

**IN THE SUPREME COURT  
STATE OF MISSOURI**

---

**IN RE:**

**RADFORD R. (SKIP) RAINES, III,**

**Respondent.**

)  
)  
)  
)  
)

**Supreme Court #SC95032**

---

**INFORMANT'S BRIEF**

---

OFFICE OF CHIEF DISCIPLINARY  
COUNSEL

SAM S. PHILLIPS #30458  
DEPUTY CHIEF DISCIPLINARY COUNSEL  
3335 American Avenue  
Jefferson City, MO 65109  
(573) 635-7400  
(573) 635-2240 (fax)  
[Sam.Phillips@courts.mo.gov](mailto:Sam.Phillips@courts.mo.gov)

**ATTORNEYS FOR INFORMANT**

## **TABLE OF CONTENTS**

TABLE OF CONTENTS .....	1
TABLE OF AUTHORITIES .....	3
STATEMENT OF JURISDICTION .....	4
STATEMENT OF FACTS .....	5
SUMMARY OF CHARGES.....	5
RESPONDENT’S DISCIPLINARY HISTORY .....	5
BACKGROUND RELATED TO RESPONDENT’S PRACTICE .....	6
COUNT I (LAURIE CARROLL) .....	7
COUNT II (LODES).....	8
COUNT III (IRS TAX LEVY) .....	9
COUNT IV (RUTH JOHNSON).....	10
COUNT V (JUDY PETERSIMES) .....	11
COUNT VI (VICTOR MEUSER).....	12
COUNT VII (MARK PEASEL) .....	13
COUNT VIII (JAMES CATCHEM).....	14
COUNT IX (DEBORAH RANGE) .....	16
COUNT X (BERT COX) .....	16
COUNT XI (REBECCA KLIPPEL) .....	18
DHP DECISION: SUMMARY AND SANCTION RECOMMENDATION.....	20

POINTS RELIED ON

I. .... 21

II..... 22

ARGUMENT

I. .... 23

II. .... 28

CONCLUSION ..... 32

CERTIFICATE OF SERVICE ..... 33

CERTIFICATION: RULE 84.06(C) ..... 34

## **TABLE OF AUTHORITIES**

### **CASES**

<i>In re Belz</i> , 258 S.W.3d 38, (Mo. banc 2008)-----	29
<i>In re Ehler</i> 319 S.W.3d 442 (Mo. banc 2010) -----	29, 30, 31
<i>Matter of Williams</i> , 711 S.W.2d (Mo. banc 1986) -----	31

### **OTHER AUTHORITIES**

ABA <u>Standards for Imposing Lawyer Sanctions</u> -----	20, 22, 28, 29, 31
--	--------------------

### **RULES**

Rule 4-1.1 -----	21, 23, 24
Rule 4-1.3 -----	21, 23, 24, 26
Rule 4-8.4 -----	21, 23, 25, 26
Rule 4-1.15 -----	21, 23, 24, 25, 26

## **STATEMENT OF JURISDICTION**

Jurisdiction over attorney discipline matters is established by Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMo 2000.

## **STATEMENT OF FACTS**

### **Summary of Charges**

In the instant case, Informant charged Respondent with eleven counts of violating Rule 4 (the Rules of Professional Conduct). Alleged misconduct includes violations of Rule 4-1.1 (competence), 4-1.3 (diligence), 4-1.15 (trust accounting), and 4-8.4(c) (dishonesty). Respondent admitted multiple violations at the outset of the panel hearing. **App. 94.** A full evidentiary hearing was held and the Disciplinary Hearing Panel found violations in each of the eleven counts. **App. 897-919.**

### **Respondent's Disciplinary History**

Respondent, Radford (Skip) Raines, acknowledges a history of professional failings and misconduct: His license has been suspended (under Rule 5.245) for failure to pay his state income taxes. **App. 309-310; 75; 773-775.** In 2012, his license was suspended for numerous violations of the Rules of Professional Conduct, including failure to cooperate with disciplinary investigators, failure to communicate with his client, and failure to act diligently on behalf of his client. **App. 373-380.** That suspension, in Case #SC92960, was stayed and Mr. Raines was placed on probation. **App. 391-396.** When he agreed to be placed on probation in 2012, Respondent admitted a pattern of misconduct. **App. 373-380.** He then failed to meet many of the conditions of probation. In 2014, the Court found that he violated the following conditions of probation:

- a. he again violated the Rules of Professional Conduct;

Among his probation breaches were eight trust

accounting failings, including these: commingling; a tax levy against his trust account; failing to maintain or pay out funds owed to third parties and clients; and distributing certain client's funds to himself and certain other clients.

