IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	**)**	
	)	
STANLEY L. WILES	**)**	**Supreme Court #SC84978**
	)	
Respondent.	**)**	

RESPONDENT'S BRIEF

STANLEY L. WILES #21,807
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RESPONDENT

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CASES

OTHER AUTHORITIES

K.S.A.

STATEMENT OF FACTS

For the most part Respondent adopts the Informant's Statements of Fact, except that:

Additional Kansas Findings of Fact

1. While this attorney's letter to the Kansas Attorney General, Ms. Carla Stovall on May 21, 1999, did not contain the Court where the Petition had been filed nor the case number of Lindy Painter's lawsuit, this attorney did send a copy of the Petition and Praecipe on Lindy Painter's case, with this attorney's letter, which clearly identified the Court where Petition had been filed in Wyandotte County, Kansas, District Court and the Case Number of Lindy Painter's Petition. This is in reference to paragraph 6 (4) of Informant's Kansas Findings of Fact in Informant's brief.

2. This attorney believes that this attorney substantially complied

with the provisions of Kansas law, **K.S.A. 60-204**. This attorney contends that this attorney's letter to Kansas Attorney General, Ms. Carla Stovall, of May 21, 1999, along with the Petition and Praecipe that this attorney sent to Ms. Stovall's office was substantial compliance Kansas law or service of process in light of **K.S.A. 60-204**.

3. Ms. Painter's claim against K.U. Medical and the K.U. Board of Regents were dismissed, because the Wyandotte County, Kansas, District Judge, that this case was assigned to Ruled over this attorney's objection, that Defendants, K.U. Medical Center, and K.U. Board of Regents were not timely served with service of process on Ms. Painter's said case.

POINT RELIED ON

I.

THE SUPREME COURT SHOULD ONLY RECIPROCALLY DISCIPLINE RESPONDENT, BECAUSE RESPONDENT DID NOT INTENTIONALLY ENGAGE IN PROFESSIONAL MISCONDUCT IN KANSAS, AND BECAUSE RESPONDENT HAS BEEN CENSURED BY THE KANSAS SUPREME COURT. RESPONDENT HAS MADE THE NECESSARY CHANGES IN HIS MISSOURI AND KANSAS LAW BASED ON THE DISCIPLINARY CHANGE AND CENSURE BY THE KANSAS SUPREME COURT.

Supreme Court Rule 2.20

K.S.A. 60-204

K.S.A. 60-518

K.S.A. 60-203(a)

K.S.A. 60-304

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

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

POINT RELIED ON

II.

THE SUPREME COURT SHOULD NOT SUSPEND RESPONDENT'S MISSOURI LAW LICENSE, BECAUSE RESPONDENT HAS ENGAGED IN NO ACTS THAT WOULD REQUIRE THE SUSPENSION OF RESPONDENT'S MISSOURI LAW LICENSE, NOR HAS RESPONDENT ENGAGED IN UNETHICAL ACTS THAT WOULD REQUIRE PROTECTION OF THE PUBLIC AS TO RESPONDENT.

Supreme Court Rule 5.20.

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

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

ARGUMENT

I.

THE SUPREME COURT SHOULD ONLY RECIPROCALLY DISCIPLINE RESPONDENT, BECAUSE RESPONDENT DID NOT INTENTIONALLY ENGAGE IN PROFESSIONAL MISCONDUCT IN KANSAS, AND BECAUSE RESPONDENT HAS BEEN CENSURED BY THE KANSAS SUPREME COURT. RESPONDENT HAS MADE THE NECESSARY DAMAGES IN HIS MISSOURI AND KANSAS LAW BASED ON THE DISCIPLINARY CHANGE AND CENSURE BT THE KANSAS SUPREME COURT.

Hindsight is 20/20. In hindsight, this attorney should not have taken Ms. Lindy Painter's case. This attorney never before has had an elevator fall case. This attorney did not anticipate the difficulties and expense of an

elevator fall case, and could not reach Ms. Painter's previous attorney to find out why that attorney withdrew from Ms. Painter's case.

This attorney acknowledges that this attorney is subject to reciprocal sanctions under **Missouri Supreme Court Rule 5.20**.

Respondent is 61 years old and has been a Missouri attorney for 34 years. For 29 years of this attorney's Missouri legal career, this attorney has had no disciplinary sanctions against his Missouri law license. Between the years of 1998 and 2001, this attorney was cited 6 times by the Disciplinary Administrator's office for informal admonitions. This attorney believes that the period of time between 1998 to 2001 was an extraordinary period of time for complaints against attorneys, and requests that the Court take into consideration the circumstances of that period of time. The facts on the 6 informal admonitions to this attorney would tend to show that the said informal admonitions to this attorney were not as serious as Informant would have this Court believe.

Service of Process on Lindy Painter's Case

Going back to the Lindy Painter case, Ms. Painter came to this attorney on February 24, 1999, to refile her lawsuit, when her previous attorney had dismissed her case without prejudice.

