

PUBLIC MATTER

1 STATE BAR OF CALIFORNIA
 OFFICE OF THE CHIEF TRIAL COUNSEL
 2 JAYNE KIM, No. 174614
 CHIEF TRIAL COUNSEL
 3 JOSEPH R. CARLUCCI, No. 172309
 DEPUTY CHIEF TRIAL COUNSEL
 4 MELANIE J. LAWRENCE, No. 230102
 ASSISTANT CHIEF TRIAL COUNSEL
 5 MICHAEL J. GLASS, No. 102700
 SUPERVISING SENIOR TRIAL COUNSEL
 6 DREW MASSEY, No. 244350
 DEPUTY TRIAL COUNSEL
 7 845 South Figueroa Street
 Los Angeles, California 90017-2515
 8 Telephone: (213) 765-1204

FILED

JAN 22 2015

STATE BAR COURT
 CLERK'S OFFICE
 LOS ANGELES

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

13 In the Matter of:) Case No. 14-J-06085
 14 JOSEPH PATRICK MASTERSON,)
 No. 165564,) NOTICE OF DISCIPLINARY CHARGES
 15)
 16 A Member of the State Bar.) (Bus. & Prof. Code, § 6049.1; Rules Proc. Of
 State Bar, rules 5.350 to 5.354)

NOTICE - FAILURE TO RESPOND!

18 **IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE**
 19 **WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT**
THE STATE BAR COURT TRIAL:

- 20 (1) **YOUR DEFAULT WILL BE ENTERED;**
- 21 (2) **YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU**
WILL NOT BE PERMITTED TO PRACTICE LAW;
- 22 (3) **YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN**
THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION
AND THE DEFAULT IS SET ASIDE, AND;
- 23 (4) **YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.**
SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE
OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT
FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.

27 //

28 //



1 The State Bar of California alleges:

2 JURISDICTION

3 1. JOSEPH PATRICK MASTERSON ("respondent") was admitted to the practice of
4 law in the State of California on June 1, 1993, was a member at all times pertinent to these
5 charges, and is currently a member of the State Bar of California.

6 PROFESSIONAL MISCONDUCT IN A FOREIGN JURISDICTION

7 2. On or about June 6, 2014, the Supreme Court of Missouri ordered that respondent be
8 disciplined upon findings that respondent had committed professional misconduct in that
9 jurisdiction as set forth in Missouri Supreme Court Order No. SC94236 issued June 6, 2014.
10 Thereafter, the decision of the foreign jurisdiction became final.

11 3. A certified copy of the final order of disciplinary action of the foreign jurisdiction, as
12 well as the Information With Notice of Default, are attached, as Exhibit 1, and incorporated by
13 reference.

14 4. A copy of the statutes, rules or court orders of the foreign jurisdiction found to have
15 been violated by respondent is attached, as Exhibit 2, and incorporated by reference.

16 5. Respondent's culpability as determined by the foreign jurisdiction indicates that the
17 following California statutes or rules have been violated or warrant the filing of this Notice of
18 Disciplinary Charges: Rules of Professional Conduct, rules 4-100(A), 4-100(B)(1), and
19 Business and Professions Code sections 6068(i) and 6106.

20 ISSUES FOR DISCIPLINARY PROCEEDINGS

21 6. The attached findings and final order are conclusive evidence that respondent is
22 culpable of professional misconduct in this state subject only to the following issues:

23 A. The degree of discipline to impose;

24 B. Whether, as a matter of law, respondent's culpability determined in the
25 proceeding in the other jurisdiction would not warrant the imposition of discipline in the State
26 of California under the laws or rules binding upon members of the State Bar at the time the
27 member committed misconduct in such other jurisdiction; and
28

1 C. Whether the proceedings of the other jurisdiction lacked fundamental
2 constitutional protection.

3 7. Respondent shall bear the burden of proof with regard to the issues set forth in
4 subparagraphs B and C of the preceding paragraph.

5 **NOTICE - INACTIVE ENROLLMENT!**

6 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR
7 COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE
8 SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL
9 THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO
10 THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN
11 INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE
12 ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE
13 RECOMMENDED BY THE COURT.**

14 **NOTICE - COST ASSESSMENT!**

15 **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC
16 DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS
17 INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING
18 AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND
19 PROFESSIONS CODE SECTION 6086.10.**

20 Respectfully submitted,

21 THE STATE BAR OF CALIFORNIA
22 OFFICE OF THE CHIEF TRIAL COUNSEL

23 DATED: January 22, 2015

24 By: 

25 Drew Massey
26 Deputy Trial Counsel





CLERK OF THE SUPREME COURT

**STATE OF MISSOURI
POST OFFICE BOX 150
JEFFERSON CITY, MISSOURI
65102**

BILL L. THOMPSON
CLERK

TELEPHONE
(573) 751-4144

November 6, 2014

STATE OF MISSOURI -- SCT.:

I, BILL L. THOMPSON, Clerk of the Supreme Court of Missouri, do hereby certify that the attached is a true and correct copy of the Order dated June 6, 2014, consisting of two pages, as fully as the same appears on file in my office in the proceeding styled: In re: Joseph P. Masterson, Respondent. Supreme Court No. SC94236.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court. Done at my office in the City of Jefferson, State aforesaid, this 6th day of November, 2014.

