

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

DOUGLAS A. WALKER, JR.

Respondent.

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Supreme Court #SC95562

INFORMANT'S BRIEF

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Rule 4-5.5	8, 11, 14
Rule 5.27	8, 14

STATEMENT OF JURISDICTION

This action is one in which Informant, the Chief Disciplinary Counsel, is seeking to discipline an attorney licensed in the State of Missouri for violations of the Missouri Rules of Professional Conduct. Jurisdiction over attorney discipline matters is established by this Court's inherent authority to regulate the practice of law, Supreme Court Rule 5, this Court's common law and Section 484.040 R.S.Mo. 2000.

STATEMENT OF FACTS

Background

Respondent Douglas Walker, Jr. has been licensed to practice law in Missouri since 2000. **App. 22 (tr. 7)**. Respondent has a prior disciplinary record. In 2007 he received an admonition for violation of Rule 4-1.1 (Competence) and 4-1.16 (Declining or Terminating Representation), in 2013 he received an admonition for a violation of Rule 4-8.4(c) (Misconduct) and in 2014 he received an admonition for a violation of Rule 4-1.15 (Safekeeping of Property). In addition, in March of 2012 Respondent was suspended pursuant to Rule 5.245 for unpaid taxes and reinstated in December of 2012. In 2012 Respondent received an admonition for a violation of Rule 4-5.5(e) for the unauthorized practice of law while suspended. **App. 25-26 (tr. 10-11); App. 100-112**. In January of 2014 Respondent was again suspended from the practice of law for failure to pay taxes pursuant to Rule 5.245. Respondent was reinstated on June 24, 2014. **App. 26-27 (tr.11-12); App. 3-4; App. 13; App. 104-105**. Respondent is currently suspended from the practice of law for failure to comply with his continuing legal education obligations pursuant to Rule 15. Therefore, between 2007 and the present Respondent has received four admonitions and been suspended on three separate occasions, twice for failure to pay taxes and currently for failure to satisfy his CLE obligations.

While suspended in 2014 Respondent continued to practice law. **App. 28 (tr. 13)**. In April of 2014 Respondent prepared, electronically signed and filed pleadings in two separate matters before the United States Bankruptcy Court for the Eastern District of

Missouri. **App. 28 (tr. 13); App. 3; App. 13-14.** During that same month Respondent met with another client, provided legal services, prepared and filed bankruptcy pleadings but he used his partner's Missouri Bar number and electronic signature rather than his own. Because he knew he was suspended, Respondent admits he used his law partner's Bar number and signature to try to hide the fact that he was providing legal services in the matter while suspended from the practice of law. **App. 29-30 (tr. 14-15).**

On January 23, 2015, Informant filed its Information in this matter. A Disciplinary Hearing Panel ("DHP") was subsequently appointed and a hearing held on May 19, 2015. **App. 113.** As he did in his Answer, at the hearing Respondent admitted the allegations contained in the Information, *to wit*, that while suspended from the practice of law he represented clients in bankruptcy matters and on one occasion filed pleadings using his law partner's name and bar number to hide the fact that he was continuing to practice law during that time. **App. 28-30 (tr. 13-14)**

DHP Decision

The DHP issued its Disciplinary Hearing Panel Decision ("Decision") on January 14, 2016. **App. 113.** The DHP found that Respondent was guilty of professional misconduct as a result of violating Rules 5.27 and 4-5.5 "by knowingly providing attorney services while suspended". **App. 114.** Based upon its findings the DHP recommended that Respondent be indefinitely suspended with no leave to apply for reinstatement for six (6) months. The DHP noted that Respondent's "many prior

disciplinary contacts, and knowing disregard of his suspension, require his suspension for a period of at least six months.” **App. 116.**

POINT RELIED ON

A SUSPENSION OF RESPONDENT’S LICENSE WITHOUT PROBATION IS APPROPRIATE WHERE RESPONDENT, WHO PREVIOUSLY HAD RECEIVED AN ADMONITION FOR THE UNAUTHORIZED PRACTICE OF LAW, HAS ENGAGED IN MULTIPLE, REPEATED AND KNOWING VIOLATIONS OF THE RULES OF PROFESSIONAL CONDUCT CONCERNING THE UNAUTHORIZED PRACTICE OF LAW WHILE SUSPENDED FOR FAILURE TO PAY TAXES.