Ms. Painter had come to this attorney telling this attorney that she had gone to K.U. Medical Center, in Kansas City, Kansas, and as she was riding upward on the elevator, the elevator suddenly went down very fast to the

basement. Ms. Painter claimed that she injured her back from this said elevator fall. There were two other people on the elevator at the time of this said elevator fall. One of the other people in the elevator was also claiming injuries and came to this attorney. This attorney agreed to represent that person on his elevator fall case.

This attorney attempted to call Ms. Painter's previous attorney, who also represented the other man on said elevator fall case, to try to find out the reason or reasons why he had refused to represent Ms. Painter, after filing a big lawsuit against the elevator service company, Kone Elevator Company, K.U. Medical Center, and the K.U. Board of Regents. This attorney made several calls to that attorney, but was never able to reach him.

This attorney made a decision, which this attorney has come to regret, that this attorney would represent Ms. Painter on her elevator fall case.

In taking down the information from Ms. Painter on her case, this attorney asked Ms. Painter how many previous injuries that Ms. Painter had had. This attorney does this on every personal injury case that this attorney handles. Ms. Painter told this attorney that she had two or three prior injuries, which this attorney later learned was false. In a deposition taken by the

attorney for Kone Elevator Company, Ms. Painter admitted that she had about 25 or 30 prior injuries, many of which were back injuries. If this attorney had known that Ms. Painter had 25 or 30 prior injuries, this attorney would have never taken Ms. Painter's case. Ms. Painter claimed that her back was injured from her said elevator fall.

However, since Ms. Painter had told this attorney that she had only 2 or 3 prior injuries, this attorney agreed to take her case.

Ms. Painter's previous attorney had filed a Petition on Ms. Painter's behalf, before he dismissed Ms. Painter's case without prejudice, with the approval of the Kansas Court. A copy of Ms. Painter's previous attorney's Petition was brought in when Ms. Painter saw this attorney, along with the other material that Ms. Painter brought in on her case. This attorney referenced the previous attorney's lawsuit in refiling Ms. Painter's case. Under Kansas law, a party can refile his or her case within 6 months of

dismissing his or her case without prejudice. Ms. Painter's previous lawsuit was dismissed without prejudice on September 9, 1998. This attorney refiled Ms. Painter's lawsuit on March 5, 1999, well within the 6 months Kansas Statute of Limitation for refiling Ms. Painter's case, pursuant to Kansas Statute, **K.S.A. 60-518**.

Pursuant to **K.S.A. 60-203(a),** refiling Ms. Painter's lawsuit would not toll the Statute of Limitations unless service of process was obtained on Defendants (there were 3 Defendants) within 90 days of the filing of the Petition, or within 120 days, if the Court had granted an extension for an additional 30 days before the initial 90 day service period had run.

Under Kansas law, service of process for Defendants K.U. Medical Center and the K.U. Board of Regents would be on the Kansas Attorney General. The Kansas Attorney General at that time was Ms. Carla Stovall.

This attorney had filed suit on both Ms. Lindy Painter and the other man in the elevator with Ms. Painter, who claimed injuries at that time from said elevator fall. These 2 cases were filed as separate lawsuits. Since this attorney had refiled Ms. Painter's lawsuit on March 5, 1999, under **K.S.A. 60-203(a),** this attorney had 90 days or until June 4, 1999, in which to serve

the Kansas Attorney General, the service agent for K.U. Medical Center and the K.U. Board of Regents.

This attorney believes that he did serve Ms. Carla Stovall with the Petition and Praecipe on Ms. Painter's case on May 21, 1999, well within the

90 day Statute of Limitations required by **K.S.A. 60-203(a),** since Ms. Painter's lawsuit was refiled on March 5, 1999**.**

Under **K.S.A. 60-203(a**), this attorney had 90 days to serve Ms. Carla Stovall's office, the service agent for K.U. Medical Center and the K.U. Board of Regents. This attorney could have gotten an additional 30 days, or a total of 120 days to serve the said Defendants, if this attorney had applied for the extra 30 days, to serve Defendants within the initial 90 days for service of process on or before June4, 1999, since Ms. Painter's lawsuit had been refiled on March 5, 1999.

This attorney sent a Court file-stamped copy of the Petition and the Praecipe to Ms. Stovall's office on May 21, 1999, well within the 90 day Statute of Limitations prescribed by the **K.S.A. 60-203(a),** since Ms. Painter's lawsuit was refiled on March 5, 1999**.**

This attorney believes that this constituted valid service of process on Defendants, K.U. Medical Center, and the K.U. Board of Regents, as

required by **K.S.A. 60-304.** Defendant, Kone Elevator Company, was properly served with process on Ms. Painter's case.

This attorney believes that Ms. Painter's case was "commenced" on May 21, 1999, as to Defendants, K.U. Medical Center and the K.U. Board of Regents.