Bill L. Thompson

Clerk,

Kevin S. Knaebel

Deputy Clerk, Court en Banc



Supreme Court of Missouri
en banc

June 6, 2014

In re: Joseph P. Masterson,

Respondent.

)
)
) Supreme Court No. SC94236
) MBE # 37632

ORDER

The Chief Disciplinary Counsel having filed an information advising this Court of its findings, after investigation, that there is probable cause to believe Respondent, Joseph P. Masterson, is guilty of professional misconduct and having filed with said information, pursuant to Rule 5.13, a notice of default, notifying the Court that Respondent, Joseph P. Masterson, failed to timely file an answer or other response within the time required although Respondent was served pursuant to the provisions of Rule 5.18 and Rule 5.11 and, therefore, pursuant to Rule 5.13, Respondent is in default; and

It appearing Respondent is guilty of professional misconduct and should be disciplined;

Now, therefore, it is ordered by the Court that the said Joseph P. Masterson be, and he is hereby disbarred, that his right and license to practice law in the State of Missouri is canceled and that his name be stricken from the roll of attorneys in this State.

It is further ordered that the said Joseph P. Masterson comply in all respects with Rule 5.27 – Procedure Following a Disbarment or Suspension Order.

Costs taxed to Respondent.

Day - to - Day

A handwritten signature in cursive script that reads "Mary R. Russell".

Mary R. Russell
Chief Justice

STATE OF MISSOURI – SCT.:

I, BILL L. THOMPSON, Clerk of the Supreme Court of Missouri, do hereby certify that the foregoing is a true copy of the order of said court, entered on the 6th day of June, 2014, as fully as the same appears of record in my office.

IN TESTIMONY WHEREOF, *I have hereunto set my hand and affixed the seal of said*

Supreme Court. Done at office in the City of Jefferson, State aforesaid,

this 6th day of June, 2014.



Bill L. Thompson, Clerk

Kayle Silvestro, Deputy Clerk



CLERK OF THE SUPREME COURT

**STATE OF MISSOURI
POST OFFICE BOX 150
JEFFERSON CITY, MISSOURI
65102**

BILL L. THOMPSON
CLERK

TELEPHONE
(573) 751-4144

September 25, 2014

STATE OF MISSOURI -- SCT.:

I, BILL L. THOMPSON, Clerk of the Supreme Court of Missouri, do hereby certify that the attached is a true and correct copy of the Information with Notice of Default, consisting of 28 pages, as fully as the same appears on file in my office in the proceeding styled: In re: Joseph P. Masterson, Respondent. Supreme Court No. SC94236.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court. Done at my office in the City of Jefferson, State aforesaid, this 25th day of September, 2014.

Bill L. Thompson

Clerk,

Keri S. Knaebel

Deputy Clerk, Court en Banc

IN THE SUPREME COURT OF MISSOURI
EN BANC

IN RE:)	
)	
JOSEPH P. MASTERSON)	
500 Delaware Street, Suite 103)	
Kansas City, MO 64105-1220)	Case # _____
)	
MISSOURI BAR NO. 37632)	
)	
Respondent.)	

INFORMATION WITH NOTICE OF DEFAULT

COMES NOW, the Office of Chief Disciplinary Counsel ("Informant"), by and through Staff Counsel, Nancy L. Ripperger, and files this Information With Notice of Default in connection with Respondent Joseph P. Masterson ("Respondent"). Informant states:

1. Respondent was licensed to practice law in this State on September 21, 1990. His bar number is 37632.
2. This Court interimly suspended Respondent's license on March 10, 2014, in Supreme Court Case No. SC94043.
3. The address Respondent designated in his most recent registration with the Missouri Bar is 500 Delaware, Suite 103, Kansas City, MO 64105-1220.
4. Rule 5.18 addresses service upon respondents. It directs Informant to first attempt service by certified mail, restricted delivery, and if this is not successful, to attempt service by first-class, regular mail. Both mailings are to be made to the address

designated by respondent in the most recent registration with the Missouri Bar. The Rule provides that if service cannot be obtained by certified or by first class mail, no further service need be attempted.

5. On March 31, 2014, the undersigned directed support staff to send to Respondent, via certified mail, restricted delivery, an Information commencing this cause, along with the Notices required by Missouri Supreme Court Rules 5.11, 5.13 and 5.14. Said documents were sent to Respondent at the most recent address provided by Respondent to the Missouri Bar. A copy of the Information and Notices are attached as **Exhibit 1**.

