IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
FRANK ARTHUR CONARD,	)	**Supreme Court #SC93318**
	)	
Respondent.	)	

INFORMANT'S BRIEF

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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, R.S.Mo. (2000).

STATEMENT OF FACTS

PROCEDURAL HISTORY & KEY DATES

May 30, 2000	Judicial Reprimand
February 16, 2011	Admonition – Fees and Safekeeping Property Violations
May 29, 2012	Information (McClelland)
June 29, 2012	Respondent's Answer to Information
July 25, 2012	Appointment of Disciplinary Hearing Panel
October 24, 2012	Amended Information (McClelland & Ritter)
November 1, 2012	Order of Continuance and Leave to File First Amended Information
November 19, 2012	Respondent's Answer to Amended Information
January 8, 2013	Notice of Hearing
March 1, 2013	Disciplinary Hearing Panel Decision adopting Joint Stipulation of Facts, Joint Proposed Conclusions of Law and Joint Recommendation for Discipline
March 11, 2013	Acceptance of Disciplinary Hearing Panel's decision by Respondent
March 27, 2013	Acceptance of Disciplinary Hearing Panel's decision by Informant
July 25, 2013	Record submitted

BACKGROUND

Respondent, Frank Arthur Conard, was licensed to practice law in the State of Missouri in September, 1976. **App. A29, A42.** In 1994, Respondent was elected to the bench of the 11th Judicial Circuit where he presided over the Family Court until 2000. After leaving the bench in 2000, Respondent returned to private practice.

In 2004, Respondent was again elected to the bench, this time in the Cottleville Municipal Division. Respondent acted as the municipal judge for approximately five years, until 2009, and now serves as the conflicts judge for the Cottleville Municipal Division.

Respondent now has his own law firm, Frank Conard, P.C., and practices law throughout the greater St. Louis area. **App. A30, A43.**

DISCIPLINARY HISTORY

Respondent has a prior disciplinary history. On May 30, 2000, Respondent received a judicial reprimand for violating Article V, Section 24 of the Constitution of the State of Missouri and Supreme Court Rule 2, Canons 1 (a judge shall uphold the integrity and independence of the judiciary), 2A (a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary), 2B (a judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment), 3B(2) (a judge shall be faithful to the law and maintain professional competence in it), 3B(7) (a judge shall accord to every person who has a legal interest in a proceeding the right to be heard according to law), and 4(G) (a judge shall not practice law). **App. A30, A43.**

On February 16, 2011, while in private practice, Respondent accepted an admonition for violating Rules 4-1.5(c), a rule concerning contingent fees, 4-1.15(c), a safekeeping property rule concerning deposits and withdrawals into a client trust account, and 4-1.15(f), a safekeeping property rule concerning maintaining and preserving client trust account records. **App. A30, A43.** Specifically, Respondent failed to obtain a signed representation agreement and failed to establish and properly maintain/administer a client trust account.

COUNT I (MCCLELLAND)

On August 27, 2002, Complainant, Dahna McClelland (hereinafter referred to as "Daughter") purchased a piece of real property from her father, Don McClelland (hereinafter referred to as "Father") for $85,500, which was secured by a deed of trust wherein Daughter promised to pay Father the $85,500 in monthly installments. **App. A30, A43.** Nine months later, after Daughter had defaulted on her obligations secured by said deed, Father began foreclosure proceedings and retained attorney Russell J. Kruse in order to facilitate the foreclosure sale. **App. A30, A43.**

Daughter responded to her father's foreclosure action by retaining an attorney of her own and filing with the court a petition to set aside the foreclosure action[1]. **App. A30, A43.** Father retained Respondent to defend against Daughter's action. **App. A30, A43.**

[1] Cause, No. 10V030300269, Circuit Court of Marion County, Missouri. **App. A30, A43.**

Shortly after his retention by Father, Respondent contacted Daughter directly and convinced her to file suit against Mr. Kruse, the attorney originally hired by Father to facilitate the foreclosure sale, for abuse of process rather than pursuing Father in order to set aside the foreclosure action. **App. A31, A44.** Daughter subsequently, and at the urging of Father, retained Respondent and filed suit against Mr. Kruse for abuse of process on February 28, 2006[2]. **App. A31, A44.** Respondent was retained on a contingency fee basis, but the agreement was never reduced to writing. **App. A31, A44.**