Ms. Carla Stovall's office "claimed" that this attorney did not send her office a copy of Ms. Painter's Petition and Praecipe in this attorney's letter to Carl Stovall's office of May 21, 1999. This attorney disputed that. This attorney only wrote the letter to the Kansas Attorney General's office on June 30, 1999, because the Kansas Attorney General's office "claimed" that they had not received the Petition and Praecipe in my certified letter to Ms. Stovall's office of May 21, 1999. The Kansas attorney General's office contacted this attorney before June 30, 1999, but after June 4, 1999, "claiming" that this attorney did send them the Petition and Praecipe on Ms. Painter's case. This attorney disputed this Kansas Attorney General offices said "claim".

K.S.A. 60-204 provides that a parties "substantial compliance" with the requirements of service of process under **K.S.A. 60-203** can be valid, if the Defendant served was made aware that an action or proceeding was

pending in a specific Court. This attorney believes that this attorney did substantially comply with the Kansas law on service of process to Defendants K.U. Medical Center and the K.U. Board of Regents, in that in this attorney's May 21, 1999, letter to Ms. Stovall's office, this attorney did send a copy of the

file-stamped Petition and Praecipe, both of which pleadings had the case number and the name of the Wyandotte County District Court where Ms. Painter's case was pending.

This attorney's letter of May 21, 1999, to Ms. Stovall's office along with the Petition and Praecipe with the case numbers attached adequately notified Ms. Stovall's office that a lawsuit was pending against K.U. Medical Center and the K.U. Board of Regents.

The attorneys for K.U. Medical Center and the K.U. Board of Regents did file a motion to dismiss on Ms. Painter's case, but they did not file their motion to dismiss until July 20, 1999. That date is significant, because since Ms. Painter's Petition was refiled on March 5, 1999, July 20, 1999, was over 120 days from the date that Ms. Painter refiled her Petition through this

attorney's office on March 5, 1999. Under Kansas law, **K.S.A. 60-203(a)** a party cannot get an additional 30 days in which to serve a Petition, unless

that party applies for an additional 30 days within the initial 90 days to serve the Petition on a Defendant's service agent.

Ms. Carla Stovall's office had substantial time to contact this attorney to let this attorney know that Ms. Stovall's office "claimed" that they had not received Ms. Painter's Petition that this attorney sent in this attorney's letter

to Ms. Stovall's office on May 21, 1999. However, Ms. Stovall's office never contacted this attorney until after 90 days service of process period of time had elapsed on June 4, 1999, to indicate that they had not received Lindy Painter's Petition. Ms. Stovall's office knew of Ms. Painter's lawsuit within the 90 day period after Ms. Painter refiled her lawsuit, because they received this attorney's certified letter on May 21, 1999. They just "claimed" that they did not know of Ms. Painter's said lawsuit by June 4, 1999.

This attorney filed Suggestions Opposing the Motion of Ms. Stovall's office to Dismiss Ms. Painter's lawsuit against K. U. Medical Center and the K.U. Board of Regents. Unfortunately, the Wyandotte County, Kansas, District Judge ruled in favor of K.U. Medical Center and the K.U. Board of Regents and dismissed Ms. Painter's lawsuit those 2 Defendants only. It was and is this attorney's belief that Ms. Painter's refiled lawsuit was

"commenced" against these 2 said Defendants, by this attorney's certified letter to Ms. Stovall's office on May 21, 1999.

As stated on page 9 of Informant's brief, this attorney lost the dispute. That is correct. However, if every attorney who loses a dispute in Court was sanctioned by the Disciplinary Administrator, every single lawyer in this

state, that tries civil cases, would probably be sanctioned by the Disciplinary Administrator's office. This attorney does not know of a single attorney who has not lost at least one motion or a civil case in his or her lifetime. The fact of the matter is that this attorney strongly believes that this attorney was competent in representing Ms. Painter, and that this attorney competently forwarded the lawsuit to Ms. Carla Stovall's office within the 90-day period mandated by **K.S.A. 60-203(a)**. As the Informant states, this attorney did notify Ms. Painter that the Court had dismissed Ms. Painter's lawsuit against Defendants, K.U. Medical Center and the K.U. Board of Regents.

It is true that this attorney did not tell Ms. Painter the reason why the Court dismissed her lawsuits against K.U. Medical Center and the K.U. Board of Regents. However, telling Ms. Painter the reason why the case was dismissed against K.U. Medical Center and the K.U. Board of Regents would not have made any difference at all in Ms. Painter's lawsuit at that

time. The cases against those 2 Defendants were dismissed by the Court. The lawsuit against Kone Elevator was still pending at the time the two other Defendants

were dismissed by the Wyandotte County District Judge. This attorney could not have appealed the dismissed of these two said Defendants cases, because the lawsuit against Kone Elevator Company was still pending , when the two other Defendants were dismissed from the case.