6. On April 9, 2014, the post office returned the Information and accompanying documents to Informant with a stamped notice that delivery had been attempted but could not be completed. A copy of the returned envelope and the return receipt are attached as **Exhibit 2**.

7. On April 18, 2014, the undersigned directed support staff to mail a copy of the Information and Notices to Respondent by regular, postage-paid, first-class mail. Said documents were sent to Respondent at the most recent address provided by Respondent to the Missouri Bar. The post office returned the mailing to Informant on May 5, 2014, with a stamped notice stating that delivery had been attempted but could not be completed. A copy of the returned envelope is attached as **Exhibit 3**.

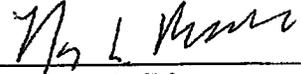
8. Respondent's forwarding address is unknown.

9. Informant has met the requirements of Rule 5.18.

WHEREFORE, the Office of Chief Disciplinary Counsel prays that Respondent's failure to provide an address at which service can be affected be deemed consent by Respondent for this Court to enter an order disbaring Respondent by default without further hearing or proceeding and to tax the costs of this matter against Respondent.

Respectfully submitted,

ALAN D. PRATZEL #29141
Chief Disciplinary Counsel

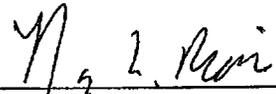
By: 
Nancy L. Ripperger #40627
Staff Counsel
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400
(573) 635-2240 fax
Nancy.Ripperger@courts.mo.gov

ATTORNEY FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that this Notice of Default was sent via first class mail to Respondent on this 6th day of June 2014, at:

Joseph P. Masterson
500 Delaware Street, Suite 103
Kansas City, Mo 64105-1220


Nancy L. Ripperger

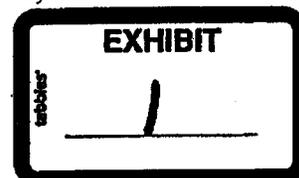
IN THE SUPREME COURT OF MISSOURI
EN BANC

IN RE:)
)
 JOSEPH P. MASTERSON)
 500 Delaware Street, Suite 103)
 Kansas City, MO 64105-1220)
) DHP Case # _____
)
 MISSOURI BAR NO. 37632)
)
 Respondent.)

INFORMATION

COMES NOW Informant, the Chief Disciplinary Counsel ("CDC"), and charges:

1. Informant is the Chief Disciplinary Counsel ("CDC") appointed by the Court pursuant to Rule 5.06.
2. The address Respondent most recently registered with the Missouri Bar is 500 Delaware Street, Suite 103, Kansas City, MO 64105-1220.
3. Currently Respondent's license is interimly suspended. The Court entered the suspension order on March 10, 2014.
4. Respondent initially was licensed to practice law in Missouri on September 21, 1990, but voluntarily surrendered his license after he pled guilty to charges of aggravated battery and possession of cocaine. The Supreme Court disbarred Respondent on March 21, 1995.
5. Respondent license was reinstated on August 27, 2002.
6. After Respondent's reinstatement, Respondent practiced with several different law firms. In January 2013, Respondent opened his own solo practice, the JPM



Law Group, LLC. Respondent's practice primarily consisted of personal injury actions with some low level criminal work.

7. Rule 4-8.4(a) provides that it is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct set forth in Supreme Court Rule 4.

COUNT I
Trust Account Overdraft
File No. 13-1675-OD

8. Informant adopts, restates, realleges, and incorporates by reference herein the allegations set forth in the foregoing Paragraphs 1 through 7.

9. As required by Rule 4-1.15(a)(2) and the supporting Advisory Committee Regulation, Commerce Bank notified the CDC on October 11, 2013, that Respondent's trust account, account no. xxxx3301, had insufficient funds to cover a \$105.00 check.

10. The CDC opened an investigation into the matter and, as part of the investigation, CDC staff audited Respondent's trust, operating and personal accounts.

11. During the investigation, Respondent advised CDC staff that he did not have an operating or trust account until September 2013. Prior to September 2013, Respondent used his personal account for business purposes.

Trust Account
Acct. No. xxxx3301

12. The audit showed that the only transaction Respondent made to the trust account was to write a \$105 check payable to the Clay County Circuit Clerk on October

4, 2013. This check caused an overdraft, as Respondent had never deposited any funds into the account.