Two years later, in April, 2007, Father signed a document releasing Daughter from the deed of trust securing the real property he had sold her, the purpose of which was to allow her to secure a bank loan and then compensate him for signing the release. **App. A31, A44.** Father recorded the release a short time later. **App. A31, A44.** On September 5, 2007, the court dismissed the abuse of process claim against Mr. Kruse. **App. A31, A44.**

On July 7, 2008, Father, with Respondent as his attorney, filed suit against Daughter for fraud and to set aside the release he signed in April, 2007[3]. **App. A31-32, A44-45.** On October 15, 2008, Mercantile Bank filed a Motion to Intervene in Father's suit against Daughter. **App. A32, A45.** Mercantile Bank argued that Daughter was in

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[2] Cause No. 06MM-CV00057, Circuit Court of Marion County, Missouri. **App. A31, A44.**

[3] Cause No. 08MM-CV00204, Circuit Court of Marion County, Missouri. **App. A31, A44.**

default on their loan, which was secured by a promissory note and a deed of trust relating to the original piece of real property purchased by Daughter from Father in August, 2002. Mercantile Bank's motion was granted on November 5, 2008. **App. A32, A45.**

On April 15, 2009, Father, Daughter, and intervener Mercantile Bank, all appeared for trial. **App. A32, A45.** The cause was heard and judgment was rendered against Daughter in favor of Father and intervener Mercantile Bank, with Mercantile Bank's judgment taking priority. **App. A32, A45.**

COUNT II (RITTER)

On February 25, 2011, Complainant, Karl Ritter (hereinafter referred to as "Mr. Ritter") was involved in a disturbance that resulted in a response and investigation from the City of Cottleville Police Department. **App. A34, A47.** Mr. Ritter was called in for questioning and, fearing he was being treated as a suspect, contacted and met with Respondent on March 10, 2011. **App. A35, A48.**

Two municipal warrants were ultimately issued for Mr. Ritter's arrest. **App. A35, A48.** Upon learning of the warrants, Mr. Ritter contacted Respondent again, who advised him to turn himself in and post bond. **App. A35, A48.** Mr. Ritter took Respondent's advice, turned himself in, posted bond, and was released with a court date of June 13, 2011. **App. A35, A48.**

Following his release, Mr. Ritter contacted Respondent and inquired as to whether he needed to be present for the June 13th court date. **App. A35, A48.** Respondent told Mr. Ritter that he need not appear unless he received a call from his office telling him

otherwise. **App. A35, A48.** Mr. Ritter never received a call from Respondent, or his office, and as a result, did not appear for his June 13 court date. **App. A35, A48.**

On June 20, 2011, Mr. Ritter received a failure to appear notice stating that he would be subject to bond forfeiture and an additional warrant if he failed to appear at his next court date. **App. A35, A48** After receiving the failure to appear notice, Mr. Ritter contacted Respondent. **App. A35, A48.** Respondent stated that not only did he not understand why the notice had been issued, but he had been working as a provisional judge in that very same court on that very same day. **App. A36, A49.**

On December 4, 2011, after several months of continuances, Mr. Ritter received a letter from Respondent notifying him of his withdrawal. **App. A36, A49.** Respondent cited his affiliation as a judge with the court that Mr. Ritter's case was to be heard in as the reason for his withdrawal. **App. A36, A49.**

Mr. Ritter subsequently retained other counsel and requested a copy of his file. **App. A36, A49.**

THE DISCIPLINARY HEARING PANEL DECISION

On March 1, 2013, the Disciplinary Hearing Panel accepted the Joint Stipulation of Facts, Joint Proposed Conclusions of Law and Joint Recommendation for Discipline submitted to it by the parties, which found that:

- In *Count I*, Respondent violated Rule 4-1.5 (fees) by failing to communicate to Daughter the scope of the representation and the basis/rate of his fee and expenses for which she would be responsible in pursuing her abuse of process claim against Mr. Kruse. **App. A32, A45**;