When Defendants, K.U. Medical Center, and the K.U. Board of Regents filed their motion to dismiss, it was past the 90 day period of time in which to ask for an extension to serve those Defendants. This attorney would have had to file a Motion for an Extension to serve these two Defendants before June 4, 1999, in order to serve K.U. Medical Center and K.U. Board of Regents by July 4, 1999.

This attorney does not believe that this attorney's actions in regards to the service of process of Ms. Painter's case against K.U. Medical Center and the Kansas University Board of Regents were unethical. This attorney disputed and vigorously contested the Motion of K.U. Medical Center and

the K.U. Board of Regents to dismiss the case against those defendants. This attorney disagreed with the ruling of the Wyandotte County District Judge, who dismissed Ms. Painter's case as to K.U. Medical Center and the K.U. Board of Regents.

Proceedings on the Lindy Painter case after the K.U. Medical Center and the Kansas University Board of Regents were dismissed from the case.

After the Wyandotte County Kansas District Judge dismissed Ms. Painter's case against K.U. Medical Center and the K.U. Board of Regents, Ms. Painter still had Kone Elevator Company as a Defendant on her case.

This attorney thought that that the primary negligence on Ms. Painter's case was with Kone Elevator Company. Defendants, K.U. Medical Center and the K.U. Board of Regents had potential liability only as derivative parties or, as principals to their agent, Kone Elevator Company.

<u>Discovery and Further Proceedings on Lindy Painter's case.</u>

This attorney did extensive discovery on Ms. Painter's case. This attorney sent out Interrogatories and Request for Production to Kone Elevator Company's attorney. This attorney obtained all of the service records from Kone Elevator Company for the K.U. Medical Center elevator in question. This attorney took about 4 depositions from all of the service personnel and the local chief operating officer of Kone Elevator Company in the Kansas City, Missouri, metropolitan area. After this attorney obtained the elevator

service records to determine if Kone Elevator Company was negligent or not, this attorney paid for an elevator expert to advise this attorney on the elevator company's potential liability on Ms. Painter's case.

After all of the discovery that this attorney conducted on Ms. Painter's behalf, the only possible theory of liability that this attorney could discover was that when Kone Elevator Company constructed the said elevator in 1978, a "key" device, that Kone Elevator had constructed to "call" down the elevator from a higher floor, was wrongfully manufactured, so that the elevator could be "called" down to the basement, when the elevator was moving between floors.

On Ms. Painter's case, the elevator was going from the 4th to the 5th floor, when the elevator started to suddenly descend to the basement. One of the employees of K.U. Medical Center apparently "called" the elevator down. This attorney did not believe that this employee of K.U. Medical

Center was at fault, because the “key” device was to be used to call down the elevator in an emergency. The only theory that this attorney could come up with was that when the elevator was constructed in 1978, the “key” device, should not have been able to “call” the elevator down, while the elevator was moving between floors.

Even this theory of liability had its special problems. Since this incident happened in 1996 and the elevator was constructed in 1978, the **Kansas Statute of Repose** stated that a manufacturer could not be held liable for a defect in a manufactured product, if the manufactured product was constructed more than ten (10) years before the incident occurred. Since the elevator was manufactured in 1978 and this incident occurred in 1996, that would be outside of the **Kansas Statute of Repose.**

It was about this time that the attorney for Kone elevator Company took a 7 hour deposition of Ms. Painter on this case. This attorney reviewed the facts and prepared Ms. Painter to give her deposition.

Ms. Painter admitted during her deposition that she had approximately 25 to 30 prior injuries, most of them to her back. This elevator fall also injured Ms. Painter's back. Kone Elevator Company's doctor obtained

information that Ms. Painter had approximately 25 to 30 prior injuries.

Ms. Painter admitted to this fact in her deposition.

After Ms. Painter's deposition was taken and in light of Ms. Painter's prior history of approximately 25 to 30 injuries, most of which were back injuries. This attorney frankly told Ms. Painter that this attorney did not think that her case was winnable in Court.

This attorney talked to Ms. Painter, and Ms. Painter agreed to let this attorney try to negotiate a settlement on her case. This attorney also told Ms. Painter that it would cost approximately $6,000.00 to hire an elevator expert

and a physician to testify on her case. Ms. Painter had given this attorney the name of an orthopedic surgeon, that Ms. Painter wanted to testify on her case. I contacted that orthopedic surgeon's office and received his medical records. **Low and behold, this orthopedic surgeon that Ms. Painter wanted to testify on her case, stated in his report to this attorney that Ms. Painter had abused that doctor's office staff.**

In light of all of the things that had transpired during discovery, including numerous prior back and other injuries that Ms. Painter had not told this attorney about and her physician who stated that Ms. Painter had

abused that doctor's office staff, this attorney was able to successfully negotiate a settlement, which Ms. Painter accepted, for $5,000.00.