Audit of "Operating Account"
Account No. xxxx3943

- 13. The audit of the "operating account" revealed that:
 - a. Respondent opened the "operating account" on September 1, 2013.
 - b. On September 4, 2013, Watson & Dameron, LLC provided Respondent with a check for \$5,238.86 made payable to "The JPM Law Group, LLC -IOLTA Trust Account." Respondent deposited the check into his "operating account" instead of his trust account.
 - c. Respondent then began to withdraw the funds for his personal use until the account only had a balance of \$5.
 - i. On September 9, 2013, Respondent withdrew \$500 in cash lowering the balance to \$4,738.86.
 - ii. On September 10, 2013, Respondent transferred \$2,000 to his "personal account" lowering the balance to \$2,738.86.
 - iii. On September 10, 2013, Respondent wrote a check for \$500 payable to "Old Board of Trade" which cleared the bank on September 13, 2013. The check was for Respondent's September office rent. Respondent's "operating account" had a balance of \$2,238.86 on September 13, 2013.

iv. On September 16, 2013, Respondent wrote a check for \$1,238.86, payable to "cash."¹ The check cleared the bank on September 18, 2013, leaving a balance of \$1,000 in the "operating account."

v. On September 25, 2013, Respondent withdrew \$995.00 in cash from the account leaving a balance of \$5.

vi. On September 30, 2013, the bank charged Respondent a \$5 service fee, which left the account with a balance of \$0.

14. The CDC's investigation revealed that the \$5,238.86 deposit was settlement proceeds for a personal injury action Respondent had handled on behalf of client John Duncan in 2004 when with Watson & Dameron. Respondent distributed all of the settlement funds except for \$5,238.86. These funds remained in trust because there was a dispute as to whether the medical providers had perfected their liens or whether the funds could be given to the client.

15. Respondent had not resolved the issue when he left Watson & Dameron in 2011. Respondent asked Watson & Dameron to continue to hold the funds while he worked to resolve the issue.

16. In 2013, Watson & Dameron requested that Respondent take control of the funds.

¹ Respondent deposited \$1,000 of the \$1,238.86 into his "personal account" to cure an overdraft in the "personal account."

17. Initially, Respondent directed Watson & Dameron to make the check payable to JPM Law Group. The law firm refused to pay over the funds unless Respondent had a trust account set up and the check was made payable to Respondent's trust account.

18. In September 2013, Respondent advised the law firm that he had established a trust account and the law firm issued a check payable to Respondent's trust account. Respondent then deposited the check into his operating account instead of his trust account.

"Personal Account"
Account No. xxxxx2011

19. CDC staff audited Respondent's personal account for the time period June 1, 2013, through December 31, 2013. The audit revealed:

- a. On July 23, 2013, check no. 1128 for \$131.50 payable to the City of Kansas City cleared Respondent's "personal" account.
- b. On August 12, 2013, a check for \$407.00 made payable to the Independence Municipal Court cleared Respondent's "personal" account.
- c. On September 11, 2013, a check for \$133.80 made payable to the Kansas City Municipal Court cleared Respondent's account.
- d. On October 17, 2013, a check for \$80 made payable to the Johnson County Prosecutor cleared Respondent's account.

20. The payments to the various municipal courts and/or prosecutors were from funds given to Respondent by clients to pay their fines and/or court costs. Respondent should have deposited the funds into a trust account but had commingled them with his own funds in his personal account.

21. Client Marquita Richardson requested a loan from Bridgeway Funding, a company that provides client presettlement loans. Ms. Richardson did not have a bank account so Respondent allowed the funds to be deposited into his account.

a. On October 23, 2013, Bridgeway Legal Funding wired \$1,000 into Respondent's "personal account." This brought the account up from a negative balance of \$393.52 to \$606.48.

b. On October 24, 2013, Respondent wrote check no. 1070 for \$500 payable to Ms. Richardson from his "personal account."

c. On October 25, 2013, Respondent wrote check no. 1067 for \$300 payable to Ms. Richards out of his "personal account."

d. Respondent did not pay Ms. Richardson the remaining \$200 owed to her.

22. Rule 4-1.15(a) provides that a lawyer shall hold property of clients or third persons separate from the lawyer's own property.

23. Respondent violated Rule 4-1.15(a) when he failed to establish a trust account when he opened his practice and when he used his "personal" and "operating" accounts to hold client and third party funds.

24. Rule 4-1.15(d) provides that upon receiving funds in which a client or third party has an interest, a lawyer shall promptly notify the client or third party and shall promptly deliver to the client or third party the funds.

25. Respondent violated Rule 4-1.15(d) when he failed to take action in the John Duncan matter to clear up the issues with the medical liens and deliver the funds either to the medical providers or the client.

26. Rule 4-8.4(c) provides that is professional misconduct for a lawyer to engage in conduct involving dishonesty, deceit misrepresentation.

27. Respondent violated Rule 4-8.4(c) when he used \$5,238.86 in client or third party funds for personal use and when he failed to give Ms. Richardson the \$200 owed to her from the Bridgeway loan.

WHEREFORE, Informant prays that a decision be issued finding that Respondent has committed professional misconduct as alleged in this Information; that Respondent be disciplined in accordance with Rule 5, and that costs be assessed against Respondent.

**COUNT II
Drug Addiction**

28. Informant adopts, restates, realleges, and incorporates by reference herein the allegations set forth in the foregoing Paragraphs 1 through 7.