- In *Count I*, Respondent violated Rule 4-1.5 (fees) by entering into a contingency fee arrangement with Daughter and failing to reduce that agreement to writing and having Daughter sign the same. **App. A33, A46**;
- In *Count I*, Respondent violated Rule 4-1.7 (conflict of interest: current clients) by representing Daughter in her abuse of process claim against Mr. Kruse before ending his representation of Father in an action directly adverse to Daughter. **App. A32, A45**;
- In *Count II*, Respondent violated Rule 4-1.7 (conflict of interest: current clients) by materially limiting his representation of Mr. Ritter by agreeing to represent Mr. Ritter in the very same court in which he was a provisional municipal judge. **App. A36, A49**;
- In *Count I*, Respondent violated Rule 4-1.9 (duties to former clients) by representing Daughter in her abuse of process claim against Mr. Kruse after having previously represented Father in a substantially related matter in which Daughter's interests were materially adverse to those of Father without first informing or obtaining Daughter's consent for the same. **App. A33-34, A46-47**; and
- In *Count I*, Respondent violated Rule 4-4.2 (communication with person represented by counsel) by communicating directly with Daughter about her action to set aside Father's foreclosure action when he knew Daughter to be represented by an attorney and without obtaining said attorney's authorization. **App. A34, A47**.

Following an analysis of relevant decisions from this Court and the *ABA'S Standards for Imposing Lawyer Sanctions*, the Panel recommended that this Court issue two reprimands, one for each count contained in the Joint Stipulation of Facts, Joint Proposed Conclusions of Law and Joint Recommendation for Discipline. **App. A41.** Respondent accepted the Panel's recommendations on March 7, 2013. **App. A54**. Informant accepted the Panel's recommendations on March 27, 2013. **App. A55.**

POINT RELIED ON

I.

IN COUNT I, RESPONDENT VIOLATED RULE 4-1.5 IN HIS REPRESENTATION OF DAUGHTER BY (A) FAILING TO COMMUNICATE TO DAUGHTER THE SCOPE AND REPRESENTATION AND THE BASIS OR RATE OF THE FEE AND EXPENSES FOR WHICH SHE WOULD BE RESPONSIBLE WHEN HE ENTERED INTO A CONTINGENCY FEE AGREEMENT WITH HER AND (B) FAILING TO PUT INTO WRITING AND HAVING MS. MCLELLAND SIGN A CONTINGENCY FEE AGREEMENT; RESPONDENT VIOLATED RULE 4-4.2 BY COMMUNICATING WITH DAUGHTER REGARDING HER ABUSE OF PROCESS CLAIM AGAINST MR. KRUSE, KNOWING HER TO BE REPRESENTED BY ANOTHER LAWYER WITHOUT THE CONSENT OF THE OTHER LAWYER AND/OR AUTHORIZATION FOR THE SAME BY LAW.

Rule 4-1.5, Rules of Professional Conduct

Rule 4-4.2, Rules of Professional Conduct

POINT RELIED ON

II.

IN COUNT I, RESPONDENT VIOLATED RULES 4-1.7 AND 4-1.9 BY ENGAGING IN A CONFLICT OF INTEREST BETWEEN SUCCESSIVE CLIENTS IN THAT (A) HE REPRESENTED BOTH DAUGHTER AND FATHER AT TIMES WHEN THEIR INTERESTS WERE DIRECTLY ADVERSE; AND (B) HE REPRESENTED DAUGHTER AFTER HAVING REPRESENTED FATHER IN A SUBSTANTIALLY RELATED MATTER WHERE DAUGHTER'S INTERESTS WERE MATERIALLY ADVERSE TO THOSE OF FATHER; IN COUNT II, RESPONDENT VIOLATED RULE 4-1.7 BY ENGAGING IN A CONFLICT OF INTEREST BETWEEN SUCCESSIVE CLIENTS IN THAT (C) HE REPRESENTED MR. RITTER AT A TIME WHEN THERE WAS A SIGIFICANT RISK THAT HIS REPRESENTATION WOULD BE MATERIALY LIMITED.

Rule 4-1.7, Rules of Professional Conduct

Rule 4-1.9, Rules of Professional Conduct

POINT RELIED ON

III.