This Attorney's History as a Missouri Attorney

This attorney practiced law as a sole practitioner for approximately 32 years in Missouri. This attorney first started out as an attorney for a small LP

gas company in Missouri. After that, this attorney worked for about 6 months with a 5 person law firm in Kansas City, Missouri. This attorney was paid salary with this 5 person law firm. This attorney did not deposit any

settlement funds with that law firm, but was simply paid a straight salary for this attorney's work. After about 6 months that law firm downsized, and this attorney was let go. This attorney tried to get another job in another law firm. However, this attorney was unable to find another job and decided to hang out this attorney's shingle and practice law on this attorney's own. When this attorney first started to practice law, this attorney did everything. This attorney did his own typing and obtained clients from the Kansas City Metropolitan Bar Association.

This attorney thought he knew what commingling of funds was. However, this attorney thought that the prohibition of commingling funds

applied when a client gave an attorney money to hold for a certain length of time. This attorney have never had a client give this attorney money to hold for that client's purposes, except during the last year when a client, who hired this attorney on a criminal case, asked this attorney to hold $1,000.00

towards a fine that he was supposed to pay. When this attorney received that $1,000.00, this attorney opened up a separate bank account immediately, because this attorney did not want to put the $1,000.00 in with this attorney's own funds.

IOLTA Account Issue

However, this attorney did not think that putting the money in an office operating account and paying personal injury settlement funds to clients and paying their medical bills out of their settlement funds was commingling client funds.

This attorney realize now that this attorney was wrong. However, this attorney did not realize that that was wrong during the approximate 32 years that this attorney practiced law as a sole practitioner.

When this attorney received the Disciplinary Complaint from the Kansas Disciplinary Administrator, that was the first time this attorney realized that on a personal injury case, the settlement funds should be deposited in a IOLTA account. Once this attorney discovered that this

attorney should deposit a settlement check in an IOLTA account, this attorney promptly opened up an IOLTA account. This attorney currently deposits clients' settlement funds in an IOLTA account. This attorney now only transfer attorneys fees from this attorney's IOLTA account to this attorney's office operating account.

When this attorney made the statement that this attorney thought this attorney did not have to have a trust account, because this attorney was a personal injury attorney, this attorney was not being arrogant. This attorney made that statement, because this attorney honestly thought that this attorney did not have to have an IOLTA trust account for personal injury funds.

On Ms. Painter's case, this attorney had Ms. Painter sign a Settlement Statement, had her endorse the settlement check, and gave Ms. Painter a check for her portion of the settlement, which was approximately $2,011.00.

$20,000.00 Bounced Check

It was at this time that something happened that this attorney would not wish on this attorney's worst enemy. Before this attorney settled Ms. Painter's case, this attorney settled a case for $20,000.00. This attorney's attorney fees on that case were 33% of the recovery. The clients recovery on that case was 65% or $13,400.00.

This attorney had the client on the $20,000.00 case come in and sign a Settlement Stipulation. This attorney gave those clients $13,400.00, through a check drawn on this attorney's office operating account.

This attorney took the $20,000.00 check, to this attorney's bank, which was Bank of America, and deposited the $20,000.00 check. A couple of days after this attorney deposited the $20,000.00 check, this attorney received a call from the attorney whom this attorney had negotiated the said $20,000.00 settlement. That attorney told this attorney that the insurance company had called him and told that attorney, that this attorney had not endorsed the $20,000.00 settlement check.

This attorney panicked. This attorney had written a check for about $13,400.00 to this attorney's clients secured by the $20,000.00 check. The $20,000.00 check was going to bounce, if this attorney did not do something quickly.

This attorney asked the attorney on the $20,000.00 case, if this attorney could get the insurance company to let this attorney endorse the $20,000.00 check, so that the $13,400.00 check, that this attorney had given to this attorney's said clients did not bounce.

This attorney was informed by the insurer company's attorney on the $20,000.00 case, that the insurance company had already returned the check to this attorney's bank, Bank of America. Still in a state of panic, this attorney contacted Bank of America and asked if they could locate the $20,000.00 check, so that this attorney could endorse it, so that the $13,400.00 check and other checks that this attorney had outstanding would not bounce.

This attorney went down to Bank of America and talked to a bank officer. **However, the bank officer at Bank of America told this attorney that they could not locate the $20,000.00 check in their system**, but that this attorney would be notified when the check came back to this attorney's local Bank of America outlet.

This attorney had not way to endorse the $20,000.00 settlement check until the check came back to this attorney's local bank, so that this attorney

could endorse the check and make the said $20,000.00 settlement check good.

Unfortunately, Ms. Painter's settlement check was deposited about the same time that the $20,000.00 settlement check, mentioned-above, bounced.

Apparently, Ms. Painter attempted to cash her settlement check on October 15, October 16, and October 18, 2001. This was obviously during the time that the $20,000.00 settlement check mentioned-above, was working its way through the Bank of America administrative system.

By October 21, 2001, this attorney had endorsed the $20,000.00 settlement check, and this attorney paid Ms. Painter a Cashier's Check for the settlement proceeds on her case. This attorney should point out that Ms. Painter did not notify this attorney that the $2,011.00 settlement check was not good until on or after October 18, 2001. This attorney promptly paid Ms. Painter by a Cashier's Check within 3 or 4 days after of Ms. Painter notified this attorney that the settlement check that this attorney gave Ms. Painter had temporarily bounced.

