IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
STANLEY L. WILES,	)	**Supreme Court #SC86682**
	)	
Respondent.	)	

INFORMANT'S BRIEF

OFFICE OF
CHIEF DISCIPLINARY COUNSEL

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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.

STATEMENT OF FACTS

Disciplinary History

Between November of 1998 and August of 2001, Respondent Stanley Wiles was issued and accepted six admonitions, which encompassed violations of the diligence rule (Rule 4-1.3), the communication rule (Rule 4-1.4), the "prompt delivery" of client funds rule (Rule 4-1.15(b)), and the rule proscribing conduct prejudicial to the administration of justice (Rule 4-8.4(d)). **App. 52-63**. The Kansas attorney discipline system issued two admonitions for unidentified rule violations to Mr. Wiles prior to December of 2002. The Kansas Supreme Court publicly censured Mr. Wiles for violation of its diligence, communication, fee, and safekeeping property rules in a decision dated December 6, 2002. **App. 64-68**. The Missouri Supreme Court, in a decision dated June 17, 2003, reciprocally disciplined (Rule 5.20) Mr. Wiles based on the Kansas court's adjudication of professional misconduct. The Missouri Supreme Court indefinitely suspended Respondent's license to practice, with leave to apply for reinstatement in six months, stayed the suspension, and ordered Respondent to serve a one-year period of probation, pursuant to Rule 5.225. **App. 69-71**.

In March of 2004, the Office of Chief Disciplinary Counsel moved the Court to issue an order for Mr. Wiles to show cause why his probation should not be revoked, based on probation violations enumerated in the motion. The enumerated violations included that Mr. Wiles was using his client trust account to pay salary expenses for office personnel and had retained $1,500.00 of client Jerry Ivy's settlement proceeds

without paying them to third party creditors as promised. **App. 121-124**. By order dated May 25, 2004, the Court ordered the term of Mr. Wiles' probation extended until June 30, 2006, and added some additional conditions to the terms of probation. **App. 82**.

Procedural History of This Case

The three-count information on which the instant matter was heard was served on Respondent Wiles on April 9, 2004.[1] A disciplinary hearing panel was appointed by the Advisory Committee Chair on June 14, 2004. The panel's presiding officer, Gary Patton, set the matter for hearing on August 18, 2004. At OCDC staff counsel's request, the matter was continued to November 5, 2004. At Respondent's counsel's request, the hearing was continued to November 19, 2004, on which date the hearing was conducted.

The panel issued its decision on February 7, 2005. The panel made findings of fact and conclusions of law supporting the allegations set forth in all three counts of the information. The panel recommended disbarment. **App. 30-51**.

Facts Underlying Information

Respondent Wiles was licensed to practice law in Missouri in 1969. **App. 72**. Respondent is a sole practitioner in Kansas City, Missouri. **App. 74**.

[1] Subsection (h) of the probation rule, Rule 5.225, states that "A motion for revocation of a lawyer's probation does not preclude the chief disciplinary counsel from filing independent disciplinary charges based on the same conduct as alleged in the motion."

On December 14, 2002, Mr. Wiles settled client Perrine's personal injury case for $4,504.00. **App. 75**. Mr. Wiles retained $1,756.98 out of the settlement proceeds to pay Mr. Perrine's medical providers, representing to Mr. Perrine that the money would be paid to Perrine's creditors. **App. 75**. Mr. Wiles did not deposit the retained $1,756.98 in a trust account. **App. 75**. Mr. Wiles paid Mr. Perrine's medical providers' bills on or about March 14, 2003, after Mr. Perrine called Mr. Wiles to complain that the creditors were bothering him. **App. 6 (T. 17), 75**. Mr. Wiles' trust account balance fell below $1,756.00 in each of the four months between December of 2002 and March of 2003. **App. 75-76**.