PREVIOUS MISSOURI SUPREME COURT DECISIONS AND THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS SUGGEST REPRIMAND IS THE APPROPRIATE SANCTION WHERE RESPONDENT ENGAGED IN CONFLICTS OF INTEREST BETWEEN SUCCESSIVE CLIENTS AND FAILED TO COMPLY WITH THE REQUIREMENTS OF THE RULES OF PROFESSIONAL CONDUCT.

In re Weier, 994 S.W.2 554 (Mo. Banc 1999)

People v. Odom, 829 P.2d 855 (Colo. 1992)

In re Coleman, 295 S.W.3d 857 (Mo. banc 2009)

ABA *Standards for Imposing Lawyering Sanctions* (1991 ed.)

ARGUMENT

I.

IN COUNT I, RESPONDENT VIOLATED RULE 4-1.5 IN HIS REPRESENTATION OF DAUGHTER BY (A) FAILING TO COMMUNICATE TO DAUGHTER THE SCOPE AND REPRESENTATION AND THE BASIS OR RATE OF THE FEE AND EXPENSES FOR WHICH SHE WOULD BE RESPONSIBLE WHEN HE ENTERED INTO A CONTINGENCY FEE AGREEMENT WITH HER AND (B) FAILING TO PUT INTO WRITING AND HAVING MS. MCLELLAND SIGN A CONTINGENCY FEE AGREEMENT; RESPONDENT VIOLATED RULE 4-4.2 BY COMMUNICATING WITH DAUGHTER REGARDING HER ABUSE OF PROCESS CLAIM AGAINST MR. KRUSE, KNOWING HER TO BE REPRESENTED BY ANOTHER LAWYER WITHOUT THE CONSENT OF THE OTHER LAWYER AND/OR AUTHORIZATION FOR THE SAME BY LAW.

Violation of Rule 4-1.5. Respondent admits he agreed to represent Daughter in her abuse of process claim against Mr. Kruse on a contingency fee basis and failed to communicate to her the basis or rate of the fee and expenses for which she would be responsible. **App. A24-25.** Respondent also admits that he failed to reduce the contingency fee agreement to writing. **App. A24-25.** By that conduct, Respondent violated Rule 4-1.5 (fees).

In a new client-lawyer relationship, generally, it is desirable to promptly furnish the client with a written statement concerning the terms of the engagement so as to reduce the possibility of misunderstanding as to fees and expenses. Comment [Basis or Rate of Fee] to Rule 4-1.5; **App. A57**. When the fee is contingent, however, that desire gives way to and becomes an obligation. Rule 4-1.5(c) provides, in pertinent part, that:

> A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibit by paragraph (d) or other law. A contingent fee agreement shall be in writing signed by the client and shall state the method by which the fee is to be determined. Rule 4-1.5(c); **App. A56**.

Here, Respondent failed to do both.

Violation of Rule 4-4.2. Respondent admits to contacting Daughter, who he knew to be represented by an attorney, without seeking Daughter's attorney's authorization after he was retained by Father to defend against her petition to set aside his foreclosure action. **App. A46.** By that conduct, Respondent violated Rule 4-4.2 (communication with person represented by counsel).

Rule 4-4.2 applies to communications with any person who is represented by counsel concerning the matter to which the communication relates. Comment [2] to Rule 4-4.2[4]. Said Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer against possible overreaching by

[4] Comment [2] to Rule 4-4.2 was not part of Rule 4-4.2 at the time of the violation.

other lawyers who are participating in the matter. Comment [1] to Rule 4-4.2[5]. Rule 4-4.2 provides that:

> In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order. Rule 4-4.2; **App. A63**.

Here, Respondent knew Daughter was represented by another lawyer with respect to her petition to set aside Father's foreclosure action at the time he contacted her. As a result, under Rule 4-4.2, Respondent needed said attorney's consent, or at the very least authorization by law, to do so. He had neither.

[5] Comment [2] to Rule 4-4.2 was not part of Rule 4-4.2 at the time of the violation.

ARGUMENT

II.