To contend, as Informant contends on page 18 of Informant's brief, that this attorney "spent" Ms. Painter's settlement

money is disingenuous. This attorney was the victim not the perpetrator of having a $20,000.00 settlement check, that had temporarily bounced. This attorney should also point out, that even if this attorney had had an IOLTA account, when this attorney gave Ms. Painter her settlement check, Ms. Painter's check still would have bounced. The said $20,000.00

settlement check, which this attorney had deposited had bounced, which means that the $13,400.00 check that this attorney had given to this attorney's clients on the other case was collected from this attorney's account, when the $20,000.00 settlement check, that this attorney deposited to cover the $13,400.00 check, had bounced.

This attorney take great offense at Informant's statement on page 18 of Informant's brief, that this attorney "spent" Ms. Painter's money. That was the furthest thing from the truth. This attorney would have endorsed the $20,000.00 settlement check sooner, if Bank of America knew where the settlement check was, before the $20,000.00 settlement check bounced. After the said $20,000.00 settlement check was returned to this attorney's bank, and this attorney endorsed it, this attorney promptly paid Ms. Painter a Cashier's Check for her $2,011.00 settlement.

Informant cites the case of **In re Tessler, 783 S.W. 2d 906, 909 (Mo. banc 1990)** to state the 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**, involved two cases, one was a personal injury case, where the

attorney deposited a settlement draft into his account on November 6, 1984, telling his client that his client would get the settlement funds within two (2) weeks. The attorney on that case finally wrote a bad check to his client in January of 1985. Finally, on February 11, 1985, after 2 checks had bounced, the attorney made good on the check four (4) months after he had deposited the settlement funds in his trust account. The attorney in **In re Tessler**, supra, also delayed sending clients money on a divorce case.

In re Tessler, supra, is not analogous to this case. In **In re Tessler**, supra, the attorney on that case delayed for 4 months getting settlement funds to his client, when he had told his client he would pay the client settlement funds within in two (2) weeks and after two (2) checks had been dishonored by the bank. In this attorney's case, this attorney gave a check to Ms. Painter on or about October 15, 2001. This attorney was not notified until at least October 18, 2001, that the settlement funds paid to Ms.

Painter had not cleared this attorney's bank. This attorney promptly gave Ms. Painter a Cashier's Check 4 days on October 22, 2001, to pay her in full for her portion of her settlement. Actually, this attorney gave Ms. Painter a Cashier's Check about 2 or 3 days after she notified this attorney of the

bounced check. **Ms. Painter had to make an appointment the next day from when she called this attorney, because she lived out of town from where this atttorney's law office is located.**

Also in **In re Tessler**, supra, there was not allegation in that case that a settlement check on another case had bounced, which would prevent the attorney on that case from giving his client the settlement funds within 2 weeks on that case.

In **In re Schaeffer, 824 S.W.2d 1, 5 (Mo. banc 1992)**, that attorney, represented a client on a claim against a hospital. That claim was settled for $4,500.00. The attorney received the settlement check in December of 1988 or January of 1989. The settlement check was deposited in that attorney's account on February 8, 1989. That attorney used the $4,500.00 settlement on that case and on 19 times between February 9, 1989 and July 25, 1989, the amount in that attorney's office account fell below $3,000.00, which was the amount that was owed to the client. On July 25,

1989, after receiving notice that the client had made a complaint against that attorney, the attorney deposited $3,000.00 owed to the client in the attorney's escrow account and paid the client $3,000.00, 4 or 5 months after the

attorney had deposited the $4,500.00 settlement check in his account. Although the attorney contended that he was too busy in **In re Schaffer**, supra, the Court noted that that attorney was not too busy to withdraw $1,500.00, which was his attorney's fees on that case. **In re Schaffer**, supra, the Missouri Supreme Court stated as follows;

> "Respondent's failure to preserve the client's funds undiminished in an escrow account constitutes a most serious violation of the disciplinary rules in a area where those rules properly demand procedures that not only guarantee that the client's funds will not be misappropriated but also enable the attorney readily to demonstrate that no misappropriation has occurred."

This case here is in no way analogous to **In re Schaffer**, supra. The attorney **In re Schaffer**, supra, deposited settlement funds into his office operating account and gave his client a settlement check for her share of the

settlement funds 5 months after the settlement funds had been deposited into the attorneys account.

In this case, this attorney gave the settlement check to Ms. Painter on or about October 15, 2001. This attorney was not notified until on or about

October 18, 2001, that the $2,011.00 settlement check that this attorney had given to Ms. Painter had bounced. On October 22, 2001, this attorney gave Ms. Painter a Cashier's Check for the full settlement amount on her case. This attorney's check to Ms. Painter bounced, because the said $20,000.00 settlement check on another case bounced. This attorney could not immediately make the $20,000.00 good, because it was temporarily lost in Bank of America's administrative network.