- b. he failed to submit required quarterly reports;
- c. he failed to obtain required malpractice insurance;
- d. he failed to make arrangements to propose a probation monitor;
- e. he failed to pay the disciplinary fee associated with the imposition of his stayed suspension. **App. 391-396; 412-413.**

This court revoked Mr. Raines' probation in Case #SC92960 on February 25, 2014. **App. 412-413.** As a result of that order, Respondent is not currently eligible to practice. The misconduct that violated his probation also made him eligible for more discipline. **App. 939.** The instant charges are based, in part, on the facts leading to the revocation of Respondent's probation.

Finally, Respondent has received three admonitions, one in 2006 and two in 2008, for failing to respond to disciplinary investigations. **App. 334-335; 336-337; 338-339.**

### **Background Related to Respondent's Practice**

In 2004-2005, Respondent took over much of the Workers Compensation practice of Michael Londoff, a friend who was dying of cancer. **App. 132.** Respondent made

arrangements with Mr. Londoff, and later with his widow, to take over the cases and to distribute 35% of recovered fees back to Mr. Londoff (and upon his death in 2005, to the Michael Londoff Trust administered by Michael Londoff's widow). **App. 208.** Additional arrangements were made for Respondent to share fees with Ryan Cox, another attorney asked by the Londoffs to continue that practice. **App. 131-133.**

Respondent and Ryan Cox were not able to work cooperatively to wrap up Mr. Londoff's caseload. **App. 140.** They engaged in several extended disputes about fee distribution. **App. 211-222.** During some disputes, Respondent knew, after he collected the settlements, that he owed funds to Ryan Cox. **App. 231.**

When Respondent took over the Londoff practice, Respondent's trust account, created in 2000, was not properly set up. **App. 399-900; 458-459.** Effective January 2010, the court's revision to Rule 4-1.15 required attorneys to establish their trust accounts in a way that would allow overdrafts in their trust accounts to be reported to the Office of Chief Disciplinary Counsel. Respondent did not do that.

### **Count I (Laurie Carroll)**

Laurie Carroll had been Michael Londoff's client. Upon settling Ms. Carroll's claim, Respondent deposited \$6,300.52 into his trust account on August 24, 2012. The Carroll deposit event occurred four months before Respondent was placed on probation in Case #SC92960. **App. 401-402.** Respondent soon withdrew his claimed portion of the Carroll fee - totaling \$3,150.26. He did not pay either the attorney fee shares owed to Ryan Cox or to the Londoff Trust. **App. 900-901; 656-659; 445-446.** In light of a dispute with Ryan Cox and the Londoff Trust over fees, Respondent initially held the



remainder of the overall fee in his trust account. But, before he eventually paid out the funds, his trust account was depleted. **App. 656-659.** It had a negative balance while Respondent was on probation and while the other claimants to the fee remained unpaid. **App. 656-659.**

DHP Decision: Count I: (Laurie Carroll)

Respondent is not guilty of professional misconduct as a result of violating Rule 4-1.3 on diligence in that the Londoff Trust and/or Mr. Cox were not clients within the meaning of the Rule.

Respondent is guilty of professional misconduct as a result of violating Rule 4-1.15 on safekeeping of property by failing to promptly deliver to a third party the funds to which that party was entitled.

Respondent is guilty of professional misconduct as a result of violating Rule 4-8.4(c) by engaging in conduct involving fraud, misrepresentation, deceit or dishonesty.

**App. 900-901.**

**Count II (Lodes)**

The Lodes case involved one of Michael Londoff's clients. In August 2012, before beginning probation, and in February 2013, while on probation, Respondent deposited a total of \$1,100.80 into his trust account; these amounts constituted attorney fees. **App. 705-708; 163-614.** Respondent withdrew a portion (\$134.16) but did not take his entire fee. He left a portion of his fees in his trust account. **App. 163-164; 233.**

DHP Decision: Count II: (Lodes Case)

Respondent is guilty of professional misconduct as a result of violating Rule 1-1.3 on diligence by timely failing to remove unearned attorney fees from his trust account.

Respondent is guilty of professional misconduct as a result of violating Rule 4-1.15 on safekeeping property by failing to promptly deliver to himself and a third party the funds to which they were entitled.

