IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
STANLEY L. WILES	)	**Supreme Court #SC84978**
	)	
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 this attorney discipline matter 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 1994.

STATEMENT OF FACTS[1]

Background and Disciplinary History

Respondent Stanley Wiles was admitted to Missouri's bar in 1969. Respondent was admitted to the Kansas bar in 1985. **App.**, p. 3. Respondent is a solo practitioner. **App.**, p. 12.

On August 3, 2001, Division II of the Region IV Disciplinary Committee admonished Respondent for violating Rule 4-1.15(b) in that Respondent did not promptly pay over settlement funds to a client or the client's third party creditor, asserting instead that it was his choice to pay the money over right away, in six months, or in a year. **App.**, p. 33 (admonition letter dated August 3, 2001). On November 2, 2000,[2] Division II of the Region IV Disciplinary Committee admonished Respondent for violating Rule 4-1.4 in that Respondent did not communicate to a client that he had dismissed her case. **App.**, p. 35 (admonition letter dated November 2, 2000). On November 2, 2000, Division II of the Region IV Disciplinary Committee admonished Respondent for

[1] The Statement of Facts is drawn from the pleadings, the stipulation entered into between Respondent and the Kansas Office of Disciplinary Administrator, and prior admonition letters issued to Respondent by Missouri disciplinary authorities, all of which are included in the Appendix.

[2] In ¶ 5 of Informant's information and motion for discipline (**App.**, p. 9 to this brief), the two admonitions issued on November 2 should be followed by the year "2000," not 2002. Informant apologizes for this error in the information.

violating Rules 4-1.3 and 4-1.4, in that he did not follow up with a client when she did not return to him a signed copy of the contingency fee contract that he had mailed to her in the hospital. The next contact between Respondent and the client occurred a full year later when the client contacted Respondent to check on the status of her case, which carried a two year statute of limitations. **App.**, p. 37 (admonition letter dated November 2, 2000). On June 5, 2000, Division II of the Region IV Disciplinary Committee admonished Respondent for violating Rules 4-1.3 and 4-1.4 in that he failed to represent a client diligently and failed to keep the client reasonably informed about her matter. **App.**, p. 39 (admonition letter dated June 5, 2000).[3] On July 31, 1999, Division II of the Region IV Disciplinary Committee admonished Respondent for violating Rules 4-1.3, 4-1.4, and 4-8.4(d) in that he did not diligently represent a client, failed to keep a client reasonably informed about her matter, and was abusive and demeaning toward a Ms. Robinson and her physician. **App.**, p. 41 (admonition letter dated July 31, 1999). On November 8, 1998, Division II of the Region IV Disciplinary Committee admonished Respondent for violating Rules 4-1.3 and 4-1.4 for not representing a client diligently and failing to communicate with the client. **App.**, p. 43 (admonition letter dated November 8, 1998).

[3] This and the following two admonition letters lack factual specificity as to what conduct by Respondent led to the Rule violations. Respondent would have participated in the investigation that preceded the issuance of the admonitions, so would have known what he did to cause the admonition to issue.

Prior to the Kansas disciplinary proceeding that underlies this reciprocal discipline case, Respondent had been informally admonished twice by Kansas authorities. **App.**, p. 21.

Kansas Disciplinary Case

Prior to hearing, Mr. Wiles and the Kansas Office of Disciplinary Administrator entered into a written stipulation. **App.**, p. 22. The Kansas hearing panel made its findings of fact and drew its conclusions of law from the stipulation. **App.**, p. 21. The Kansas Supreme Court adopted the panel's findings and conclusions and imposed the panel's recommended discipline, published censure, in a per curiam opinion. **App.**, p. 32. A Kansas published censure is the same level of discipline as a Missouri public reprimand.

Kansas Findings of Fact

The findings of fact recited below are drawn directly from and track the paragraph numbering in the per curiam opinion of the Kansas Supreme Court, which is at **App.**, p. 21.