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

In re Coleman, 298 S.W.3d 857 (Mo. banc 2009)

In re Shelhorse, 147 S.W.3d 79 (Mo. banc 2004)

In re Crews, 159 S.W.3d 355 (Mo. banc 2005)

ARGUMENT

A SUSPENSION OF RESPONDENT’S LICENSE WITHOUT PROBATION IS APPROPRIATE WHERE RESPONDENT, WHO PREVIOUSLY HAD RECEIVED AN ADMONITION FOR THE UNAUTHORIZED PRACTICE OF LAW, HAS ENGAGED IN MULTIPLE, REPEATED AND KNOWING VIOLATIONS OF THE RULES OF PROFESSIONAL CONDUCT CONCERNING THE UNAUTHORIZED PRACTICE OF LAW WHILE SUSPENDED FOR FAILURE TO PAY TAXES.

In both his Answer to the Information as well as his testimony before the DHP Respondent admitted the misconduct alleged that forms the basis for violations of Rules 5.27 and 4-5.5. Respondent, with a disciplinary history that includes an admonition for the unauthorized practice of law, continued to practice law while suspended for failure to pay taxes and on one occasion used the bar number and signature of his law partner in an attempt to conceal his misconduct. The misconduct and Rule violations are undisputed by the parties. Therefore, the remaining issue is the appropriate level of discipline to impose in this case.

It is axiomatic that “The fundamental purpose of an attorney disciplinary proceeding is to ‘protect the public and maintain the integrity of the legal profession.’” *In re Crews*, 159 S.W.3d 355, 360 (Mo. banc 2005). The Court regularly relies on the ABA

Standards for Imposing Lawyer Sanctions (the “*ABA Standards*”) when determining the appropriate sanction to achieve the goals of attorney discipline. *In re Coleman*, 298 S.W.3d 857, 869 (Mo. banc 2009).

Under the *ABA Standards*, the factors to be considered in determining an appropriate sanction are “(a) the duty violated; (b) the lawyer’s mental state; (c) the potential or actual injury caused by the lawyer’s misconduct; and (d) the existence of any aggravating or mitigating factors.” *ABA Standards 3.0*.

Respondent’s unauthorized practice of law and utilizing the bar number and signature of another attorney to hide that misconduct violated a duty he owed to the legal system and the profession¹.

The next stage of the analysis set forth in the *ABA Standards* is determining Respondent’s “mental state”. The *ABA Standards* notes:

¹ As noted by the *ABA Standards, Section II, Theoretical Framework, p. 5*, “Lawyers also owe duties to the *legal system*. Lawyers are officers of the court, and must abide by the rules of substance and procedure which shape the administration of justice. Lawyers must always operate within the bounds of the law, and cannot create or use false evidence, or engage in any other illegal or improper conduct...Finally, lawyers owe duties to the *legal profession*...These duties do not concern the lawyer’s basic responsibilities in representing clients, serving as an officer of the court, or maintaining the public trust, but include other duties relating to the profession.”

“The mental states used in this model are defined as follows. The most culpable mental state is of intent, when the lawyer acts with the conscious objective or purpose to accomplish a particular result. The next most culpable mental state is that of knowledge, when the lawyer acts with conscious awareness of the nature or attendant circumstances of his or her conduct but without the conscious objective or purpose to accomplish a particular result. The least culpable mental state is negligence, when a lawyer fails to be aware of a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.” *ABA Standards*, p. 6.

In the present case, by Respondent’s own admissions, he acted with “the conscious awareness of the nature or attendant circumstances” of his conduct, the second most culpable state of mind in the *ABA Standards* analysis. Respondent continued to practice law while suspended with full knowledge that such was a violation of the Rules of Professional Conduct. Respondent’s knowledge that his continuing to practice was a violation is reflected both in his own testimony before the DHP and in the actions he took to try to conceal his knowing misconduct, utilizing the bar number and signature of his law partner in an admitted attempt to hide this violation.