IN COUNT I, RESPONDENT VIOLATED RULES 4-1.7 AND 4-1.9 BY ENGAGING IN A CONFLICT OF INTEREST BETWEEN SUCCESSIVE CLIENTS IN THAT (A) HE REPRESENTED BOTH DAUGHTER AND FATHER AT TIMES WHEN THEIR INTERESTS WERE DIRECTLY ADVERSE; AND (B) HE REPRESENTED DAUGHTER AFTER HAVING REPRESENTED FATHER IN A SUBSTANTIALLY RELATED MATTER WHERE DAUGHTER'S INTERESTS WERE MATERIALLY ADVERSE TO THOSE OF FATHER; IN COUNT II, RESPONDENT VIOLATED RULE 4-1.7 BY ENGAGING IN A CONFLICT OF INTEREST BETWEEN SUCCESSIVE CLIENTS IN THAT (C) HE REPRESENTED MR. RITTER AT A TIME WHEN THERE WAS A SIGIFICANT RISK THAT HIS REPRESENTATION WOULD BE MATERIALY LIMITED.

Count I (McClelland)

Violation of Rule 4-1.7 and Rule 4-1.9. Respondent admits to being retained by Daughter to file suit against Mr. Kruse for abuse of process after he had already been retained by Father to defend against Daughter's petition to set aside his foreclosure action. **App. A23-24.** At no time did Respondent make Daughter aware of the conflict of interest that existed as a result of his representation of Father in an action directly

adverse to her (*i.e.* Father's foreclosure action), and at no time were waivers solicited or obtained from either Daughter of Father. **App. A24.** By that conduct, Respondent violated Rule 4-1.7 (conflict of interest: current clients) and Rule 4-1.9 (duties to former clients).

Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Comment [Loyalty to a Client] to Rule 4-1.7; **App. A59**. Rule 4-1.7 provides, in pertinent part, that:

> (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:
>
> (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
>
> (2) each client consents after consultation. Rule 4-1.7; **App. A59**.

Here, Daughter's interests were directly adverse to Father's. Father wanted to proceed, via defending against Daughter's petition to set aside his foreclosure action, with foreclosing on Daughter while she, by pursuing the very same petition, wanted to avoid being foreclosed on. As a result, under Rule 4-1.7, Respondent needed both Daughter and Father's consent to proceed with Daughter's representation. He failed to secure consent from either.

After a client-lawyer relationship ends, a lawyer has certain continuing duties with respect to conflicts of interest and may not represent another client except in

conformity with Rule 4-1.9. Comment [1] to Rule 4-1.9[6]; **App. A62**. Rule 4-1.9(a), provides, that:

> A lawyer who has formerly represented a client in a matter shall not thereafter:
>
> (a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent after consultation. Rule 4-1.9(a); **App. A62**.

Matters are "substantially related" if they involve the same transaction or legal dispute. *See* Comment to Rule 4-1.9; **App. A62.** Here, Daughter's suit against Mr. Kruse for abuse of process was substantially related to Father's defending against Daughter's petition to set aside his foreclosure action in that they both involved the same legal dispute (*i.e.* foreclosing on Daughter), and, similar to Rule 4-1.7, Daughter's interests were materially adverse to Father's. As a result, under Rule 4-1.9, Respondent needed to consult Father to proceed with Daughter's representation. He failed to do so.

Count II (Ritter)

Respondent admits that he agreed to represent Mr. Ritter as his attorney in the Cottleville Municipal Division, the very same court in which he was a provisional municipal judge. **App. A28.** At no time did Respondent make Mr. Ritter aware of the conflict of interest that existed as a result of his position as a provisional judge, and at no

[6] Comment [1] to Rule 4-1.9 was not part of Rule 4-1.9 at the time of the violation.

time was a waiver ever solicited or obtained from Mr. Ritter (or the municipality, to the extent possible). By that conduct, Respondent violated Rule 4-1.7 (conflict of interest: current clients).

Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client, or a third person or from the lawyer's own interests. Comment [1] to Rule 4-1.7; **App. A65**. Rule provides, in pertinent part, that:

> (a) Except as provided in Rule 4-17(b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
>
> > (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.
>
> (b) Notwithstanding the existence of a concurrent conflict of interest under Rule 4-1.7(a), a lawyer may represent a client if:
>
> > (4) each affected client gives informed consent, confirmed in writing. Rule 4-1.7; **App. A65**.