2. In January 1996, Lindy S. Painter sustained injuries to her back when the elevator that she was riding in at the University of Kansas Medical Center fell several floors. Ms. Painter retained an attorney to file suit against the University of Kansas Medical Center, the Kansas State Board of Regents, and Montgomery-Kone, Inc. (Montgomery-Kone, Inc., was the company that installed and maintained the elevator.)

3. On September 9, 1998, Ms. Painter's lawsuit was dismissed without prejudice.

4. Thereafter, on February 24, 1999, Ms. Painter retained the Respondent to refile the lawsuit.

5. On March 5, 1999, the Respondent refiled Ms. Painter's lawsuit against the University of Kansas Medical Center, the Kansas State Board of Regents, and Montgomery-Kone, Inc. in Wyandotte County District Court Case #99-C-1033.

6. On July 20, 1999, the University of Kansas Medical Center and the Kansas State Board of Regents filed a motion to dismiss the lawsuit. Thereafter, on January 19, 2000, the court granted the motion and dismissed Ms. Painter's case as against the University of Kansas Medical Center and the Kansas State Board of Regents. In its journal entry, the [trial] court [that granted the dismissal motion] found the following facts to be true:

> 3. Plaintiff re-filed the current case on March 5, 1999.
>
> 4. Plaintiff sent a letter on May 21, 1999, to the State Attorney General, Carla Stovall, stating "I am [sending] you a copy of the Petition for Damages and Praecipe on this case." Plaintiff's counsel sent the letter by certified mail. The contents of the letter did not include either the court where the petition had been filed or a case number.
>
> 5. The moving defendants admit that they received the above letter but deny that the petition or any other documents were attached to it.

6. Plaintiff's counsel sent another letter to the office of the State Attorney General, Carla Stovall, dated June 30, 1999. In that letter he stated:

> "According to your attorney when I served you by certified mail on May 21, 1999, I did not serve you with the Petition and Summons on this case. I am now serving you the Summons and Petition on this case."
>
> Again the face of the letter did not mention the court in which the petition was filed or a case number.

7. Plaintiff's counsel has never filed a return of service.

In addition, the trial court concluded as follows:

A. The filing of the first case on January 23, 1997, occurred prior to the running of the applicable statute of limitations.

B. Even though the statute of limitations had expired prior to dismissal of the first case, plaintiff had 6 months from the date of the dismissal in which to re-file the case (or until April 9, 1999) pursuant to K.S.A. 60-518.

C. Plaintiff filed the petition in the current case on March 5, 1999, within 6 months of the dismissal of her first case.

D. Pursuant to K.S.A. 60-203(a) the filing of the current Petition on March 5, 1999, would not constitute a tolling of the statute of limitations unless service was obtained within 90 days of the filing of the

petition (or within 120 days if the court had granted an extension of this time period for an additional 30 days).

E. Plaintiff's letter to the Kansas Attorney General dated May 21, 1999, did not constitute service of process as required in K.S.A. 60-303(b) . . .

F. Any purported service of process by plaintiff on defendants by virtue of the letter of June 30, 1999, was beyond the 90-day period within which service had to be accomplished in order for this action to be deemed filed on the date of the filing of the petition. Since plaintiff's counsel never requested that this 90-day period be extended, the matter was not "commenced" until defendants received the letter of June 30th with enclosures at the very earliest. This clearly was more than six months after the dismissal of the first case.

G. K.S.A. 60-204 provides that in certain circumstances a party's substantial compliance with the requirements of service of process can be valid service if the party served was:

> "made aware that an action or proceeding was pending in a specified court in which his or her person, status or property were subject to being affected."

Here, plaintiff's counsel did not substantially comply with the requirements of service of process since he never forwarded a summons to the defendants nor can he provide proof that he sent

them a copy of the petition prior to the running of the statute of limitations. The letter of May 21, 1999, by itself does not adequately notify defendants of litigation against them such that it can be deemed "substantial compliance.'"

