

IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:

DOROTHY L. SAVORY

Respondent

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)

Supreme Court #SC93482

RESPONDENT'S BRIEF

KEMPTON AND RUSSELL

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ATTORNEY FOR RESPONDENT

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STATEMENT OF FACTS

Respondent accepts Informant's Statement of Facts and provides the following additional facts.

Respondent is a 35 year old African American female who grew up in a single parent home in the core of the inner city of Kansas City, Missouri. **A33.** She graduated from Central High School in Kansas City, Missouri and went to Southwest Missouri State and graduated from that institution in 2000. She then went to UMKC Law School and graduated in 2003. After her graduation from law school she went to Atlanta, Georgia and worked as a Law Clerk in the Steel Law Firm. She returned to Missouri and was admitted to the Missouri Bar in 2005. She then went to work for the Clay County Public Defender's Office and was there from November 2005 through March 2008. Thereafter she opened her own solo practice in Kansas City.

Since the hearing before the Disciplinary Hearing Panel on April 12, 2013, Respondent has complied with the conditions of her proposed probation that she attend the Solo and Small Firm Conference and has obtained professional liability insurance in the amount of \$100,000.00 per claim and \$300,000.00 aggregate for the period from August 28, 2013 to August 28, 2014. **RA2.** In addition Respondent has been accepted and is participating in the Ross T. Roberts Trial Academy in Kansas City. **RA3.**

POINTS RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT IN ACCORDANCE WITH THE STIPULATION OF THE PARTIES AND THE FINDINGS AND RECOMMENDATION OF THE DISCIPLINARY HEARING PANEL BECAUSE SHE VIOLATED RULES 4-3.3, 4-8.4(c) AND 4-8.4(d), IN THAT SHE KNOWINGLY MISLED THE COURT BY DIRECTING HER CLIENT'S TWIN BROTHER TO SIT AT THE COUNSEL TABLE AS THOUGH HE WERE THE DEFENDANT.

II.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT IN ACCORDANCE WITH THE STIPULATION OF THE PARTIES AND THE FINDINGS AND RECOMMENDATIONS OF THE DISCIPLINARY HEARING PANEL BECAUSE SHE VIOLATED RULES 4-1.1, 4-1.3, 4-1.4, AND 4-8.4(d) BY NOT PROVIDING COMPETENT REPRESENTATION, NOT ACTING WITH REASONABLE DILIGENCE AND BY FAILING TO KEEP HER CLIENT REASONABLY INFORMED AS TO THE STATUS OF HIS CASE.

III.

**THE SUPREME COURT SHOULD SUSPEND
RESPONDENT'S LICENSE, STAY THE SUSPENSION
FOR A PERIOD OF 2 YEARS AND PLACE HER ON
PROBATION BECAUSE PROBATION IS
APPROPRIATE PURSUANT TO MISSOURI
SUPREME COURT RULE 5.225.**

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

In re Conner, 207 S.W.2d 492 (Mo. banc 1948)

In re Donaho, 98 S.W.3d 871, 873 (Mo. banc 2003)

Hulse v. Criger, 247 S.W.2d 855 (Mo. banc 1952)

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

RULES

Rule 5.06

Rule 5.10

Rule 5.105(a)

Rule 5.11

Rule 5.12

Rule 5.16(b)(2)

Rule 5.16(e)

Rule 5.16(g)

Rule 5.19(a)

Rule 5.225

Rule 5.225(a)(2)

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT IN ACCORDANCE WITH THE STIPULATION OF THE PARTIES AND THE FINDINGS AND RECOMMENDATION OF THE DISCIPLINARY HEARING PANEL BECAUSE SHE VIOLATED RULES 4-3.3, 4-8.4(c) AND 4-8.4(d), IN THAT SHE KNOWINGLY MISLED THE COURT BY DIRECTING HER CLIENT'S TWIN BROTHER TO SIT AT THE COUNSEL TABLE AS THOUGH HE WERE THE DEFENDANT.

Respondent has no argument to make in regard to Point I and accepts the argument of Informant.

II.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT IN ACCORDANCE WITH THE STIPULATION OF THE PARTIES AND THE FINDINGS AND RECOMMENDATION OF THE DISCIPLINARY HEARING PANEL BECAUSE SHE VIOLATED RULES 4-1.1, 4-1.3, 4-1.4 AND 4-8.4(d) BY NOT PROVIDING COMPETENT REPRESENTATION, NOT ACTING WITH REASONABLE DILIGENCE AND BY FAILING TO KEEP HER CLIENT REASONABLY INFORMED AS TO THE STATUS OF HIS CASE.

Respondent has no argument to make in regard to Point II and accepts the argument of Informant.

III.