There was no misappropriation on this attorney's case.

The fact of the matter is, is that this attorney had adequate funds in this attorney's office operating bank account to pay Ms. Painter. The only reason that Mr. Painter's settlement check bounced was that the said $20,000.00 settlement check, temporary bounced. **That does not amount up to misappropriation of clients funds, especially when this attorney wrote Ms.Painter a cashier's check for the full amount of settlement**

within 4 days or less of finding out from Ms. Painter that the settlement check to Ms. Painter had bounced. This attorney is not a millionaire lawyer, but that is not an ethical offense. This attorney takes great pride in doing this

attorney's very best to practice law in an ethical manner, no matter what Informant says. This attorney have made some mistakes, but this attorney has never intentionally stolen money from a client nor delayed giving clients money like the **In re Tessler**, supra, and **In re Schaeffer** cases.

Plaintiff's Prior Disciplinary Actions

This attorney acknowledges that this attorney has had 6 informal admonitions from Informant's office:

The period of time of the ethical charges against this attorney from November 8, 1998, until August 3, 2001, was an extraordinary period of time in which attorneys were made to feel like 2nd class citizens by the media and certain celebrities.

It was during this period of time, that Jay Leno, on almost a nightly basis, made derogatory, negative, and demeaning jokes about attorneys.

This attorney remembers each and every one of these ethical complaints against this attorney, because this attorney contested almost every one of these charges.

This attorney practices in an area of law that is more susceptible to complaints than other areas of the law. This attorney has a Plaintiff's practice. This attorney never has and never will represent insurance companies. Insurance companies rarely, if ever, make a complaint against their attorneys.

Members of the general public, who live from paycheck to paycheck, do not realize that it takes a long time for certain cases to get money that is owed then on a personal injury case.

All of the disciplinary letters to this attorney, cited by Informant, come from an attorney by the name of Mr. Keith Cutler. Mr. Cutler is a very good attorney. However, Mr. Cutler is an insurance company attorney. He primarily has represented State Farm Insurance Company on many personal injury cases. From November 8, 1998, to 2001, not only attorneys but attorneys on various Informant's hearing panels were apparently under

pressure to find attorneys had violated ethical rules in this State. Many of this attorney's fellow Plaintiff attorneys were present when this attorney appeared for hearings on ethical complaints by the hearing panels for Informant.

Once a hearing was held on a client's charge against an attorney, the hearing panel's lead attorney, such as Mr. Keith Cutler, almost invariably issued an opinion stating that the attorney violated certain ethical rules and gave the attorney a choice of accepting an informal admonition or going on for a formal hearing of the ethical charges.

This attorney and other attorneys, usually accepted an informal admonition, because going to a formal hearing on a client's charges would take valuable time away from the attorney's practice, and involve an element of risk.

This attorney acknowledges on the **Jayneen Hammons** case, that this attorney should have paid the MAST bill sooner than this attorney paid it. An informal admonition against this attorney was justified on that case. However, this attorney did pay the MAST bill in full on Ms. Hammons' case.

On the **Jewel Walker** case, this attorney believed that an informal admonition on that case was not justified. This attorney dismissed Ms. Walker's case without prejudice, because Ms. Walker moved from the address that she had given this attorney and left no forwarding

address with the Post Office. This attorney could not inform Ms. Walker about the dismissal of her case, because this attorney's letters to Ms. Walker were returned to this attorney. There was no way that this attorney could not contact Ms. Walker, even though this attorney had sent her a certified letter, because the certified letter and other letters that this attorney had written to Ms. Walker came back that she was not at the address where this attorney had written to her, and Ms. Walker had not given any forwarding address to the Post Office.

Concerning the Yvonne Hobbs case, this was an alleged medical malpractice case. This attorney well remembers this case. This attorney had used Medical Review Foundation to get an opinion from the medical director, Dr. Barry Jacobs, as to whether this case was a meritorious medical malpractice case. The letter from Mr. Cutler states that this attorney waited a year to contact Ms. Hobbs. This attorney did not contact Ms. Hobbs for a

period of time, because this attorney had a lot of difficulty getting all of the medical records on Ms. Hobbs' case. However, this attorney did not let the Statute of Limitations run on Ms. Hobbs's case. In fact, this attorney wrote

to Ms. Hobbs well before the two (2) year Statute of Limitations had run, and told her that this attorney thought that she did not have a medical malpractice case, that she had a right to consult another attorney, and this attorney was forwarding her files to her.