7. The Respondent informed Ms. Painter that the case had been dismissed as against the University of Kansas Medical Center and the Kansas State Board of Regents. However, the Respondent failed to inform Ms. Painter that the claims against the University of Kansas Medical Center and the Kansas State Board of Regents were dismissed because he failed to achieve timely service of process.

8. On August 17, 2001, Montgomery-Kone, Inc., offered to settle the pending claim against it for $5,000. Ms. Painter accepted the offer, and on August 26, 2001, a journal entry of judgment was entered against Montgomery-Kone, Inc., in the amount of $5,000.

9. On October 4, 2001, the court directed the Clerk of the District Court pay to the Respondent a judgment amount of $5,066.50. The Clerk issued a check, made payable to Ms. Painter and the Respondent. The Respondent deposited the check into his law office operating account at the Bank of America. At the time of the settlement, the Respondent did not have a trust account and was of the opinion that because he was a personal injury attorney, he did not need to have a trust account. However, the Respondent now understands that he needs to deposit the settlement checks into a trust account and then

disburse the funds from the trust account. The Respondent now has a trust account.

10. On October 5, 2001, the Respondent provided Ms. Painter with a settlement statement, setting forth an accounting of the expenses and distribution of the proceeds from the settlement.

11. On October 15, 2001, the Respondent provided Ms. Painter with a check drawn on his law office operating account for her share of the settlement proceeds. However, when Ms. Painter attempted to cash the check on October 15, 2001, October 16, 2001, and October 18, 2001, the bank refused to pay the check because there were insufficient funds in the account to cover the check.

12. On October 22, 2001, the Respondent provided Ms. Painter with a cashier's check for her share of the settlement proceeds. The Respondent explained that the reason Ms. Painter's check was not honored was because he had deposited another check in an unrelated case into his law office operating account but had inadvertently forgotten to endorse that check and, as a result, the unrelated check was returned for his signature, leaving insufficient funds to cover outstanding checks.

Missouri Disciplinary Case

On December 18, 2002, the Office of Chief Disciplinary Counsel filed an information and motion for discipline against Respondent pursuant to Rule 5.20. **App.**,

p. 9. The Court issued its show cause order to Respondent on December 19, 2002. Mr. Wiles filed his response on January 21, 2003. **App.**, p. 12. On January 31, 2003, the Court notified the parties by letter that it had established a briefing schedule.

POINT RELIED ON

I.

THE SUPREME COURT SHOULD RECIPROCALLY DISCIPLINE RESPONDENT BECAUSE THE KANSAS SUPREME COURT HAS ADJUDGED RESPONDENT GUILTY OF PROFESSIONAL MISCONDUCT IN THAT HE: PROVIDED INCOMPETENT SERVICE (4-1.1) TO AND FAILED DILIGENTLY TO REPRESENT (4-1.3) CLIENT PAINTER BY NOT EFFECTING TIMELY SERVICE OF PROCESS; FAILED TO KEEP MS. PAINTER INFORMED ABOUT HER CASE (4-1.4(a)) BY NOT TELLING HER THAT THE REASON THE TRIAL COURT DISMISSED TWO DEFENDANTS FROM HER CASE WAS BECAUSE RESPONDENT DID NOT TIMELY SERVE THEM WITH PROCESS; AND FAILED TO SAFEGUARD MS. PAINTER'S PROPERTY (4-1.15(a)) BY DEPOSITING HER SHARE OF A SETTLEMENT CHECK IN HIS OPERATING ACCOUNT AND NOT MAINTAINING A BALANCE IN THE ACCOUNT AT LEAST EQUAL TO MS. PAINTER'S SHARE OF THE SETTLEMENT

In re Tessler, 783 S.W.2d 906, 909 (Mo. banc 1990)

In re Schaeffer, 824 S.W.2d 1, 5 (Mo. banc 1992)

In re Charron, 918 S.W.2d 257, 259 (Mo. banc 1996)

In re Waldron, 790 S.W.2d 457, 460 (Mo. banc 1990)

Rule 4-1.1

Rule 4-1.3

Rule 4-1.4(a)

Rule 4-1.15(a)

POINT RELIED ON

II.