**App. 901.**

**Count III (IRS Tax Levy)**

In May of 2011, the IRS levied Respondent's trust account because he had failed to pay his federal income taxes. **App. 695-699.** Although he told the Office of Chief Disciplinary Counsel and the DHP that the funds in that account belonged to clients, Respondent took no legal action to either protect the client funds or prove that the funds indeed belonged to clients. **App. 902; 131, 148-150; 459-462.** He said he did not know which clients' funds were taken in the levy. **App. 460.**

DHP Decision: Count III: (U.S. Government Levy)

Respondent is guilty of professional misconduct as a result of violating Rule 4-1.15 on safekeeping property by having a government agency levy on a client trust account.

Respondent is guilty of professional misconduct as a result of violating Rule 4-8.4(c) by engaging in conduct involving fraud, misrepresentation, deceit or dishonesty.

**App. 902.**

**Count IV (Ruth Johnson)**

Ruth Johnson had been Michael Londoff's client. Respondent settled her claim in 2009 for \$20,000.00. **App. 709-721.** Respondent first paid himself \$5,426.08. Then, he paid Ms. Johnson \$11,949.65. **App. 163-166; 709-721.** The remainder was initially held in his trust account to address a dispute with the Londoff Trust and to pay expenses and the Londoff Trust's share of the fee. Three years later, when Respondent attempted to pay the Londoff Trust, his two checks to the Trust bounced. **App. 235-236.** His trust account no longer contained the Londoff share of fees. **App. 709-721; 163-165; 268.** Two months later, Respondent paid the Londoff Trust with funds he had deposited into his trust account after settling an unrelated claim for Mark Peasel, a different client. **App. 902-903; 165-167; 709-721; 656-659; 660-667; 477-480.**

**DHP Decision: Count IV: (Ruth Johnson)**

Respondent is not guilty of professional misconduct as a result of violating Rule 4-1.3 on diligence by failing to pay attorney fees and expenses due to the Londoff Trust over two and a half years in that the Londoff trust is not a client within the meaning of Rule 4-1.3

Respondent is guilty of professional misconduct as a result of violating Rule 4-1.15 on safekeeping property by failing to preserve in his trust account money due and owing a third party, the Londoff Trust.

Respondent is guilty of professional misconduct as a result of violating Rule 4-8.4(c) by engaging in conduct involving dishonesty, fraud,

deceit or misrepresentation by using funds from the Johnson settlement for other purposes.

**App. 902-903.**

**Count V (Judy Petersimes)**

Judy Petersimes had been Michael Londoff's client. Respondent settled her claim in 2010 for \$21,998.26. **App. 656-659; 722-729; 167-168.** At that time, Respondent paid his own fee of \$3,574.71. **App. 268; 722-729.** Then, he paid Ms. Petersimes' net award of \$3,365.15. Respondent initially held the remainder in his trust account until a dispute about fee distribution with the Londoff Trust could be resolved. **App. 722-729; 236.** By the time Respondent attempted to pay the Londoff Trust, in March 2012, the Petersimes case proceeds were no longer in his account. **App. 722-729.** The checks payable to the Londoff Trust were returned for insufficient funds. **App. 167; 236.** Two months later, Respondent paid the Londoff Trust from a different trust account. At the time of payment, that trust account then contained only funds belonging to another client, Mark Peasel. **App. 903-904; 656-659; 167; 236; 476-480.**

**DHP Decision: Count V: (Judy Petersimes)**

Respondent is not guilty of professional misconduct as a result of violating Rule 4-1.3 on diligence by failing to pay attorney fees and expenses due to the Londoff Trust for almost two years in that the Londoff Trust is not a client within the meaning of the Rule.

Respondent is guilty of professional misconduct as a result of violating Rule 4-1.15 on safekeeping property by failing to preserve in his trust account money due and owing a third party, the Londoff Trust.

Respondent is guilty of professional misconduct as a result of violating Rule 4-8.4(c) by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation by using funds from the Petersimes settlement for other purposes.

**App. 903-904.**

**Count VI (Victor Meuser)**

Mr. Meuser had been a client of Michael Londoff when Respondent took over his workers compensation claim. Respondent settled the claim in December 2010 for about \$21,000.00. But, before even depositing the settlement funds, he made three payments to himself, totaling \$4,000.00; those payments referenced the Victor Meuser case. **App. 730-739; 168; 236-237; 268.** Two months after paying himself, Respondent also paid Mr. Meuser his share: \$15,039.30. **App. 730.** He deposited the Meuser proceeds into his trust account in December 2010. **App. 730-739.** He made no attempt to pay over the Londoff Trust's share until March 2012. At that point, the trust account was empty, so the check to the Londoff Trust bounced. **App. 730-739.** Two months later, Respondent paid the Londoff Trust, but funded the payment with proceeds from Mark Peasal's settlement, which had been held in a different trust account. **App. 904-905; 268; 169; 730-739.**

DHP Decision: Count VI: (Victor Meuser)

Respondent is not guilty of professional misconduct as a result of violating Rule 4-1.3 on diligence by failing to pay attorney fees and expenses due to the Londoff Trust for almost one and a half years in that the Londoff Trust is not a client within the meaning of the Rule.