Concerning the **Beverly Stanton** case, this was again an alleged malpractice case. This attorney cannot remember exactly what complaint Ms. Stanton made. The complaint of Ms. Stanton is not outlined in the letter from Mr. Cutler to this attorney. However, this attorney did his best to try to contact Ms. Stanton on Ms. Stanton's case. This attorney also told Ms. Stanton months before the Statute of Limitations had run on her case that this attorney had acquired all of the medical records on her case and obtained an opinion from Medical Review Foundation, that she did not have a medical malpractice case. This attorney told Ms. Stanton, that she had a

right to consult another attorney. This attorney sent all of Ms. Stanton all of the

medical records that this attorney had acquired and sent Ms. Stanton a certified letter stating that this attorney did not think she had a medical malpractice case, that she should contact another attorney, and that she should file her case before the two (2) year medical malpractice Statute of Limitations had run in Missouri.

Concerning the **Mary Robinson** complaint, this attorney vehemently disputed that claim of Ms. Robinson. This attorney believes that this attorney acted with reasonable diligence on Ms. Robinson's case, and this attorney also vehemently denied this attorney was demeaning toward Ms. Robinson or her doctor. This attorney's recollection is that Ms. Robinson and her doctor were demeaning and abusive toward this attorney on Ms. Robinson's case.

This attorney believe that the **Mary Robinson** complaint is another instance where Mr. Cutler and the hearing panel members apparently felt they were under pressure to uphold a client's complaint against an attorney, because of the pressures attorneys were under from about 1998 to 2001.

Concerning the **Zepha J. Hobley** case, this attorney does not recall much about this case, but this attorney knows that this attorney tried

diligently to try to represent Ms. Hobley and keep in communication with her on her case.

This attorney accepted informal admonitions on this and other cases because of time constraints and potential risks on some of the complaints, if a certain complaint went to a full hearing.

POINT RELIED ON

II.

THE SUPREME COURT SHOULD ONLY DISCIPLINE THIS ATTORNEY UNDER RULE 5.20, WITH A FORMAL REPRIMAND OR LESSER SANCTION.

The appropriate discipline on this case would be a public Reprimand. As stated by Informant, this attorney has acknowledged his violation of Kansas ethical rules for attorneys that resulted in this attorney being censured by the Kansas Supreme Court. This attorney believes that the suspension of his Missouri law license is not justified under the facts of this case. This attorney has corrected and acknowledged mistakes and ethical violations that this attorney made on Ms. Painter's case. However, in no way did this attorney ever misappropriate funds from Ms. Painter. This

attorney acted in a reasonable way to try to represent Ms. Painter on her case. This attorney now has an IOLTA trust account and strictly segregates client's funds and attorney fees.

This attorney recognizes the seriousness of the charges in Kansas, before the Kansas Supreme Court and has corrected all of the mistakes, and ethical violations cited by the Kansas Supreme Court. A public Reprimand or lesser sanction by this Court would be severe punishment to this attorney.

Informant states on page 22 of Informant's brief that this attorney has stated that this attorney has done little wrong. This attorney did not say that this attorney has done little wrong. This attorney has acknowledged this attorney's violation of Kansas ethical rules for attorneys. This attorney has made the necessary changes in this attorney's law practice by opening up and maintaining an IOLTA trust account for this attorney's client's funds, in making changes in this attorney's personal injury forms to inform this attorney's Kansas clients that they have a right to contest this attorney's attorney fees on a Kansas case. This attorney has done to the best to his ability to represent clients in Missouri for about 34 years. This attorney

would maintain his Kansas law license, if this attorney were suspended in Missouri. This attorney has a number of civil jury trials pending in Missouri.

This attorney did not misappropriate funds on the Lindy Painter case as alleged and proved in **In re Tessler**, supra, and **In re Schaeffer**, supra.

This attorney is certainly no threat to the public. **A public Reprimand, or lesser sanction by this Court, would be reciprocal sanction by this Court similar to the censure issued by the Kansas Supreme Court against this attorney.** This attorney did not misappropriate funds on Ms. Painter's case. This attorney has corrected the Kansas ethical violations. A public Reprimand in Missouri would be essentially the same punishment as Kansas gave this attorney on Ms. Painter's case. The Painter case was an aberration and not indicative of this attorney's work in 34 years of practicing law in the State of Missouri.

A public Reprimand, or lesser sanction by this Court, would not be an insignificant punishment to this attorney. This attorney would be glad to abide by any terms of probation that this Court might impose.

In the vast majority of cases, this attorney has acted the best he could to diligently and aggressively represent clients on personal injury and workers compensation cases in the States of Missouri and Kansas.

CONCLUSION

Under **Rule 5.20**, Respondent requests that this Court Order a public Reprimand, or Informal Admonition, to this attorney which would be a heavy punishment to this attorney and would be equivalent to the censure of this attorney by the Kansas Supreme Court.

Respectfully submitted,

By: _____
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CERTIFICATE OF MAILING

I hereby certify that on this _____day of _____, 2003, 2 copies of Respondent's Brief and a copy of the disk, have been sent via First Class mail to:

Office of Chief Disciplinary Counsel

Ms. Sharon K. Weedin
Staff Counsel
3335 American Avenue
Jefferson City, Missouri 65109

Attorney for Informant

STANLEY L. WILES