29. As part of his investigation of Respondent's overdraft, the CDC directed Special Representative Charles Gotschall of Region IV to take Respondent's sworn statement.

30. Mr. Gotschall took Respondent's sworn statement on February 18, 2014. During the sworn statement, Respondent denied using drugs. On February 19, 2014, Mr. Gotschall wrote to Respondent and asked that he submit to both urine and hair sample testing on February 20, 2013.

31. Respondent appeared for the testing on February 20, 2013. The hair follicle testing showed methamphetamine, amphetamine, and cocaine use by Respondent within thirty days of testing.

32. Rule 4-8.1(a) provides that a lawyer in connection with a disciplinary matter shall not knowingly make a false statement of material fact.

33. Respondent violated Rule 4-8.1(a) when he advised Mr. Gotschall that he was not using drugs.

34. Rule 4-8.4(b) provides that is professional misconduct for a lawyer to commit a criminal act that reflects adversely on his fitness as a lawyer.

35. Respondent violated Rule 4-8.4(b) when he used illegal drugs as the drug use reflected adversely on his fitness as a lawyer.

WHEREFORE, Informant prays that a decision be issued finding that Respondent has committed professional misconduct as alleged in this Information; that

Respondent be disciplined in accordance with Rule 5, and that costs be assessed against Respondent.

DESIGNATION OF COUNSEL

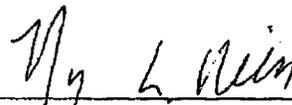
The Chief Disciplinary Counsel has designated the following as counsel of record for Informant:

Nancy L. Ripperger
3335 American Avenue
Jefferson City, MO 65109

Respectfully submitted,

ALAN D. PRATZEL #29141
Chief Disciplinary Counsel

By:



Nancy L. Ripperger #40627
Staff Counsel
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400
(573) 635-2240 fax
nancy.ripperger@courts.mo.gov

ATTORNEYS FOR INFORMANT

IN THE SUPREME COURT OF MISSOURI
EN BANC

JOSEPH P. MASTERSON
500 Delaware Street, Suite 103
Kansas City, MO 64105-1220

MISSOURI BAR NO. 37632

Respondent.

)
)
)
)
)
)
)
)
)
)

DHP Case # _____

NOTICE PURSUANT TO RULES 5.11, 5.13, AND 5.14

A. ANSWER REQUIRED

You are hereby notified that within thirty (30) days after the service of the Information in this matter an answer or other response is to be filed with the Missouri Supreme Court Advisory Committee, c/o Melinda Bentley, Legal Ethics Counsel, 217 East McCarty Street, Jefferson City, Missouri 65101. A copy shall be served on the counsel for the Informant and the Chief Disciplinary Counsel (Alan D. Pratzel, Chief Disciplinary Counsel, 3335 American Avenue, Jefferson City, MO 65109). If an answer or other response is not timely filed, the Information shall be filed in the Supreme Court as an Information with notice of default. All charges shall be deemed admitted against you. The failure to file an answer or other response to the Information timely shall be deemed as consent by the respondent for this Court to enter an order disbaring respondent without further hearing or proceeding.

B. DISCIPLINARY SANCTIONS

In the event of default, you may be disbarred or indefinitely suspended, reprimanded or disciplined in any other manner the Supreme Court deems appropriate. Disbarment or suspension will result in forfeiture of your right to practice law in the state of Missouri. The failure to respond to the Information may be considered by the Court as grounds for imposing a harsher sanction than might otherwise be warranted by the violation charged. **According to Missouri Supreme Court Rules, a suspended lawyer shall not apply for reinstatement until six months after the date the discipline is imposed. A disbarred lawyer is not permitted to apply for reinstatement until five years after the date of the disbarment order and must take and pass the Missouri bar examination to be reinstated.**

Supreme Court Rule 5, particularly Rules 5.11, 5.16, 5.28 and 5.31 should be consulted for further information about disciplinary sanctions.

C. DISCIPLINARY HEARING

You are hereby notified that when the answer is filed you may exercise peremptory challenges of two persons from the list of disciplinary hearing officers and Advisory Committee members attached to this notice. The persons challenged shall be ineligible to serve on the disciplinary hearing panel assigned to try the Information. Any peremptory challenges shall be directed to the Missouri Supreme Court Advisory Committee, c/o Melinda Bentley, Legal Ethics Counsel, 217 East McCarty Street, Jefferson City, Missouri 65101. A copy shall be served on the counsel for the Informant and the Chief

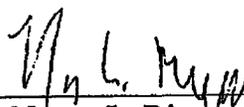
Disciplinary Counsel (Alan D. Pratzel, Chief Disciplinary Counsel, 3335 American Avenue, Jefferson City, MO 65109). Supreme Court Rules provide that if respondent fails to attend the hearing, the Information shall be filed as an Information in the Supreme Court with notice of these facts. The Information shall be treated in the same manner as an Information filed in the Supreme Court after the failure to file an answer pursuant to Rule 5.13.