**THE SUPREME COURT SHOULD SUSPEND
RESPONDENT'S LICENSE, STAY THE SUSPENSION
FOR A PERIOD OF TWO (2) YEARS AND PLACE
RESPONDENT ON PROBATION BECAUSE
PROBATION IS APPROPRIATE PURSUANT TO
MISSOURI SUPREME COURT RULE 5.225.**

This case has always been about what is the appropriate discipline. Respondent has always taken responsibility for her actions. She self-reported the events of December 14, 2011 which occurred in the case of *State v. Darrel White, Jr.* She has continued to fully cooperate with the Office of Chief Disciplinary Counsel. She has made full and complete disclosure to the Office of Chief Disciplinary Counsel.

That Respondent has been able to go to college and go to law school given her background is a tribute to her tenacity, her determination and her strength.

Able and experienced counsel for Informant together with the Chief Disciplinary Counsel himself negotiated a Stipulation of Findings of Facts Conclusions of Law and Recommended Discipline. **A33.** That Stipulation together with the appearance and testimony of Respondent, and representations from counsel for the parties was presented to the experienced Disciplinary Hearing Panel. After the DHP hearing on April 12, 2013 and pursuant to Rule 5.16(e) the DHP filed its decision and its recommended discipline with the Advisory Committee on May 22, 2013.

That decision recommended an indefinite suspension with a stay of the suspension and probation for 2 years on conditions set forth by the DHP. Those conditions were more extensive than the conditions agreed to and recommended by Informant and Respondent.

Pursuant to Rule 5.16(e) the Chair of the Advisory Committee reviewed the decision of the DHP for the limited purpose of determining that the recommended discipline conforms to Rule 5 and the sanctions established by the Court. After confirming that the decision so conformed, the Chair of the Advisory Committee served the written decision on the parties.

Pursuant to Rule 5.19(a) the Informant and Respondent both filed timely written Notice of the Acceptance of the Decision of the DHP.

This Court has the inherent power and right to license and discipline attorneys and to regulate the practice of law. *Hulse v. Criger*, 247 S.W.2d 855 (Mo. 1952), *In Re: Conner*, 207 S.W.2d 492 (Mo. 1948). The written Decision of the DHP has no finding or limiting effect on this Court. **Rule 5.16(g).**

It is submitted that while the Findings of the DHP, the approval by the Chair of the Advisory Committee are the Stipulation by the Chief Disciplinary Counsel and Respondent are not binding on the Court those things should be carefully considered before the Court makes its decision concerning discipline. This Court has held that the findings and recommendations of a Disciplinary Hearing Panel are entitled to considerable weight. *In re: Donaho*, 98 S.W.3d 871, 873 (Mo. banc. 2003).

This Court appoints the Chief Disciplinary Counsel, sets the compensation of the Chief Disciplinary Counsel, and requires that the Chief Disciplinary Counsel take an oath to impartially perform his or her duties. The Chief Disciplinary Counsel serves at the pleasure of the Court. **Rule 5.06.**

The Chief Disciplinary Counsel serves as counsel for the Bar in all disciplinary proceedings in conducting necessary investigations into allegations of attorney misconduct. **Rule 5.06.** Because of his or her position there is no one in a better position to know what is happening on a day-to-day basis in the field of alleged attorney misconduct and discipline in the State of Missouri.

This Court has granted considerable discretion in disciplinary matters to the Chief Disciplinary Counsel. For example, the Chief Disciplinary Counsel may make diversion available to an attorney with no necessity of approval from the Court. **Rule 5.105(a).**

The Chief Disciplinary Counsel may refer complaints that he believes may be best resolved outside of the formal proceedings to the Missouri Bar Complaint Resolution Program or the Missouri Bar Lawyer to Lawyer Dispute Resolution Program, again without any review by this Court. **Rule 5.10.** The Chief Disciplinary Counsel may administer an admonition to an attorney with no review by this Court. **Rule 5.11.** The Chief Disciplinary Counsel may determine there is no probable cause to believe that an attorney has committed professional misconduct without any review by this Court although a complainant can seek review of that decision from the Advisory Committee. **5.12.** After the issuance of an admonition by a Disciplinary Hearing Panel the Chief Disciplinary Counsel may accept the issuance of the admonition without review by this

Court. **Rule 5.16(b)(2)**. It is submitted that the agreement and stipulations of the Chief Disciplinary Counsel are entitled to great weight. If the Chief Disciplinary Counsel makes agreements and stipulations and they are not followed by the Court it undermines the ability of the Chief Disciplinary Counsel and of attorneys charged with misconduct to enter into stipulations and agreements. It is submitted that agreements and stipulations of the CDC are entitled to great weight and should be followed by this Court absent some compelling reason not to do so.