THE SUPREME COURT SHOULD SUSPEND RESPONDENT INDEFINITELY WITH LEAVE TO APPLY FOR REINSTATEMENT AFTER SIX MONTHS AND STAY THE SUSPENSION FOR A TWELVE MONTH PERIOD BECAUSE THE SANCTION IMPOSED IN THIS CASE MUST PROVIDE SOME ASSURANCE OF PROTECTION TO THE PUBLIC IN THAT THE MISCONDUCT IN BOTH THIS CASE AND THE SIX ADMONITIONS RESPONDENT HAS ACCEPTED IN THE PRECEDING FOUR YEARS INVOLVE VIOLATIONS OF DUTIES TO CLIENTS

A.B.A. Standards for Imposing Lawyer Sanctions (1991 ed.)

Rule 4-1.1

Rule 4-1.3

Rule 4-1.4

Rule 4-1.15(b)

Rule 4-8.4(d)

ARGUMENT

I.

THE SUPREME COURT SHOULD RECIPROCALLY DISCIPLINE RESPONDENT BECAUSE THE KANSAS SUPREME COURT HAS ADJUDGED RESPONDENT GUILTY OF PROFESSIONAL MISCONDUCT IN THAT HE: PROVIDED INCOMPETENT SERVICE (4-1.1) TO AND FAILED DILIGENTLY TO REPRESENT (4-1.3) CLIENT PAINTER BY NOT EFFECTING TIMELY SERVICE OF PROCESS; FAILED TO KEEP MS. PAINTER INFORMED ABOUT HER CASE (4-1.4(a)) BY NOT TELLING HER THAT THE REASON THE TRIAL COURT DISMISSED TWO DEFENDANTS FROM HER CASE WAS BECAUSE RESPONDENT DID NOT TIMELY SERVE THEM WITH PROCESS; AND FAILED TO SAFEGUARD MS. PAINTER'S PROPERTY (4-1.15(a)) BY DEPOSITING HER SHARE OF A SETTLEMENT CHECK IN HIS OPERATING ACCOUNT AND NOT MAINTAINING A BALANCE IN THE ACCOUNT AT LEAST EQUAL TO MS. PAINTER'S SHARE OF THE SETTLEMENT

It should be noted at the outset that the facts from which the Kansas Supreme Court concluded Respondent had violated the Rules of Professional Conduct were

stipulated to by Mr. Wiles (who was represented in the Kansas disciplinary case by counsel) and the Kansas Office of the Disciplinary Administrator (Kansas' counterpart to Missouri's Office of Chief Disciplinary Counsel). A certified copy of the Stipulation is included in this brief's Appendix.

Mr. Wiles stipulated to the fact that he deposited a settlement check payable to himself and his client (Ms. Painter) in his law office bank account, which was not a trust account. **App.**, p. 5. Mr. Wiles stipulated to the fact that it was his belief at the time that because he is a personal injury lawyer, he did not need a separate trust account. **App.**, p. 5. Mr. Wiles stipulated to the fact that he wrote Ms. Painter a check for $2,011.31 (her share of the settlement proceeds), and that the drawee bank refused thereafter to honor the check on October 15, October 16, and October 18, 2001, because there were insufficient funds in the account. **App.**, p. 6.

Since Mr. Wiles stipulated to the very facts that constitute a violation of Rule 4-1.15(a), it is disingenuous of Respondent to tell this Court that he "den[ies] the allegation of the Disciplinary Administrator that I spent a portion of the recovery going to Ms. Painter, before the settlement check to her and me had cleared my bank." **App.**, p. 13. Indeed, Mr. Wiles' explanation as to why he believes he did nothing wrong reveals a disturbing ignorance of, or misunderstanding about, a lawyer's fiduciary obligations to his client and toward his client's property.