Here, there was a significant risk that Respondent's representation of Mr. Ritter would be materially limited by Respondent's position as a provisional judge in the municipality of Cottleville. Not only was there a significant risk that Respondent's ability to recommend and/or advocate all possible positions for Mr. Ritter materially limited as a result of the duties owed by him to the municipality as a judge, but his acceptance of payment from

the municipality as a judge also presented a significant risk in that Respondent was materially limited by his own interest in accommodating the municipality. As a result, under Rule 4-1.9, Respondent should have never agreed to represent Mr. Ritter as his attorney in the very same court in which he was a provisional municipal judge.

ARGUMENT

III.

PREVIOUS MISSOURI SUPREME COURT DECISIONS AND THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS SUGGEST REPRIMAND IS THE APPROPRIATE SANCTION WHERE RESPONDENT ENGAGED IN CONFLICTS OF INTEREST BETWEEN SUCCESSIVE CLIENTS AND FAILED TO COMPLY WITH THE REQUIREMENTS OF THE RULES OF PROFESSIONAL CONDUCT.

The purpose of discipline is not to punish the attorney, but to protect the public and maintain the integrity of the legal profession. *In re Kazanas*, 96 S.W.3d 803, 807-08 (Mo. banc 2003). Those twin purposes may be achieved both directly, by removing a person from the practice of law, and indirectly, by imposing a sanction which serves to deter other members of the bar from engaging in similar conduct. *Id.* (citing *In re Littleton*, 719 S.W.2d 772, 777 (Mo. banc 1986)).

This Court often refers to the American Bar Association's *Standards for Imposing Lawyer Sanctions* (hereinafter referred to as the "ABA *Standards*") in determining appropriate (*i.e.* direct or indirect) discipline. The ABA *Standards* recommend baseline discipline for specific acts of misconduct taking into consideration the duty violated, the lawyer's mental state, and the extent of injury or potential injury. *In re Griffey*, 873 S.W.2d 600 (Mo. banc 1994). Once the baseline discipline is known, the ABA *Standards* allow consideration of aggravating and mitigating circumstances. ABA *Standards for*

Imposing Lawyer Sanctions (1991 ed.) (p.6). The ABA *Standards* "assume that the most important ethical duties are those obligations which a lawyer owes to clients" and provides that the ultimate sanction imposed should be at least consistent with the sanction for the most serious instance of misconduct among a number of violations. ABA *Standards* (p.5-6).

Here, Respondent's most serious violation was breaching the duty of loyalty to his clients by failing to avoid conflicts of interest. Failure to avoid conflicts of interest is addressed in ABA Standard 4.3, and having considered the case at bar, Informant believes that Standard 4.33 is applicable: **Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client**. ABA Standard 4.33.

In *Count I*, Respondent breached the duty of loyalty owed to his clients by failing to avoid a conflict of interest by representing Daughter in her suit against Mr. Kruse for abuse of process after having already been retained by Father to defend against Daughter's petition to set aside his foreclosure action. Similarly, in *Count II*, Respondent failed to avoid a conflict interest when he agreed to represent Mr. Ritter in the very same municipal court in which he was a provisional judge.

This Court has had prior opportunities to address the issues presented by this case, specifically the appropriate sanction for attorneys found to have engaged in conflicts of interest. In *In re Weier*, 994 S.W.2d 554 (Mo. banc 1999), this Court found that

Attorney's violation of the conflict of interest rules warranted public reprimand. In *Weier*, Attorney represented a partnership of urologists who owned a medical device that was leased to a corporation in which Attorney was a shareholder. *Id.* at 557. Said corporation then entered into an operation agreement with a health care management company also partially owned by Attorney in order to conduct the daily operation of the medical device. *Id.* Attorney did not distribute any documentation regarding his interest in the corporation or the health care management company, nor did he orally inform any of the partners of the same. *Id.*

This Court reasoned that the circumstances of this case "fit squarely" into the language of ABA *Standard* 4.33 and the comments thereto which note that reprimand is the most appropriate sanction where, "a lawyer engages in a single instance of misconduct involving a conflict of interest when the lawyer has merely been negligent and there is no overreaching or serious injury to the client." *See id.* at 559. "While the evidence may not be sufficient to show that [Attorney] engaged in intentional deception, his actions may still be subject to discipline." *Id.* at 558. This Court then took note that Attorney had been practicing law for "some 32 years" and had fully cooperated and given full disclosure to the disciplinary committee and hearing panel. *Id.* Finally, this Court noted, and found significant, that no discernible harm was brought upon the parties by virtue of Attorney's conflicts of interest. *See id*.