Respondent is guilty of professional misconduct as a result of violating Rule 4-1.15 on safekeeping property by failing to preserve in his trust account money due and owing a third party, the Londoff Trust.

Respondent is guilty of professional misconduct as a result of violating Rule 4-8.4(c) by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation by using funds from the Meuser settlement for other purposes.

**App. 904-905.**

**Count VII (Mark Peasel)**

Respondent represented Mark Peasel in a worker's compensation matter in 2011-2012. Mr. Peasel had not been a client of Michael Londoff. Respondent wrote seven (7) checks to himself, referencing the Peasel claim, between February and April 2011. All seven checks (which totaled over \$10,000.00) predated any deposit for Mr. Peasel by several months. **App. 740-750.** Respondent's payments to himself were made from other clients' funds. **App. 158-159; 169-170; 176; 656-659; 660-667.** Almost a year after Respondent began paying himself in the Peasel matter, Respondent paid his clients

with a check in January 2012 for \$22,709.54 and another check that month for \$5,952.11. Those checks also predated Respondent's deposit of the Peasel case proceeds. **App. 740.**

The Peasal case records indicate that Respondent began using a new trust account (#xxxx6951) when he eventually deposited the Peasel settlement proceeds. **App.740-750; 905-906.** Respondent told the panel that he believed he had deposited the Peasal funds before he wrote checks to himself. **App. 237.**

DHP Decision: Count VII: (Mark Peasel)

Respondent is guilty of professional misconduct as a result of violating Rule 4-1.15 on safekeeping property by making payment to himself and to Mr. Peasel from funds belonging to others.

Respondent is guilty of professional misconduct as a result of violating Rule 4-8.4(c) on conduct involving dishonesty, fraud, deceit or misrepresentation by paying himself and Mr. Peasel from money belonging to others.

**App. 905-906.**

**Count VIII (James Catchem)**

Respondent represented Mr. Catchem in a Workers Compensation matter in 2011. Michael Londoff had been Mr. Catchem's first lawyer.

On September 20, 2011, Respondent paid himself \$2,639.65 from his trust account, referencing the Catchem matter on the payment. **App. 656-659; 751-757.** Three weeks later, on October 11, 2011, Respondent wrote a check to Mr. Catchem. More than a month after he paid himself for settling Mr. Catchem's case, Respondent

first deposited the Catchem settlement proceeds. **App. 171-172.** He paid himself and Mr. Catchem with other clients' funds. **App. 171-172.** After depositing the settlement, he made another payment to himself. Respondent testified that he had, in fact, settled the case before making payments, but had failed to deposit the check. **App. 238** He didn't pay shares to Ryan Cox or the Londoff Trust for several months. Eventually, Respondent made payments on the Catchem matter that exceeded the gross settlement. **App. 751-757.**

DHP Decision: Count VIII: (James Catchem)

Respondent is guilty of professional misconduct as a result of violating Rule 4-1.15 on safekeeping property by making payment to himself and to Mr. Catchem when settlement proceeds had not yet been received, meaning that the payments were from other sources.

Respondent is guilty of professional misconduct as a result of violating Rule 4-1.15 on safekeeping property in that the total of attorney fees and expense payments to Respondent, Ryan Cox and the Londoff Trust were greater than the amount that had been withheld for settlement, meaning a portion of those fees was from some other source.

Respondent is guilty of professional misconduct as a result of violating Rule 4-8.4(c) by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation by paying himself and Mr. Catchem prior to receipt of the settlement proceeds.

**App. 906-907.**



### **Count IX (Deborah Range)**

Deborah Range was not a client inherited from Michael Londoff. Although Respondent did not deposit the Range case proceeds into his trust account until January 2011, he used funds in his trust account to pay off a loan Ms. Range had made in August 2010; she was using the expected settlement as collateral. **App. 758-763.**

Beginning in September 2010, Respondent paid himself (in two checks) a total of \$1,800.00. Two months later, Respondent paid his client, Deborah Range. One month after paying his client, four months after paying himself, and five months after paying Ms. Range's creditor, he finally deposited the settlement checks payable to Ms. Range. **App. 758-763.** At that point, Respondent still owed Ms. Range \$1,189.41. **App. 758-763; 173.** Respondent admits, as he did in Counts VII and VIII, that he used other clients' funds to pay Ms. Range, her creditors, and himself. **App. 238-239.**