Mr. Wiles blames his bank's refusal, on three different occasions, to honor the check he wrote his client on his inadvertent failure to endorse an unrelated check deposited in the account from an entirely different matter. Just as Mr. Wiles was of the

shockingly wrong opinion that he did not need a trust account because he is a personal injury lawyer, Mr. Wiles reveals in his response to this Court his lack of understanding of a lawyer's obligations with respect to a client's money. Rule 4-1.15 articulates the postulate sacrosanct to a lawyer's responsibilities toward his client's property: a lawyer must safeguard his client's property. A lawyer cannot commingle his client's property with his own; he cannot "borrow" (some would say "steal") client property with the intention of quickly replacing it.

The fact that Mr. Wiles forgot to endorse a check he deposited in his account in an unrelated matter in no way excuses the fact that he spent Ms. Painter's money before she got it. Mr. Wiles' inability to grasp this basic concept of professional ethics is alarming.

Failure to keep a sufficient balance in the trust account to pay over a client's money promptly is a serious offense. *In re Tessler*, 783 S.W.2d 906, 909 (Mo. banc 1990). "When an attorney deposits the client's funds into an account used by the attorney for his own purposes, any disbursement from the 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). The fact that the client may ultimately suffer little or no harm does not absolve the lawyer's violation of the Rule. *In re Charron*, 918 S.W.2d 257, 259 (Mo. banc 1996). The lawyer's subsequent admission that he made a mistake in his handling of the client's property does not diminish the seriousness of a flagrant violation of Rule 1.15. *In re Waldron*, 790 S.W.2d 457, 460 (Mo. banc 1990).

While the other Rules Respondent violated implicate less serious professional misconduct than the violation of 4-1.15, it should be noted that Mr. Wiles likewise stipulated to the facts from which the Rule 4-1.1, 4-1.3, and 4-1.4(a) violations were drawn. Respondent tells this Court in his Response that he "disputed the trial court's Ruling that the service was not timely effected against K.U. Medical Center." Respondent may have disputed it in the underlying tort litigation, but he obviously lost that dispute. Mr. Wiles stipulated to the following facts: "The court ruled that the complainant's [Ms. Painter's] claim was time-barred because the defendants were not served with process within ninety (90) days after the refiling of the petition. . . . The respondent informed the complainant about the dismissal of the claims against the two (2) defendants but did not inform the complainant that the dismissal occurred because the respondent had not timely effected service of process." **App.**, p. 4. It is from these stipulated facts that the Kansas Court concluded Respondent violated his duty to provide competent representation (4-1.1), his duty to represent his client diligently (4-1.3), and his duty to keep his client reasonably informed about the status of her matter (4-1.4(a)). It should be noted that the stipulated facts also lend themselves to the conclusion that Respondent concealed material information from his client, a violation of Rule 4-8.4(d).

This case was filed as a reciprocal disciplinary matter under Rule 5.20. Not only should this Court discipline Respondent pursuant to Rule 5.20 because Respondent has been adjudged guilty of professional misconduct by a sister jurisdiction, but this Court should doubly take cognizance of the legitimacy of that adjudication inasmuch as

Respondent stipulated to the very facts from which it was concluded that professional misconduct had occurred.

ARGUMENT

II.

THE SUPREME COURT SHOULD SUSPEND RESPONDENT INDEFINITELY WITH LEAVE TO APPLY FOR REINSTATEMENT AFTER SIX MONTHS AND STAY THE SUSPENSION FOR A TWELVE MONTH PERIOD BECAUSE THE SANCTION IMPOSED IN THIS CASE MUST PROVIDE SOME ASSURANCE OF PROTECTION TO THE PUBLIC IN THAT THE MISCONDUCT IN BOTH THIS CASE AND THE SIX ADMONITIONS RESPONDENT HAS ACCEPTED IN THE PRECEDING FOUR YEARS INVOLVE VIOLATIONS OF DUTIES TO CLIENTS

The repetitiveness, recent quantity, and substantive nature of Respondent's professional misconduct prompt Informant to recommend indefinite suspension with leave to apply for reinstatement after six months, to be stayed for a one-year period of probation to include the conditions of satisfactory completion of courses on law office management and ethics, submission to random, independent audits of his client trust account, periodic reports to the Office of Chief Disciplinary Counsel, and no further violations of the Rules of Professional Conduct. Informant has included a proposed disciplinary order at **App.**, p. 45.