D.

Pursuant to Rule 5.11, all statements or documents obtained in the investigation of this matter are available for inspection and copying at the Office of Chief Disciplinary Counsel, 3335 American Avenue, Jefferson City, Missouri by appointment. The materials are voluminous, therefore a copy does not accompany this notice.

Respectfully submitted,

ALAN D. PRATZEL #29141
Chief Disciplinary Counsel

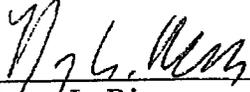
By: 
Nancy L. Ripperger #40627
Staff Counsel
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400
(573) 635-2240 fax
Nancy.Ripperger@courts.mo.gov

ATTORNEY FOR INFORMANT

Certificate of Service

I hereby certify that this Notice was sent via first class mail with the Information this
18th day of April, 2014, to Respondent at:

Joseph P. Masterson
500 Delaware Street, Suite 103
Kansas City, MO 64105-1220



Nancy L. Ripperger

DISCIPLINARY HEARING OFFICERS

6/6/13

Lawyer disciplinary hearing officers with terms expiring 6/30/08

Thomas J. Casey
10 South Broadway, Suite 825
St. Louis, MO 63102

Lawyer disciplinary hearing officers with terms expiring 6/30/14

Donald E. Bonacker
4272 East Mary Road
Rogersville, MO 65742

Janet M. Thompson
8300 N. Wagon Tail Road
Columbia, MO 65202

Edward C. Clausen
601 Monroe, Suite 301
Jefferson City, MO 65101

Vanita R. Massey
PO Box 411495
Kansas City, MO 64141

The Honorable T. Bennett Burkemper, Jr.
Lincoln County Justice Center
45 Business Park Drive
Troy, MO 63379

Robert Eggmann
7733 Forsyth Blvd., Suite 2075
Clayton, MO 63105

Donna White
1609 Paddlewheel Circle
Jefferson City, MO 65109

Mr. C. Ronald Baird
1901-C South Ventura Avenue
Springfield, Missouri 65804

Thomas P. Schult
2600 Grand Blvd., Suite 1200
Kansas City, MO 64108

Mr. William Joseph Lasley
130 W. 4th Street
Carthage, Missouri 64836

Elizabeth Dunlop McCarter
7905 Forsyth Blvd.
St. Louis, MO 63105-3808

Kendall R. Garten
1600 NE Coronado Drive
Blue Springs, MO 64014

Diarra T. Cross-Davis
7 Beverly Place
St. Louis, MO 63112

Michael R. Nack
200 S. Bemiston, Suite 307
Clayton, MO 63105

Non - Lawyer disciplinary hearing officers with terms expiring 6/30/14:

John Rush
1740 E. Jacqueline
Springfield, MO 65804

Nancy Walkenhorst
4006 W. 26th Street
Joplin, MO 64804

George Stephans
14621 Timberlake Manor Court
Chesterfield, MO 63017

Hannelore "Lori" Winter
10626 Village of Lavinia Court
St. Louis, MO 63123

Surendra D. Khanna
17886 Bonhomme Fork Court
Chesterfield, MO 63005

Kay Kasiske
7719 Walnut Acres Road
Lohman, MO 65053

Larry Blair
1440 SW Heartwood Drive
Lee's Summit, MO 64081

Rosemary Garten
2111 North Dover Street
Independence, MO 64058

Charlotte R. Humphrey
4 East 125th Terrace
Kansas City, MO 64145-1604

Darcella K. Craven
4647 Minnesota Avenue
St. Louis, MO 63111

Charles J. Thal
14830 Brook Hill Drive
Chesterfield, MO 63017

The Honorable Donald L. McCullin
2231 Cuggiono Court
St. Louis, MO 63110

Lawyer disciplinary hearing officers with terms expiring 6/30/13:

Keith W. Brunstrom
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6/17/13

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12/31/15

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(314)621-7676

12/31/15

IN THE SUPREME COURT OF MISSOURI
EN BANC

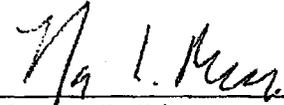
IN RE:)	
)	
JOSEPH P. MASTERSON)	
500 Delaware Street, Suite 103)	
Kansas City, MO 64105-1220)	DHP Case # _____
)	
)	
MISSOURI BAR NO. 37632)	
)	
Respondent.)	

MEMORANDUM FOR ADVISORY COMMITTEE CHAIR

A copy of the enclosed Information was served on the Respondent along with Notice Pursuant to Rules 5.11, 5.13 and 5.14, and a list of Disciplinary Hearing Officers and Advisory Committee members. The Notice Pursuant to Rules 5.11, 5.13 and 5.14 was either accompanied by (1) a copy of all statements or documents obtained in the investigation of this matter except any transcripts prepared by a court reporter, which Respondent can obtain from the court reporter, or (2) notice that the materials are voluminous but all statements or documents obtained in the investigation of this matter are available for inspection and copying by appointment.