#### **DHP Decision: Count IX: (Deborah Range)**

Respondent is guilty of professional misconduct as a result of violating Rule 4-1.15 on safekeeping client property by paying Deborah Range and the Professional Funding Company from client trust account funds other than from the settlement proceeds on her case. **App. 907-908.**

### **Count X (Bert Cox)**

Mr. Cox had not been a client of Michael Londoff when Respondent represented him on his workers compensation claim in 2010-2011. Respondent settled the Cox case, in April 2011, for \$20,128.90. **App. 764-766.** In May 2010, eleven months before

settling the claim and before receiving the settlement proceeds, Respondent wrote a \$3,636.55 check to himself. **App. 173-174; 764-766.** The May 2010 check memo referred to the Bert Cox case **App. 764-766.** Respondent was using other clients' funds to pay himself while referencing the Bert Cox claim.

And, although Respondent received and deposited the Bert Cox claim proceeds in April 2011, he didn't distribute funds to Mr. Cox until more than two years later. Respondent told the Panel that Mr. Cox wasn't paid because he didn't come to get the check. **App. 245.** No distributions were made until Mr. Cox retained another attorney to investigate, and, not until the Office of Chief Disciplinary Counsel initiated a disciplinary investigation. **App. 764-766.**

Although Respondent told the CDC and the Panel that he was just waiting for Mr. Cox to "come in and get the funds", the Cox funds were, in fact, quickly depleted. **App. 517; 908-909; 173-175; 245; 514-519; 764-766; 656-659.** Respondent could not explain to the CDC where the Cox funds had been spent. **App. 517-519.**

DHP Decision: Count X: (Berthold Cox)

Respondent is guilty of professional misconduct as a result of violating Rule 4-8.4(c) on conduct involving dishonesty, fraud, deceit or misrepresentation in that the proceeds of the Berthold Cox settlement were used for other purposes.

**App. 908-909.**

**Count XI (Rebecca Klippel)**

Rebecca Klippel was not a client of Michael Londoff. Between November 2010 and March 2011, Respondent wrote two checks to his client, one check to himself (totaling \$1,500.00), and one check for a loan payment on behalf of Ms. Klippel. Funds for those payments came from other clients, as Respondent admits. **App. 767-772; 175-176.**

Although he settled Ms. Klippel's case in April 2011, Respondent never deposited nor cashed the settlement drafts. **App. 767-772; 154-155; 175-176**, Respondent told the hearing panel he didn't knowingly write checks without making the deposit. **App. 240.**

Ms. Klippel eventually retained another attorney, who was able to obtain a new check for Ms. Klippel's workers compensation. That new check was issued in 2013, two years after Respondent first received the first check.

**DHP Decision: Count XI: (Rebecca Klippel)**

Respondent is guilty of professional misconduct as a result of violating Rule 4-1.1 on competence by failing to deposit the settlement proceeds of an approved workers' compensation settlement.

Respondent is guilty of professional misconduct as a result of violating Rule 4-1.15 on safekeeping property by making payment to himself, Ms. Klippel and the Professional Funding Company from proceeds other than those of the Klippel case.

Respondent is guilty of professional misconduct as a result of violating Rule 4-8.4(c) by conduct involving dishonesty, fraud, deceit or

misrepresentation in utilizing other client proceeds to make the Klippel payment.

**App. 909.**

### **DHP Decision: Summary and Sanction Recommendation**

The Panel found that Respondent violated Rule 4-1.15 in each of the charged eleven counts directly relating to his trust account practices. The Panel also concluded Respondent acted with fraud, misrepresentation, deceit, or dishonesty in violating Rule 4-8.4(c). Those Rule 4-8.4(c) violations were found in nine counts. The Panel analyzed the facts, applied the ABA's Standards for Imposing Lawyer Sanctions, and recommended disbarment. **App. 914-919.**

Specifically analyzing Respondent's mental state in recommending a sanction, the Panel found Respondent had knowledge and was aware of the substantial risk that circumstances existed that compromised and injured his clients, the Londoff Trust and Ryan Cox. And, the Panel ruled that Respondent "acted with reckless disregard for proper safekeeping of the funds in the trust account," and that "he may not have had a conscious objective to accomplish the result but should have known the result would follow." **App. 916.**

The Panel noted that the following ABA mitigating factors "may be applicable" here: personal or emotional problems and remorse. **App. 918.**