The *ABA Standards* notes that “The extent of the *injury* is defined by the type of duty violated and the extent of actual or potential harm.” *ABA Standards*, p. 7. In this

case, the duty violated was, as previously noted, the duty a lawyer owes the legal system and his profession. Injury occurs to the legal system and the legal profession at any time that the rules established to govern the integrity of the system are violated. This is especially true when the violation of the rules is flagrant and intentional as demonstrated by Respondent in our case. Unchecked and unsanctioned the injury can be serious.

Finally, the *ABA Standards* analysis requires a review of any aggravating or mitigating factors. In this case both aggravating and mitigating factors exist. The aggravating factors applicable to this case are:

Standard 9.22(a) *prior disciplinary offenses*: Respondent received prior Admonitions in 2007, 2012, 2013 and 2014, one of which, the Admonition in 2012, was for a violation of Rule 4-5.5(e) for the unauthorized practice of law while suspended. Respondent was suspended from the practice of law in 2012 and 2014 pursuant to Rule 5.245 and is currently suspended for failure to satisfy his CLE obligations pursuant to Rule 15.

Standard 9.22 (b) *dishonest or selfish motive*: Respondent has admitted that he filed pleadings with the United States Bankruptcy Court using the bar number and electronic signature of another attorney in an effort to conceal his unauthorized practice of law.

Standard 9.22 (c) *a pattern of misconduct* and (d) *multiple offenses*: Respondent engaged in the unauthorized practice of law in 2012, for which he received an

Admonition, and has admitted to three instances of unauthorized practice of law in 2014 while suspended.

Standard 9.22 (i) *substantial experience in the practice of law*: Respondent has been licensed to practicing law since 2000.

There is also a mitigating factor to consider:

Standard 9.32(e) *full and free disclosure to disciplinary board or cooperative attitude toward proceedings*. Respondent freely admitted his misconduct before the DHP and was cooperative throughout the proceedings.

This Court, in *In re John Shelhorse IV*, 147 S.W.3d 79 (Mo. banc 2004), found that a public reprimand was appropriate punishment for an attorney suspended for failing to comply with Rule 15 and failing to respond to inquiries from disciplinary authorities. The Court noted, however, that Shelhorse had no prior disciplinary history and any future similar misconduct “will result in a more severe sanction”. *Id* at 80. In the present case, Respondent has an extensive prior disciplinary history, including prior discipline for the same violations involved in this proceeding. Applying the Court’s analysis in *Shelhorse*, a “more severe sanction” than another admonition or a reprimand is warranted.

The *ABA Standards* provides additional guidance for the sanction generally appropriate for misconduct such as has occurred in this case. *ABA Standard 7.2* states that in cases involving the unauthorized practice of law, absent aggravating or mitigating factors, “Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession and causes injury or potential

injury to a client, the public, or the legal system.” Similarly, *ABA Standard 8.2* states, “Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.”

In this case the *ABA Standards* and prior Court rulings supports a discipline of suspension without probation. The record reflects that Respondent intentionally engaged in the unauthorized practice of law while his license to practice law was suspended and in fact engaged in deceitful actions in an attempt to conceal his misconduct. Respondent’s misconduct is all the more egregious when considering his prior disciplinary history, including having previously received an Admonition for engaging in the unauthorized practice of law. The facts of this case, and this Court’s desire for progressive discipline, supports nothing less than a sanction of actual suspension.

CONCLUSION

Based upon the undisputed facts of this matter, Informant asks this Court to enter an Order finding that Respondent violated Rule 4-5.5 and Rule 5.27. The Court should suspend Respondent's license with no leave to seek reinstatement for at least six months, if not longer, given the knowing misconduct involved.

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of June, 2016, the Informant's Brief was sent to Respondent via the Missouri Supreme Court e-filing system and first class mail, postage prepaid, to:

Douglas A. Walker, Jr.
8627 Joseph Avenue
St. Louis, Missouri 63144

Respondent



Barry Klinckhardt

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 2,258 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



Barry Klinckhardt