On December 27, 2002, Respondent Wiles dismissed without prejudice a petition filed against the manufacturer of a chemical alleged to have caused respiratory problems to his client, Ronald Guy. **App. 76-77**. Mr. Wiles dismissed the petition in order to gain some time to secure an expert witness with which to refute the defendant's experts. **App. 7 (T. 20)**. Mr. Guy filed a complaint against Mr. Wiles in July of 2003, alleging that Mr. Wiles was not keeping him informed about his case. Mr. Wiles responded to the complaint, relating his expert witness difficulties. **App. 77**. Mr. Wiles refiled the petition on Mr. Guy's behalf on December 15, 2003. **App. 77-78**. While Respondent did take some steps to gain service against the defendant after the petition was refiled, he did not attempt to effect personal service even though he had a physical location for the defendant's business. **App. 12 (T. 39)**. Mr. Wiles did not communicate to Mr. Guy, either by copying the client on letters generated in the attempt to gain service or by

initiating telephone contact with him, about the status of Mr. Guy's case. **App. 8 (T. 25), 9-10 (T. 29-30)**.

On April 3, 2003, Respondent Wiles settled Jerry Ivy's personal injury case for $4,790.00. **App. 78**. At the time of the settlement, Mr. Ivy owed Marvin's Midtown Chiropractic Clinic over $2,000.00 for services in connection with the personal injuries sustained by Mr. Ivy. **App. 78**. Mr. Ivy authorized Mr. Wiles to offer the clinic $700.00 or $750.00 to compromise its bill. **App. 10 (T. 32-33)**. The clinic declined to compromise Mr. Ivy's bill for less than $1,500.00. **App. 95**.

In April of 2003, Mr. Wiles retained $1,500.00 from the Ivy settlement monies to pay the clinic. **App. 78-79**. In March of 2004, Respondent sent the clinic a check for $750.00, which the clinic declined to accept. **App. 79**. Respondent paid the clinic the full $1,500.00 in April of 2004, after the Office of Chief Disciplinary Counsel became aware of the situation. **App. 79, 97**. In seven of the months between April of 2003 and April of 2004, the balance in Respondent's trust fund account fell below $1,500.00. **App. 80-81**.

Mr. Wiles experienced a significant drop in income beginning in 2001. **App. 6 (T. 16)**. He was between a rock and a hard place, "doing whatever I could to stay in business." **App. 11 (T. 35), 13 (T. 42)**. Respondent Wiles delayed paying Mr. Perrine's creditors and Mr. Ivy's creditor in order to pay Mr. Wiles' bills and stay in practice. **App. 12 (T. 38, 40)**. Mr. Wiles left some of his attorney fees in the trust account in order to protect himself. **App. 13 (T. 42), 14-15 (T. 49-51)**. Mr. Wiles used funds from the trust account to pay some of the office's operating expenses in 2003, including his

secretary's wages. **App. 12-13 (T. 40-42)**. He had severe cash flow problems at the time and does not know what he could have done differently. **App. 14 (T. 49)**.

POINTS RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE COMINGLED CLIENT FUNDS WITH ATTORNEY FEES, HE MISAPPROPRIATED CLIENT FUNDS, AND HE FAILED TO COMMUNICATE ADEQUATELY AND PURSUE DILIGENTLY A CLIENT'S CASE, IN THAT RESPONDENT LEFT ATTORNEY FEES IN THE CLIENT TRUST ACCOUNT TO PROTECT HIMSELF, HE USED CLIENT FUNDS, RETAINED BY HIM TO PAY CLIENT THIRD PARTY CREDITORS, TO PAY HIS OFFICE OPERATING EXPENSES, AND HE INITIATED NO COMMUNICATION WITH CLIENT RONALD GUY AND MADE ONLY NOMINAL EFFORTS TO GET SERVICE AGAINST THE DEFENDANT IN MR. GUY'S REFILED CASE.

In re Schaeffer, 824 S.W.2d 1 (Mo. banc 1992)

State Bar Comm. v. Stumbaugh, 123 S.W.2d 51 (Mo. 1938)

In re Witte, 615 S.W.2d 421 (Mo. banc 1981), appeal dismissed, cert. denied, 454 U.S. 1025

Supreme Court Rule 4-1.15(a)(b)

POINTS RELIED ON

II.

THE SUPREME COURT SHOULD DISBAR RESPONDENT BECAUSE HE KNOWINGLY CONVERTED CLIENT PROPERTY IN THAT HE USED FUNDS, ENTRUSTED TO HIM TO PAY CLIENT CREDITORS, TO PAY HIS OWN OPERATING EXPENSES, AND BECAUSE HE KNOWINGLY COMMINGLED ATTORNEY FEES WITH CLIENT FUNDS IN A TRUST ACCOUNT IN ORDER TO PROTECT HIMSELF.