Respectfully submitted,

ALAN D. PRATZEL #29141
Chief Disciplinary Counsel

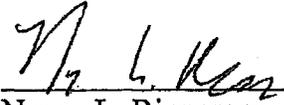
By: 
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Staff Counsel
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(573) 635-7400
(573) 635-2240 fax
Nancy.Ripperger@courts.mo.gov

ATTORNEY FOR INFORMANT

Certificate of Service

I hereby certify that this Memorandum was sent via first class mail, postage prepaid
with the Information this 18th day of April, 2014, to Respondent at:

Joseph P. Masterson
500 Delaware Street, Ste. 103
Kansas City, MO 64105-1220


Nancy L. Ripperger

OFFICE OF CHIEF DISCIPLINARY COUNSEL
3335 American Avenue
Jefferson City, MO 65109



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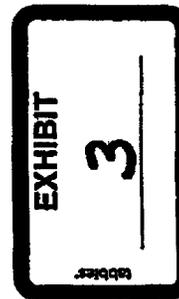


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TOC: Missouri Court Rules > / . . . / > CLIENT-LAWYER RELATIONSHIP > **4-1.15. Safekeeping property**

Mo. Sup. Ct. R. 4-1.15

MISSOURI COURT RULES

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Practitioner's Toolbox  

 **Case Notes**

 **History**

*** Rules current through October 2, 2014 ***

SUPREME COURT RULES
RULES GOVERNING THE MISSOURI BAR AND THE JUDICIARY
RULE 4. RULES OF PROFESSIONAL CONDUCT
CLIENT-LAWYER RELATIONSHIP

Mo. Sup. Ct. R. 4-1.15 (2014)

Review Court Orders which may amend this Rule

4-1.15. Safekeeping property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Client or third party funds shall be kept in a separate account designated as a "Client Trust Account" or words of similar import maintained in the state where the lawyer's office is situated or elsewhere if the client or third person consents.

(1) Every client trust account shall be either an IOLTA account, non-IOLTA trust account, or exempt trust account. No earnings from an IOLTA account, a non-IOLTA trust account, or exempt trust account shall be made available to any lawyer or law firm, nor shall any lawyer or law firm have a right or claim to such earnings. Other property shall be identified as such and appropriately safeguarded.

(2) A client trust account, whether IOLTA, non-IOLTA, or exempt must be in an approved institution. Every lawyer practicing or admitted to practice in this jurisdiction, as a condition thereof, shall be conclusively deemed to have consented to the overdraft reporting and production requirements mandated by the regulations adopted by the advisory committee.

(3) Only a lawyer admitted to practice law in this jurisdiction or a person under the direct supervision of the lawyer shall be an authorized signatory or authorize transfers from a client trust account.

(4) Receipts shall be deposited intact and records of deposit shall be sufficiently detailed to

identify each item;

(5) Withdrawals shall be made only by check payable to a named payee, and not to cash, or by authorized electronic transfer; and

(6) No disbursement shall be made based upon a deposit:

(A) if the lawyer has reasonable cause to believe the funds have not actually been collected by the financial institution in which the trust account is held; and

(B) until a reasonable period of time has passed for the funds to be actually collected by the financial institution in which the trust account is held.

(7) A reconciliation of the account shall be performed reasonably promptly each time an official statement from the financial institution is provided or available.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as provided in Rules 4-1.145 to 4-1.155 or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the lawyer shall keep the property separate until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute. Lawyers shall cooperate as necessary to enable distribution of funds that are not in dispute.

(f) Complete records of client trust accounts shall be maintained and preserved for a period of at least five years after termination of the representation or after the date of the last disbursement of funds, whichever is later.

Records may be maintained by electronic, photographic, or other media provided that they otherwise comply with Rules 4-1.145 to 4-1.155 and that printed copies can be produced. These records shall be readily accessible to the lawyer.

Upon dissolution of a law firm or of any legal professional corporation, the partners shall make reasonable arrangements for the maintenance of client trust account records. Upon the sale of a law practice, the seller shall make reasonable arrangements for the maintenance of records.

Complete records shall include at a minimum:

(1) receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, source, and description of each item deposited as well as the date, payee, and purpose of each disbursement;

(2) ledger records for all client trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited, the names of all persons for whom the funds are

or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed;

(3) fee agreements, engagement letters, retainer agreements and compensation agreements with clients;

(4) accountings to clients or third persons showing the disbursement of funds to them or on their behalf;

(5) bills for legal fees and expenses rendered to clients;

(6) records showing disbursements on behalf of clients;

(7) the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks provided by a financial institution;

(8) records of all electronic transfers from client trust accounts, including the name of the person authorizing transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and the time the transfer was completed;

(9) reconciliations of the client trust accounts maintained by the lawyer;

(10) those portions of client files that are reasonably related to client trust account transactions; and

(11) records of credit card transactions with clients to the extent permitted by law and the payment card industry data security standard.