The result in *In re Weier* is consistent with that found in other jurisdictions involving similar fact patterns. For example, in *People v. Odom*, 829 P.2d 855 (Colo. 1992), the court unanimously accepted a stipulation, agreement, and conditional

admission of misconduct and recommended a public censure where Attorney engaged in conflicts of interest. *Id*. at 856. In *Odom*, Attorney was asked by the buyer and seller to represent "both parties" in the sale of a restaurant. *Id*. at 856. After the sale of the restaurant was closed, a third party filed an action against the buyer and the seller, and Attorney once again, undertook representing both parties. *Id.* In accepting the stipulation and agreement and recommending public censure, the court noted Attorney's absence of a disciplinary record in his 13 years of practice, the absence of a selfish or dishonest motive, and his full and free disclosure to the disciplinary counsel. *Id.* at 857.

In *In re Coleman*, 295 S.W.3d 857 (Mo. banc 2009), this Court found that Attorney's violation of the conflict of interest rules, in conjunction with several other violations[7], warranted a stayed suspension, subject to Attorney's completion of a one year term of probation. *Id.* at 859. Attorney was hired by Client to represent her in three separate civil actions. *Id.* The fee agreement in each case originally required non-refundable retainers, but was eventually converted to contingent fee agreements giving Attorney the "exclusive right to determine when and for how much" to settle her cases. *Id.* at 860. Attorney subsequently attempted to settle one of Client's three cases, against her wishes, and when he was unable to do so, withdrew from all three cases; but not before one of Client's cases was dismissed and summary judgment had been rendered against her in another. *Id*. at 860-61.

[7] Attorney's other violations included violations of Rule 4-1.2 (Scope of Representation) and Rule 4-1.15 (Client-Lawyer Relationship: Safekeeping Property). *Id*. at 870.

This Court found Attorney had "improperly" contracted with Client for the exclusive right to settle her cases and furthermore, that it was unreasonable for Attorney to believe that his interests would not adversely affect his representation of Client. *Id.* at 865. "The contingent fee contract gave Attorney a motivation to protect his financial interests" and promoted his personal interests when he "knew" they directly conflicted with those of Client. *Id.* In applying the ABA *Standards*, this Court reasoned that the nature of Attorney's conduct, taken in conjunction with a prior disciplinary history[8] and the absence of a dishonest motive, justified a stayed suspension. *Id.* at 870-71.

While a stayed suspension (with probation) is arguably an appropriate sanction given the facts of this case, Informant submits that Respondent's conduct is less egregious than that found in *In re Coleman*. In *In re Coleman*, not only did Attorney cause discernible harm to Client by promoting his own personal interests knowing they directly conflicted with those of Client, but his misconduct also included violations of several other obligations which Respondent owed to Client[9], namely violations of Rule 4-1.2 (Scope of Representation) and Rule 4-1.15 (Client-Lawyer Relationship: Safekeeping Property. *Id*. at 870.

[8] Attorney had been previously admonished in 1990 and 1998, and publicly reprimanded in 2008. *Id.* at 870.

[9] The ABA *Standards* "assume that the most important ethical duties are those obligations which a lawyer owes to clients." ABA *Standards* (p.5-6).

In light of the outcomes and rationales of the aforementioned cases, this Court should find that Respondent's violation of the conflict of interest rules warrants a public reprimand. Similar to *Weier* and *Odom*, here, Respondent undertook a series of representations which violated Rules 4-1.7 and 4-1.9. In *Count I*, Respondent engaged in representing Daughter in her suit against Mr. Kruse for abuse of process after having already been retained by Father to defend against Daughter's petition to set aside his foreclosure action; representations that were both directly adverse and substantially related at the same time. In *Count II*, Respondent engaged in representing Mr. Ritter in the very same court in which he was a provisional municipal judge, posing a significant risk which materially limited his ability to advocate for Mr. Ritter in several respects. Unlike *In re Coleman*, however, neither representation promoted Respondent's personal interests and neither representation resulted in any discernible harm to Respondent's clients. And, similar to both *Weier* and *Odom*, here, Respondent has been practicing law for well over 35 years with a noticeable absence of a disciplinary record and has fully cooperated and given full disclosure to the disciplinary committee and hearing panel.