In re Staab, 785 S.W.2d 551 (Mo. banc 1990)

In re Fenlon, 775 S.W.2d 134 (Mo. banc 1989)

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

Rule 4.11, ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE COMINGLED CLIENT FUNDS WITH ATTORNEY FEES, HE MISAPPROPRIATED CLIENT FUNDS, AND HE FAILED TO COMMUNICATE ADEQUATELY AND PURSUE DILIGENTLY A CLIENT'S CASE, IN THAT RESPONDENT LEFT ATTORNEY FEES IN THE CLIENT TRUST ACCOUNT TO PROTECT HIMSELF, HE USED CLIENT FUNDS, RETAINED BY HIM TO PAY CLIENT THIRD PARTY CREDITORS, TO PAY HIS OFFICE OPERATING EXPENSES, AND HE INITIATED NO COMMUNICATION WITH CLIENT RONALD GUY AND MADE ONLY NOMINAL EFFORTS TO GET SERVICE AGAINST THE DEFENDANT IN MR. GUY'S REFILED CASE.

In 2003, Respondent Wiles used funds from his client trust account[2] to pay office operating expenses. He retained funds from the settlement of cases on the pretext that he

[2] Respondent Wiles learned, in the course of Kansas' disciplinary case against him, that he was required to maintain a client trust account. He established his first client trust account in 2002, after thirty-three years of a practice concentrating in personal injury and workers compensation. **App. 6 (T. 15), 15 (T. 52)**.

would use the funds to pay the clients' debts to third parties. Rather than the "prompt delivery" of those funds to the third parties, which is mandated by Rule 4-1.15(b), Mr. Wiles unapologetically acknowledges using the funds to pay his own bills, and acknowledges leaving attorney fees in the trust account to protect himself. The following exchanges, taken from the transcript of the disciplinary hearing, tell the story.

> A: I was scrambling to pay bills. . . . And I mean it was a choice of either holding it [Perrine's money] for three or four months or going out of practice. I mean I just couldn't – you know, and I hate to say that, but I mean my choice was either to hold it for three or four months or go out of practice, because I didn't have the funds.

App. 6 (T. 16).

> A: But if I hadn't delayed paying Mr. Perrine's bills, I would have gone out of business. . . . I mean I wouldn't be here.
>
> Q: And the reason you were delaying them was so you could pay other bills to stay in practice; correct?
>
> A: Yes.

App. 12 (T. 38).

> Q: So in 2003, you were also using money that was received and used from your client trust account to pay for ongoing office expenses; correct?
>
> A: Yeah. It was either that or go out of business, sir.

App. 12 (T. 40).

A: [W]ith checks bouncing out of my office operating account and my severe cash flow problem, I had to keep some – I had to do something to protect myself to try to stay in business. So I kept some attorney's fees in the trust account so that I could pay emergency bills that came up.

App. 15 (T. 50-51).

Supreme Court Rule 4-1.15(a) and (b) do not contain an exception for lawyers experiencing cash flow problems. The client trust account is not a source for short-term "loans" to keep the lawyer's practice afloat in bad economic times, nor can it be a safe harbor for the lawyer's money.[3] To the contrary, a "lawyer should hold property of others with the care required of a professional fiduciary. . . . All property which is the property of clients or third persons should be kept separate from the lawyer's business and personal property." Comment, Rule 4-1.15. Misappropriation occurs whether a lawyer fails to pay over money collected by him for his client or appropriates client funds entrusted to him for his own use. *State Bar Comm. v. Stumbaugh*, 123 S.W.2d 51, 53 (Mo. 1938); *In re Oliver*, 258 S.W.2d 648, 655 (Mo. banc 1956); *In re Fenlon*, 775 S.W.2d 134, 142 (Mo. banc 1989). Mr. Wiles did both. Ethics rules prohibit

[3] It is ironic that Mr. Wiles, who practiced unethically for thirty-three years without a client trust account, abused the trust account to his personal advantage after finally establishing one, thereby overriding the very safeguards the trust account was designed to afford clients.

commingling client or third party funds with the lawyer's own property out of the very real danger that doing so will result in loss of property to the client or third party. See *In re Witte*, 615 S.W.2d 421, 422-423 (Mo. banc 1981), appeal dismissed, cert. denied, 454 U.S. 1025.

