City of Kansas City, Mo.*, 442 F.3d 661 (8th Cir. 2006) (internal citations omitted); *See also* Note, Discrimination, Retaliation, and the EEOC: The Circuit Split Over the Administrative Exhaustion Requirement in Title VII Claims, 118 Penn. St. L. Rev. 169 (2013).

Consequently, in order to help a client navigate the procedural pitfalls of pursuing Title VII relief, a lawyer in the State of Missouri has a duty to recognize the evolution of a client's particular discrimination claim and, if post-EEOC filing retaliation occurs, communicate about the matter with the client to the extent reasonably necessary for her to make an informed decision about pursuing the claim. Mo. S. Ct. Rule 4-1.4(b). Furthermore, if a lawyer is only hired to investigate a client's Title VII rights, or otherwise terminates his legal representation prior to the client's *pro se* filing of a Title VII lawsuit, the lawyer has a duty to tell the client of the legal requirement of amending the original

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EEOC complaint or filing a new complaint regarding the retaliation. Mo. S. Ct. Rule 4-1.16(d) (Upon termination of representation, a lawyer shall take reasonable steps practicable to protect a client's interests such as giving reasonable notice to a client). Otherwise, the client loses an opportunity for a legal remedy.

In the instant case, the Respondent held himself out as an expert in Title VII employment law. He testified that he knew in 2005 that there were judges in the St. Louis federal district court who would dismiss a plaintiff's complaint of post-EEOC filing retaliation if the plaintiff failed to first allege the retaliation with the EEOC. He also held himself out to Ms. Webster as knowledgeable about how to handle legal challenges for clients who work in patronage jobs, which by nature is volatile employment.

Ms. Webster hired Respondent to conduct a Title VII investigation and file a Title VII federal court lawsuit. Yet, he stood by silently when the retaliation against Ms. Webster started and snow-balled. After she filed her original EEOC complaint for racial and sexual discrimination, Ms. Webster was suspended for alleged attendance and performance issues and for insubordination, charges she had never faced at work before filing the EEOC charges. She faxed the written, negative employment actions to Respondent. Respondent accepted Ms. Webster's money, but refused to draft and file her lawsuit. The day after Ms. Webster filed her *pro se* Complaint for discrimination, she specifically wrote on the bottom of a new Written Warning, that she was being retaliated against, which she then faxed to Respondent. She never heard back.

Ms. Webster knew enough on her own to file a first amended complaint to add the claim of post-EEOC filing retaliation, and again, to amend her complaint when she was

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terminated. She called Respondent to ask for help. He told Ms. Webster she needed to pay him another $4,000.00 and to call the Bar to help get a bad mark off his record. What he never told her, however, was that the court might dismiss her claim of retaliation if she did not go back to the EEOC and amend her charges there, first. Consequently, Ms. Webster fell victim to summary judgment for having failed to amend her EEOC charge to include "the discreet subsequent act[s]" of retaliation.

The failure of Respondent to communicate with Ms. Webster was an ethical violation and conduct prejudicial to the administration of justice. Mo. S. Ct. Rule 4-8.4(a) and (d).

In summary, Respondent failed in his duty to communicate with his client adequately to advise her of his involvement as her attorney and as to the status of her legal action. Mo. Sup. Ct. Rule 4-1.4. He knew from the faxed letters he received that she believed she was being retaliated against for having filed EEOC charges, but he never discussed with her the implications of making that claim in federal court. Rather, he accepted Ms. Webster's $1,000 retainer to file a lawsuit and abandoned the representation after she came to his office with her homework in hand. If he was going to leave Ms. Webster to file the lawsuit on her own, Respondent, at a minimum, had a duty to protect the interests of his former client by explaining to her the EEOC procedural requirements imposed on Title VII plaintiffs in the Eighth Circuit. Mo. Sup. Ct. Rule 4-1.16(d). Ms. Webster suffered prejudice by being deprived of an opportunity to argue and obtain a decision on the merits for her claim of post-EEOC filing retaliation. Mo. Sup. Ct. Rule 4-8.4(a) and (d).

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ARGUMENT

II.

UNDER A PROGRESSIVE DISCIPLINARY SCHEME AND THE AGGRAVATING FACTORS PRESENT IN THIS CASE, THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LICENSE INDEFINITELY, WITH NO LEAVE TO REAPPLY FOR REINSTATEMENT FOR EIGHTEEN (18) MONTHS.

The purpose of attorney disciplinary proceedings is "to protect the public and maintain the integrity of the legal profession." *In re Ehler*, 319 S.W.3d 442, 451 (Mo. banc 2010). In imposing discipline, the Court considers the ethical duty violated, the attorney's mental state, the extent of actual or potential injury caused by the attorney's misconduct, and any aggravating or mitigation factors. The Court looks to the ABA Standards for Imposing Lawyer Sanctions (1991 ed.) for guidance when imposing attorney discipline, which includes a progressive disciplinary scheme. *Ehler*, 319 S.W.3d at 451-52.