The circumstances of this case "fit squarely" into language of ABA Standard 4.33 and the comments thereto. Both *Count 1* and *Count II* include a single instance of misconduct involving a conflict of interest. Granted, in *Count I*, there were two conflict of interest rule violations, but this Court should take note of the fact the both violations arose from the same transaction. Further, as in *Weier*, the evidence does not establish that Respondent engaged in any intentional deception. It is significant that here, unlike in *Odom*, there was no improper attempt by Respondent to promote his personal interests

over those of his clients, and perhaps most importantly, "no discernible harm" was brought upon Respondent's clients by virtue of the conflicts.

Under the ABA *Standards*, once the baseline discipline is known, it is appropriate to allow consideration of aggravating and mitigating circumstances. ABA *Standards* (p.6). Respondent's previous disciplinary offenses and substantial experience in the practice of law can be considered aggravating factors. ABA *Standards* (p.49). However, Respondent's substantial experience in the practice of law with a noticeable absence of a prior disciplinary record can also be considered a mitigating factor, just as it was in *Weier* and in *Odom*. ABA *Standards* (p. 50). Other mitigating factors include the absence of a dishonest or selfish motive and the fact that Respondent has fully cooperated with and given full disclosure to the disciplinary committee and hearing panel regarding his conduct. ABA *Standards* (p.50). And finally, although not a mitigating factor, Informant submits that it is significant that, unlike in *In re Coleman*, no discernible harm was brought upon Respondent's clients by virtue of his conduct.

On the basis of its analysis of this Court's decisions and the guidance provided by the ABA *Standards*, the Panel recommended that this Court issue two reprimands, one for each count contained in the Joint Stipulation of Facts, Joint Proposed Conclusions of Law and Joint Recommendation for Discipline. Informant concurs in the Panel's well-reasoned recommendation and believes that such is adequate to protect the public and maintain the integrity of the legal profession.

CONCLUSION

Informant asks the Court to accept the parties' stipulation and the Panel's Recommendation, and to enter the following Order:

WHEREAS, in this Court the Disciplinary Hearing Panel approved a stipulation, the parties' filed the complete record, the parties' fully briefed and argued said cause, and the parties having agreed that a Public Reprimand is the appropriate sanction.

Now at this day, the Court being sufficiently advised of and concerning the premises and having considered the statement of acceptance of the Disciplinary Hearing Panel decision pursuant to Rule 5.19(c), the Court finds that, in February 2006, and June 2011, Respondent, Frank Arthur Conard, Missouri Bar Number 27060, engaged in conflicts of interest between successive clients, and did so without following the requirements set forth in Rule 4-1.7 and Rule 4-1.9, failed to communicate and put into writing the basis or rate of the fee for which the client would be responsible in violation of Rule 4-1.5, and communicated with a person whom he knew to be represented by another lawyer without following the requirements set forth in Rule 4-4.2. Respondent is publicly reprimanded for these violations and ordered to carefully review Rules 4-1.5, 4-1.7, 4-1.9, and 4-4.2 to assure future compliance with the Rules of Professional Conduct.

Fees pursuant to Rule 5.19(h) in the amount of $750 payable to the Clerk of this Court to the credit of the Advisory Committee Fund taxed to Respondent. Costs taxed to Respondent.

Respectfully submitted,

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SPECIAL COUNSEL FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 2013, a true and correct copy of the foregoing was served via the electronic filing system pursuant to Rule 103.08 on:

Frank Arthur Conard
4011 North St. Peters Pkwy.
St. Peters, MO 63304

_____
Alan D. Pratzel

CERTIFICATION: RULE 84.06(c)

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;

2. Complies with the limitations contained in Rule 84.06(b);

3. Contains 6,001 words, according to Microsoft Word, which is the word processing system used to prepare this brief.

_____
Alan D. Pratzel

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