Mr. Wiles does not dispute his trust account balance many times fell below the amounts he retained from clients to pay their creditors. "[A]ny disbursement from [an] account for purposes other than those of the client's interests has all the characteristics of misappropriation, particularly when the disbursement reduces the balance of the account to an amount less than the amount of the funds being held by the attorney for the client." *In re Schaeffer*, 824 S.W.2d 1, 5 (Mo. banc 1992). Mr. Wiles' eventual payment of the retained client funds to the clients' creditors is no defense to his violation of the Rule. See *In re Schaeffer*, 824 S.W.2d 1, 5 (Mo. banc 1992); *In re Kohlmeyer*, 327 S.W.2d 249, 251-252 (Mo. banc 1959).

Mr. Wiles represented to Mr. Perrine and Mr. Ivy that he was retaining funds from their respective settlements in order to pay their creditors. His subsequent failure to do so "promptly" proved those representations to be dishonest, in violation of Rule 4-8.4(c). Mr. Wiles only paid the retained funds to Mr. Perrine's creditors after Mr. Perrine called him, in Mr. Wiles' words, "bothered" that the creditors had not been paid. And the Ivy creditor was only paid the full amount of the funds retained by Mr. Wiles for that purpose after the disciplinary office began inquiring into the matter, a full year after the funds were retained.

While less serious than the misconduct already discussed under this Point, Mr. Wiles' lack of attention to Mr. Guy's case and his failure to keep Mr. Guy apprised about material developments in his case are serious issues, largely owing to the number of times Mr. Wiles has been previously sanctioned for the very same Rule violations. Diligence and communication rule violations, Rules 4-1.3 and 4-1.4, were repeatedly cited in Mr. Wiles' admonitions and were part of the 2003 case before this Court. Even though this Court's decision, which included discipline for diligence and communication, was handed down in the month before Mr. Guy filed his complaint, both the multiple prior admonitions for diligence and communication problems and the Kansas Supreme Court decision put Mr. Wiles on notice that his communication (Rule 4-1.4(a)) and diligence (Rule 4-1.3) practices were ethically substandard. The recurrence of that misconduct in the case sub judice should be considered as an aggravating factor.

ARGUMENT

II.

THE SUPREME COURT SHOULD DISBAR RESPONDENT BECAUSE HE KNOWINGLY CONVERTED CLIENT PROPERTY IN THAT HE USED FUNDS, ENTRUSTED TO HIM TO PAY CLIENT CREDITORS, TO PAY HIS OWN OPERATING EXPENSES, AND BECAUSE HE KNOWINGLY COMMINGLED ATTORNEY FEES WITH CLIENT FUNDS IN A TRUST ACCOUNT IN ORDER TO PROTECT HIMSELF.

Reference to every source used in lawyer sanction analysis leads to the same outcome: disbarment in this case is necessary to protect the public and maintain the integrity of the profession. The disciplinary hearing panel recommended disbarment. Analysis of this case in accordance with the framework set forth in the ABA Standards for Imposing Lawyer Sanctions (1991 ed.) results in disbarment. And, the Missouri Supreme Court's decisional law is consistent with the ABA Standards analysis and the panel's recommendation: misappropriation and commingling are always grounds for disbarment. See, e.g., *In re Mentrup*, 665 S.W.2d 324 (Mo. banc 1984); *In re Witte*, 615 S.W.2d 421 (Mo. banc 1981), appeal dismissed, cert. denied 454 U.S. 1025.

The Disciplinary Hearing Panel's recommendation is, of course, advisory in nature. In attorney discipline matters the Court reserves to itself de novo review of the record and draws its own conclusions as to whether the facts constitute Rule violations.

In re Caranchini, 956 S.W.2d 910, 911 (Mo. banc 1997). The Court's work in this case however, is made simpler by the stipulation of material facts entered into between the parties, and the detailed decision from the panel. The panel recommended disbarment.