The most important ethical duties are those obligations which a lawyer owes to clients. *Ehler*, 319 S.W.3d at 451. Those duties include safekeeping of client property (Rule 4-1.15), communication (Rule 4-1.4), termination of representation (Rule 4-1.16), and fees (Rule 4-1.5).

Respondent knowingly violated all of these rules. His ethical violations regarding his client trust account exposed his client's money to garnishment by Respondent's personal creditors. He hid behind his accountant's reported tax advice as an excuse for his

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failure to abide by his obligations under Rule 4-1.15. Respondent has been practicing law in Missouri for over 40 years, and the evidence presented at the hearing illustrated that he has not taken the time or energy to understand fully his obligations in maintaining a client trust account pursuant to Missouri Rule 4-1.15. Respondent's ethical violations regarding the handling of Ms. Webster's Title VII legal representations, an area of self-professed expertise, allowed Ms. Webster's devolving employment situation to end with a lost legal remedy.

When the Court finds an attorney has committed multiple acts of misconduct, "the ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among the violations. *Ehler*, 319 S.W.3d at 451. In this case, both sets of ethical violations are equally egregious. According to ABA Standard 4.12, "suspension should be reserved for lawyers who engage in misconduct that does not involve misappropriation or conversion. The most common cases involve lawyers who commingle client funds with their own" According to ABA Standard 4.5: "Disbarment is generally appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury to the client."

Aggravating factors in this case include prior disciplinary offenses, a pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of conduct, vulnerability of the victim, and the substantial experience in the practice of law. This is not Respondent's first experience with the Missouri disciplinary system. In the legal practice arena of safekeeping of client funds, Respondent was previously admonished for

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similar misconduct: (1) holding back a portion of settlement proceeds to pay the bill of a treating doctor, (2) not paying the doctor, and (3) commingling the monies held back with Respondent's personal funds in the client trust account. In the arena of employment law practice, Respondent was previously suspended for similar misconduct: (1) lack of communication, (2) improper termination of legal representation, and (3) charging excessive fees. Regarding that previous suspension, Respondent stipulated to the Court as aggravating factors his "many years in the practice of law and his prior disciplinary history involving issues of communication, excessive fees and termination of representation which are present in this case."

Respondent has seven prior admonitions and one stayed suspension. The sanction of an eighteen (18) month suspension from the practice of law is consistent with a progressive disciplinary scheme. *Ehler*, 319 S.W.3d at 452. The many admonitions and prior suspension were meant to teach Respondent how to manage his client trust account and his law practice. Respondent has not learned from his past opportunities. The cumulative effect of Respondent's discipline and the long shadow it casts create significant doubt as to Respondent's fitness to continue to practice law without the legal profession falling into disrepute. Mo. Sup. Ct. Rule 5.225(a)(2). (*Compare* the 1978 *Miller* decision where, unlike here, "[t]he Respondent, now 70 years of age, has for years borne an excellent professional reputation among his colleagues, outstanding lawyers and respected judges, for honesty, integrity, good character and professional competence as a lawyer. From 1936 to 1948 respondent served the public as a state senator. Twice he received the nomination of his political party for state-wide offices (Lieutenant-Governor and Attorney-

General). While these facts constitute no defense in this type of proceeding the Court may consider them in determining what action should be taken under the circumstances." *In re Miller*, 568 S.W.2d 246 (Mo. banc 1978).

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CONCLUSION

Respondent admitted violating Rule 4-1.15 by commingling his personal funds with his client's funds and for conducting personal business from his client trust account. Misuse of the client trust account is misconduct under Rule 4-8.4(c).

Respondent violated Rules 4-1.4 and 4-1.6(d) by failing to communicate to his client his role as her Title VII attorney, to appreciate the retaliation she was enduring, and, at a minimum, to communicate to her that the Eighth Circuit required a disaffected employee to exhaust her administrative remedies in order to claim post-EEOC filing retaliation in federal court. Furthermore, Respondent violated Rule 4-1.5 by failing to justify his fees for the alleged legal services he provided to Ms. Webster. These violations constitute misconduct under Rules 4-8.4(a) and (d).

In order to protect the public and the integrity of the profession, Informant respectfully requests that this Court adopt the DHP recommendation and enter an order indefinitely suspending Respondent from the practice of law with no leave to apply for reinstatement until after eighteen (18) months.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of July 2014, the Informant's Brief was sent through the Missouri Supreme Court e-filing system to Respondent:

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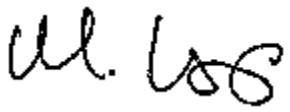
CERTIFICATION: RULE 84.06(c)

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 9381 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and



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Marc A. Lapp

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