Annually the Chief Disciplinary Counsel reports to the Supreme Court in its May session the number and types of disciplinary actions taken during the year. In its most recent report filed in 2013 for the year 2012, the OCDC reported there were 45 disciplinary actions taken. Of that number 13 were cases in which there was a suspension imposed and stayed and the lawyer placed on probation. There were also eight (8) cases of suspension without stay or probation. See Report of the Chief Disciplinary Counsel for the year 2012. A list of those 13 suspension actions with probation is appended hereto. **RA4**.

The report of those 13 cases does not state what conduct actually occurred, but does list the Supreme Court Rule which was violated. Eight of the 13 involved problems with the handling of client funds and trust accounts. Respondent has not been cited for any mishandling or appropriation of client funds. It would seem from the 13 suspensions with probations that were imposed in 2012 that consistency in discipline would be achieved by placing Respondent on probation subject to the conditions set forth by the Disciplinary Hearing Panel. The case of *In re: Coleman*, 295 S.W.3d 857 (Mo. banc

2009), would also seem to call for probation in this case if consistency of discipline is to be achieved.

Respondent has never disagreed with the Chief Disciplinary Counsel that a suspension is the appropriate discipline in this case although an argument could be made that a reprimand is appropriate pursuant to Standard 6.13, ABA Standards for Imposing Lawyer Sanctions. That argument has not been made by Respondent in view of the fact that there are multiple offenses in this case.

The Respondent's conduct did not involve any mishandling of client funds and there is no suggestion by the OCDC that Respondent's conduct would warrant disbarment. The real question is whether Respondent should be granted probation and on what conditions.

Respondent is eligible for probation under **Rule 5.225(a)(2)** in that she is a) unlikely to harm the public during the period of probation and can be adequately supervised; b) is able to perform legal services and able to practice law without causing the Courts or profession to fall into disrepute; and c) she has not committed acts warranting disbarment.

As evidence of those things Respondent has not received any additional complaints. She has obtained professional liability insurance and she has limited her practice primarily to the municipal court. The OCDC has determined that Respondent can be adequately supervised by that office. Dana Tippin Cutler has agreed to act as a mentor for Respondent during the period of probation and has already reached out to Respondent. James Hall, a Jackson County attorney who holds a number of municipal

judge positions and who has practiced extensively in the municipal courts for Jackson County has agreed to assist Respondent by giving her information and training in how to conduct a primarily municipal court practice.

The testimony of John Kurtz indicates that Respondent has done a 180° turn around in her practice and relationships before the Kansas City Municipal Court. Mr. Kurtz indicates that judges of that Court indicate that Respondent has become one of the most valued practitioners before that Court. **A35.**

Respondent has shown her interest in improving herself as an attorney by attending the Solo and Small Firm Conference and entering the Ross T. Roberts Trial Academy in Kansas City.

Respondent had no training or experience to help her successfully operate a solo law firm practice. She is a hard-working, motivated lawyer who is trying to improve herself. Probation with mentoring would give Respondent the opportunity to succeed and prove herself and would be consistent with the disciplinary decisions previously handed down by this Court.

Given her background she should be afforded the opportunity to succeed on probation just as the 13 people who were suspended in 2012 and placed on probation were given.

At the hearing before the DHP the Chair of the DHP, James Sullivan, indicated at the conclusion of the hearing that in retrospect it was a question of experience, training and judgment and that Respondent didn't think of what she needed to do when faced with the situation before Judge Garrett. **A56.**

As counsel for Informant pointed out to the DHP there are no aggravating circumstances, but there are a number of mitigating circumstances such as an absence of a prior disciplinary action, timely good faith effort to rectify the consequences of her conduct, full and free disclosure to the OCDC, inexperience in the practice of law, good character, and remorse. Further the OCDC believes Respondent can be rehabilitated and that she can be of help to people and can be properly supervised. **A55.**

Finally it has long been the policy in the State of Missouri to resolve controversies through settlement or agreement.

That is just what has occurred here. This Court has placed its confidence in the Office of Chief Disciplinary Counsel and the Chief Disciplinary Counsel and should afford great weight to the agreement of the Chief Disciplinary Counsel with the Respondent and should afford considerable weight to the deliberations and recommendations of the Disciplinary Hearing Panel and should suspend the Respondent and place her on probation pursuant to the terms and conditions of probation set forth in the Recommendations of the DHP.

CONCLUSION

Respondent meets the criteria for probation contained in **Rule 5.225** and should be suspended from the practice of law and placed on probation for a period of 2 years under the supervision of the Office Chief Disciplinary Counsel and subject to the terms and conditions set forth in the Recommendations of the Disciplinary Hearing Panel.

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 2013, the Respondent's Brief was sent through the Missouri Supreme Court e-filing system to Informant's counsel:

Charles W. Gotschall
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Robert G. Russell

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 2,347 words, according to Microsoft Word, which is the

word processing system used to prepare this brief.


Robert G. Russell