The analytical framework of the ABA Standards substantiates the panel's recommendation. The most serious instance of misconduct is the misappropriation and commingling charge. Misappropriation and commingling violate duties owed to clients, the most important of the obligations identified in the Standards. Mr. Wiles' misconduct was knowing. In addition to the fact that the Rules themselves put Mr. Wiles on notice that "prompt delivery" of client funds to third parties is required, he was expressly admonished and disabused of any contrary notions he may have had on the subject in the admonition issued to him in August of 2001. **App. 62**. Additionally, the disciplinary panel that considered Respondent's Kansas case in 2002 rebuked Mr. Wiles for commingling in a decision subsequently adopted by the Kansas Supreme Court. The Kansas Supreme Court's opinion was handed down in December of 2002, which was before, according to Mr. Wiles' testimony, he commenced leaving attorney fees in the trust account in order to protect himself (in 2003).

Mr. Wiles knew, from having been told so by a disciplinary committee and the Supreme Courts of Missouri and Kansas, that a trust account was a necessity, and that funds not belonging to him were to be delivered promptly to the rightful owner. He was likewise warned against commingling client and personal funds. The potential injury to clients and the integrity of the legal profession from his continued violation of the Rules

is egregious. The Standards recognize that "potential" injury, where foreseeable by the lawyer, satisfies the injury component of the framework's analysis.

The fourth question in the Standards analysis is consideration of the aggravating and mitigating factors. By recognizing that the Perrine trust account issues occurred after (December 14, 2002 through March 14, 2003) the Kansas Supreme Court's decision (December 6, 2002), and the Ivy trust account issues occurred primarily after (April 2, 2003 through April 16, 2004) this Court put Mr. Wiles on probation (June 17, 2003), the egregiousness of the following aggravating factors is highlighted: prior disciplinary offenses, pattern of misconduct, and dishonest or selfish motive. Additionally, the fact that Mr. Wiles was on probation when some of the misconduct occurred is a violation of the trust reposed in Respondent by the Court in allowing him the opportunity to continue practicing.

Based on the foregoing analysis pursuant to the analytical framework of the Standards, the applicable Standard Rule is 4.11. It reads as follows:

> Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client property:
>
> 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

This Court's cases disbarring lawyers for failing promptly to pay over retained client funds to third parties are numerous. See, e.g., *In re Staab*, 785 S.W.2d 551 (Mo.

banc 1990) (failed for two years to remit funds retained from settlement to client's union); *In re Fenlon*, 775 S.W.2d 134 (Mo. banc 1989) (lawyer received settlement check on January 15, 1986, but did not remit $1,678.00 payment to hospital on client's behalf until April 1, 1986); *In re Adams*, 737 S.W.2d 714 (Mo. banc 1987) (per curiam) (lawyer delayed, from December 12, 1984, to November 21, 1985, paying $796.00 to client's creditor, and remitted funds only after disciplinary proceeding initiated); *In re Lechner*, 715 S.W.2d 257 (Mo. banc 1986) (per curiam) (lawyer failed to pay over $1,292.00 owed by client to the United States from settlement monies received on client's behalf); *In re Simmons*, 576 S.W.2d 324 (Mo. banc 1978) (per curiam) (lawyer agreed to pay hospital $3,429.00 out of retained settlement funds, but did not do so).

A client is entitled to rely on his lawyer's honesty and devotion to the client's interests. That cannot happen when the lawyer has been told what a trust account is and is not but abuses the ethical rules anyway, because to do otherwise would cause him to go out of business. Lawyering is a profession before it is a business, a concept apparently beyond Respondent's ability to comprehend. The objective of protecting society and promoting the integrity of the profession will be best served by disbarring Mr. Wiles.

CONCLUSION

Respondent Wiles has committed professional misconduct by commingling his funds with those of his clients in his client trust account and converting client money in order to meet his own financial obligations. Mr. Wiles' considerable disciplinary history, and the fact that he was serving a term of probation at the time much of the misconduct occurred, compel disbarment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of April, 2005, two copies of Informant's Brief and a diskette containing the brief in Microsoft Word format have been sent via First Class mail to:

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Sharon K. Weedin

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 84.06b);

3. Contains 3,760 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and

4. That Norton Anti-Virus software was used to scan the disk for viruses and that it is virus free.

_____
Sharon K. Weedin

APPENDIX