While the recommended discipline in this reciprocal case exceeds that stipulated to and imposed by the Supreme Court of Kansas, Informant believes suspension, stayed for a period of supervised probation, will more adequately and proactively address the concerns raised by the professional misconduct at issue than will a public reprimand alone. Respondent's accumulation of six Missouri admonitions in the preceding four years, all of which admonitions involve violations of duties owed to clients, raises serious public protection concerns. See A.B.A. Standards for Imposing Lawyer Sanctions at 5 (1991 ed.) (Standards assume the most important ethical duties are those obligations owed to clients).

The Office of Chief Disciplinary Counsel does not believe that probation pursuant to Rule 5.225 is appropriate in every case where the recommended sanction is below the level of disbarment. Before the Chief Disciplinary Counsel will recommend probation, the lawyer must have demonstrated an awareness of wrongdoing and an openness to rehabilitation of those areas of his or her practice that led to disciplinary action in the first place. Mr. Wiles' case is before the Court in an unusual procedural posture: a reciprocal case in which the underlying professional misconduct was litigated and established by Kansas disciplinary authorities. Because Missouri disciplinary personnel were not involved, the individual assessment of whether Mr. Wiles is a good candidate for probation has not occurred. While the Chief Disciplinary Counsel recommends probation in this case with hesitation, particularly in light of Mr. Wiles' insistence in his response to this Court's show cause order that he has done little wrong, the Chief

Disciplinary Counsel is willing to grant Mr. Wiles the benefit of the doubt in light of his many years of practice without discipline before November of 1998.

Beginning in November of 1998, six admonitions were issued by Missouri disciplinary authorities to Respondent. Respondent accepted all six of the admonitions. The six admonitions include four diligence rule violations (4-1.3), five communication rule violations (4-1.4), one safeguarding client property rule violation (4-1.15(b)), and one violation of the rule against engaging in conduct prejudicial to the administration of justice (4-8.4(d)).

The case presently before the Court is one in which Kansas has adjudicated Respondent guilty of violations of analogous Missouri Rules 4-1.1 (competence), 4-1.3 (diligence), 4-1.4 (communication), and 4-1.15(a) (safeguarding client property). Additionally, the Kansas decision recites that Respondent had been given two prior admonitions by Kansas, although the nature and dates of the Kansas violations is not identified. It is important to note that it does not appear that the Kansas authorities took Respondent's Missouri disciplinary history into consideration in publicly censuring Respondent.

Under the circumstances, Informant recommends an indefinite suspension with leave to apply for reinstatement after six months, to be stayed for a one-year period of supervised probation.

CONCLUSION

Drawing from a set of facts stipulated to between Respondent and Kansas disciplinary authorities, the Kansas Supreme Court has adjudicated Respondent guilty of professional misconduct. Under Rule 5.20, Respondent may be reciprocally adjudged to have violated the Missouri Rules of Professional Conduct. Respondent's acceptance of six Missouri admonitions in the preceding four years, coupled with the professional misconduct in the case sub judice, prompt Informant to recommend suspension with no leave to apply for reinstatement for six months, to be stayed for a one-year period of supervised probation.

Respectfully submitted,

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By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of March, 2003, two copies of Informant's Brief have been sent via First Class mail to:

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_____
Sharon K. Weedin

CERTIFICATION: SPECIAL RULE NO. 1(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 Special Rule No. 1(b);

3. Contains 4,358 words, according to Microsoft Word 97, 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