The Panel determined these five ABA aggravating factors were applicable: prior disciplinary offenses, dishonesty or selfish motives, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency, and substantial experience in the practice of law. **App. 918.**

**POINTS RELIED ON**

**I.**

**AS ALLEGED IN THE INFORMATION,  
RESPONDENT VIOLATED RULES 4-1.1, 4-1.3, 4-1.15,  
AND 4-8.4(c).**

**POINTS RELIED ON**

**II.**

**UPON APPLICATION OF PREVIOUS DECISIONS OF THIS COURT AND THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS, RESPONDENT'S PATTERN OF SELFISH MISCONDUCT, AGGRAVATED BY DISHONESTY AND PREVIOUS SUSPENSIONS, SHOULD RESULT IN DISBARMENT.**

## ARGUMENT

### I.

**AS ALLEGED IN THE INFORMATION,  
RESPONDENT VIOLATED RULES 4-1.1, 4-1.3, 4-1.15,  
AND 4-8.4(c).**

#### Violations

Respondent is charged with violating four different rules of professional conduct in eleven counts. First, in several counts, Informant charged Rule 4-1.3, concerning diligence. Those counts relate to Respondent's failure to timely distribute client funds to clients and third parties. In Counts I, IV, V, and VI, Respondent violated Rule 4-1.3 (diligence) by failing to deliver owed client funds to the Londoff Trust and/or former co-counsel, Ryan Cox. Respondent and the Disciplinary Hearing Panel correctly point out that Rule 4-1.3 establishes duties only "in representing a client." Obviously, Ryan Cox and the Londoff Trust were not Respondent's clients. But, the funds Respondent improperly held were attorney fees earned by contract and legal work completed in representing clients. Respondent owed his clients a duty of diligence to promptly pay his clients' debts. He received the funds as part of his representation of those clients. By failing his duty to his clients to pay his clients' debts with their funds, Respondent not only left them at risk of continued claims from the Londoff Trust and Ryan Cox, he violated Rule 4-1.3.

In 2010, this Court found violations of Rule 4-1.3 (diligence) when the attorney failed to pay over funds. *In re Ehler* 319 S.W.3d 442 (Mo. banc 2010). That attorney



had recovered funds to be distributed to both her client and her client's ex-spouse (the opposing party). *In re Ehler*, 319 S.W.3d at 446, 449.

Contrary to the Panel's reasoning in this case, Rule 4-1.3 broadly requires attorneys to act diligently in representing a client. For example, as the Court found in *Ehler*, the rule requires attorneys to diligently distribute funds to both clients and other legitimate claimants. When this Respondent failed in his obligation to distribute funds to his co-counsel, he violated Rule 4-1.3.

In Count XI, Respondent is also charged with violating Rule 4-1.1 (competence). That charge relates to Respondent's admitted failure to deposit funds received for his client, Rebecca Klippel, and then misplacing the settlement check.

Each of the eleven counts contains a Rule 4-1.15 charge, relating to trust accounting. Respondent admits many, but not all, Rule 4-1.15 charges.

In Count I, Respondent represented Laurie Carroll in a workers compensation matter. After settling the case, Respondent paid himself the fees he was owed, but failed to distribute fees owed to his co-counsel, Ryan Cox, or his other contractual obligations to the Londoff Trust. He held those funds in his trust account, he says, because he was in a dispute with the Londoff Trust and Ryan Cox, the former co-counsel. But, before paying the funds out, he spent them elsewhere. **App. 162-163.** Respondent violated Rule 4-1.15 by commingling client funds held in his trust account with the funds held for debts owed to his co-counsel.

In Counts I, II, IV, V, and VI, Respondent initially violated Rule 4-1.15 by leaving earned funds in his trust account after settlements. That conduct constituted

commingling because Respondent's funds remained in the same account as client funds. Those counts include violations of Rule 4-1.15 and 4-8.4(c). Some portion of the funds initially held in trust following the settlements referred to in Counts I and II-VI were owed to third parties (Ryan Cox and the Londoff Trust). Respondent argues that he held those funds in trust because he was in a dispute with the Londoff Trustee and Ryan Cox. He violated Rule 4-8.4(c) by spending the shares owed to Ryan Cox and Londoff Trust, before paying them. In each of these counts, Respondent's trust account was depleted while he was purportedly holding the disputed and non-disputed Cox and Londoff Trust funds.

In Count II, Respondent violated Rule 4-1.15 initially by failing to protect client funds in that the account he was using to hold client funds was not denominated as a lawyer trust account.

Count III relates to a tax levy on Respondent's trust account. When Respondent failed to pay his federal income taxes, the IRS levied his client account. Although Respondent contacted the IRS and reported that the funds held in that account belonged to clients, and not him, he took no other steps to resist the levy. That failure to assertively protect client funds constitutes a violation of Rule 4-1.15 because Respondent failed to meet his fiduciary duty to preserve those funds. (Count III)

In Counts VII, VIII, IX, X, and XI, Respondent violated Rule 4-1.15 by distributing certain clients' funds to himself as attorney fees for settling other clients' cases, months before even depositing the other clients' settlement proceeds into his account. In other words, Respondent used trust funds received and held for clients A, B,

and C, to pay himself for working on clients X, Y, and Z's cases before receiving or depositing X, Y, and Z's awards. That scheme violated Rule 4-1.15 because Respondent failed to preserve Clients A, B, and C's funds. The same scheme violated Rule 4-8.4(c) because the repeated conduct provided selfish gains to himself, at the expense of his clients and creditor third parties. As the Disciplinary Hearing Panel noted, "Respondent had knowledge and was aware of the substantial risk that circumstances existed that compromised and injured his clients, the Londoff Trust and Ryan Cox." **App. 916.** When that "knowledge" and "reckless disregard" works not only to harm clients and third parties, but also (repeatedly) to his own benefit, it is not mere coincidence. Respondent consistently made certain that he was paid first, regardless of whose funds he was using to accomplish that. Occasionally, but not always, his clients also were paid - albeit with other clients' funds. Often, as noted, clients X, Y, and Z were paid from assets belonging to clients A, B, and C. In all events, Respondent paid himself first. That selfish behavior supports the Disciplinary Hearing Panel's conclusions that Respondent violated Rule 4-8.4(c) (dishonesty) in Counts III-XI. Additionally, Respondent used client funds for other purposes – that cannot be determined – than for the benefit of the persons entitled to receive the funds. The hearing panel properly concluded that behavior also violated Rule 4-8.4(c).

Respondent has admitted many of the Rule 4-1.15 charges, but he denies the 4-1.3 charges, arguing that the duty to client did not require him to use his clients' funds to pay their obligations. Respondent also denies violation of Rule 4-8.4(c); he argues that his misconduct lacked intent to deprive. As noted, his routine scheme, as shown in Counts

VII-XI, was to use one clients' money to pay himself for legal work completed for another client, months before the second clients' settlement was received or deposited.

Violations of the Rules of Professional Conduct are established by the evidence, including partial admissions by Respondent. Discipline is warranted.

## **ARGUMENT**

### **II.**

**UPON APPLICATION OF PREVIOUS DECISIONS OF THIS COURT AND THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS, RESPONDENT’S PATTERN OF SELFISH MISCONDUCT, AGGRAVATED BY DISHONESTY AND PREVIOUS SUSPENSIONS, SHOULD RESULT IN DISBARMENT.**

#### **Sanction**

The Disciplinary Hearing Panel properly and fully applied the ABA Sanction standards to the facts of this case. The Panel determined the duties Respondent breached, (primarily to clients and third person), and the nature and level of intent, (recklessness with a reasonably foreseeable result). Also, the Panel identified actual and potential harm resulting to Respondent’s clients. And, while listing two possible mitigating factors as remorse and emotional problems, they found explicitly these aggravators applicable:

- Dishonest or selfish motives;
- Prior disciplinary offenses;
- Multiple offenses;
- Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the OCDC;

- Substantial experience in the practice of law.

Upon consideration of ABA Standard 4.11, as well as aggravating and mitigating factors, the Panel recommended disbarment. **App. 915-919.**

Three reported decisions of this court provide the best guidance for a sanction analysis. First is the 2008 suspension case involving Missouri attorney Belz. That case stands for the proposition that disbarment is the appropriate default sanction when lawyers purposely take client and third party funds for their own use. *In re Belz*, 258 S.W.3d 38, (Mo. banc 2008).

Although Belz was suspended for his misconduct, the Court majority described a unique set of circumstances including a diagnosed bipolar condition that caused his misconduct. And, Mr. Belz self-reported his violation. In the instant case, Respondent has no diagnosed condition causing his misconduct. Though he claims a lack of purpose, he repeatedly and purposely paid himself, while purposely refraining from paying his clients and their creditors. Although the amounts taken and the methods of taking differ from Belz, the analysis stands: disbarment is appropriate. In this case, no significant mitigating circumstances apply. On the aggravation side of the scales, Respondent has an extensive disciplinary history - a significant aggravating factor. Belz had minimal, if any disciplinary history.

A unanimous 2010 decision offers the best guidance for the Court's sanction analysis in this case. *In re Ehler*, 319 S.W.3d 342 (Mo. banc 2010).

Several key points from the *Ehler* ruling support disbarment here. First, disbarment is appropriate for misappropriation of client funds. *In re Ehler*, 319 S.W.3d

at 451. In this case, Respondent paid himself but failed to pay his client, Bert Cox, for over two years. Although he tries to excuse that failing by declaring that Mr. Cox didn't stop by to get his check, he did not document that claim. More importantly, even if Mr. Cox had visited Respondent's office daily, Respondent could not have paid him, because Mr. Cox's money had already been spent.

Second, the *Ehler* decision supports the concept that the twin purposes of these discipline cases are to protect the public and the integrity of the profession. Given Respondent's disciplinary history and the multitude of serious violations here, those purposes are best addressed by disbarment.

Third and fourth, *Ehler* reiterates that when lawyers are dishonest and selfish, and when they engage in a pattern of misconduct, these two aggravating factors demand the highest appropriate sanction, *In re Ehler*, 319 S.W.3d at 451. Here the Panel found what the evidence supports: Respondent's repeated selfish scheme was dishonest.

Fifth, Ms. Ehler's personal problems, not unlike Respondent's, do not provide significant mitigation when weighed against many established aggravators.

Finally, and perhaps most relevant here, the *Ehler* court ruled that under "a progressive disciplinary scheme," disbarment is appropriate when a lawyer has been previously suspended. Here, Respondent has been suspended for failing to pay his taxes, and suspended for multiple rule violations. And he has been admonished three times. He acknowledged in his earlier suspension that he had already engaged in a pattern of misconduct. *In re Ehler*, 319 S.W.3d at 452. In the instant case, that pattern has only repeated itself, with more serious violations.

Also, the *Ehler* court relied on ABA Sanction Standard 4.11(c) in noting that “disbarment is generally appropriate when a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client”. *In re Ehler*, 319 S.W.3d at 451. That standard rebuts Respondent’s argument that disbarment is too harsh because he simply forgot to deposit a couple settlement checks and forgot to reconcile his trust account for a few months.

Respondent’s excuse of incompetence would also have failed in 1986. That year, the Court disbarred an attorney who argued that his secretary/wife had improperly managed his trust account. *Matter of Williams*, 711 S.W.2d, 518 (Mo. banc 1986). In that case, as in the instant case, the attorney benefitted from a lengthy set of circumstances in which they both – at the least – recognized problems with their trust accounts but failed to take remedial actions, *Matter of Williams*, 711 S.W.2d at 521-522.

The ABA Sanction Standards and previous Missouri cases support disbarment. The Hearing Panel recommended disbarment. Informant recommends disbarment.



## **CONCLUSION**

The Court has suspended Respondent's license twice. He has now engaged in another pattern of misconduct involving eleven clients and two associates. In each case, Respondent was sufficiently savvy to assure that he got paid promptly - generally by using another client's funds to pay himself. At the same time, he failed to pay his contractual associates (Ryan Cox and the Londoff Trust) and at times failed to pay his clients. In defense and mitigation, Respondent offers his incompetence and that those parties didn't get paid only because he was holding funds as part of a dispute and that his client failed to pick up the settlement funds. Those explanations are contrary to the truth – which is that Respondent did not actually hold the disputed funds and client funds. Instead, that money was spent for other clients and for Respondent's fees. This case is best described as a pattern of selfish violations of multiple rules, involving eleven injured clients, compounded by dishonest excuses in the discipline process, and aggravated by an extensive disciplinary history. Respondent should be disbarred.

Respectfully submitted,

ALAN D. PRATZEL #29141  
Chief Disciplinary Counsel



By: \_\_\_\_\_  
Sam S. Phillips #30458  
Deputy Chief Disciplinary Counsel  
3335 American Avenue  
Jefferson City, MO 65109  
(573) 635-7400 – Phone  
(573) 635-2240 – Fax  
Sam.Phillips@courts.mo.gov

ATTORNEYS FOR INFORMANT

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of July, 2015, a true and correct copy of the foregoing was served via the electronic filing system pursuant to Rule 103.08 on:

Michael P. Downey  
49 North Gore Avenue, Suite 2  
St. Louis, MO 63119

**Attorney for Respondent**



\_\_\_\_\_  
Sam S. Phillips

**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 5993 words, according to Microsoft Word, which is the word processing system used to prepare this brief.

A handwritten signature in black ink, appearing to read "Sam S. Phillips". The signature is written in a cursive, somewhat stylized font.

---

Sam S. Phillips