(h) Every lawyer shall certify in connection with this Court's annual enrollment statement the financial institutions in which the lawyer has one or more trust accounts and that the lawyer or the law firm with which the lawyer is associated either maintains an IOLTA account with an eligible and approved institution or is exempt because the:

(1) lawyer is not engaged in the practice of law;

(2) nature of the lawyer's or law firm's practice is such that the lawyer or law firm does not hold client or third party funds;

(3) lawyer is primarily engaged in the practice of law in another jurisdiction and not regularly engaged in the practice of law in this state;

(4) lawyer is associated in a law firm with at least one lawyer who is admitted to practice and maintains an office in a jurisdiction other than the state of Missouri and the lawyer or law firm maintains a pooled trust account for the deposit of funds of clients or third persons in a financial institution located in such other jurisdiction and any interest or dividends, net of any service charges and fees, from the account is being remitted to the client or third person who owns the funds or to a nonprofit organization or government agency pursuant to the laws or rules governing lawyer conduct of the jurisdiction in which the financial institution is located; or

(5) The lawyer maintains an exempt account.

(i) lawyer is associated in a law firm with at least one lawyer who is admitted to practice and maintains an office in a jurisdiction other than the state of Missouri and the lawyer or law firm maintains a pooled trust account for the deposit of funds of clients or third persons in a financial institution located in such other jurisdiction and any interest or dividends, net of any service

charges and fees, from the account is being remitted to the client or third person who owns the funds or to a nonprofit organization or government agency pursuant to the laws or rules governing lawyer conduct of the jurisdiction in which the financial institution is located; or

(j) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the lawyer shall keep the property separate until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(k) Unless exempt as provided in Rule 4-1.15(1), a lawyer or law firm shall establish and maintain one or more IOLTA accounts into which shall be deposited all funds of clients or third persons, but only in compliance with the following provisions:

(1) no earnings from such account shall be made available to the lawyer or law firm, and the lawyer or law firm shall have no right or claim to such earnings;

(2) a lawyer or law firm shall deposit in an IOLTA account all funds of clients and third persons from which no income could be earned for the client or third person in excess of the costs incurred to secure such income, and all other client or third person funds shall be deposited into a non-IOLTA trust account;

(3) in determining whether client or third person funds should be deposited in an IOLTA account or non-IOLTA trust account, a lawyer shall take into consideration the following factors:

(A) the amount of interest that the funds would earn during the period they are expected to be deposited;

(B) the cost of establishing and administering a non-IOLTA trust account for the benefit of the client or third person, including the cost of the lawyer's services and the cost of preparing any tax reports required for interest accruing to the benefit of a client or third person;

(C) the capability of financial institutions or lawyers or law firms to calculate and pay interest to individual clients or third persons;

(D) any other circumstance that affects the ability of the client or third person funds to earn income, in excess of the costs incurred to secure such income, for the client or third person;

(4) the determination of whether the funds of a client or third person can earn income in excess of costs as provided in Rule 4-1.15(k)(3) shall rest in the sound judgment of the lawyer or law firm, and no lawyer shall be charged with an ethical impropriety or breach of professional conduct based on the good faith exercise of such judgment;

(5) the lawyer or law firm shall review the account at reasonable intervals to determine if changed circumstances require further action with respect to the funds of any client or third person; and

(6) a lawyer or law firm required to establish and maintain an IOLTA account under this Rule 4-1.15 shall maintain IOLTA accounts only at an eligible institution that voluntarily chooses to offer such accounts. The foundation shall annually publish a list of eligible institutions, shall update the list seasonably, and shall provide a copy of the updated list to any Missouri lawyer upon written request. The foundation shall promptly notify the advisory committee and the chief disciplinary counsel when it removes a financial institution from the list.

(l) Every lawyer shall certify in connection with this Court's annual enrollment statement the financial institutions in which the lawyer has one or more trust accounts and that the lawyer or the law firm with which the lawyer is associated either maintains an IOLTA account with an eligible institution as provided in Rule 4-1.15(k) or is exempt because the:

(1) lawyer is not engaged in the practice of law;

(2) nature of the lawyer's or law firm's practice is such that the lawyer or law firm does not hold client or third party funds;

(3) lawyer is primarily engaged in the practice of law in another jurisdiction and not regularly engaged in the practice of law in this state;

(4) lawyer is associated in a law firm with at least one lawyer who is admitted to practice and maintains an office in a jurisdiction other than the state of Missouri and the lawyer or law firm maintains a pooled trust account for the deposit of funds of clients or third persons in a financial institution located in such other jurisdiction outside the state of Missouri and any interest or dividends, net of any service charges and fees, from the account is being remitted to the client or third person who owns the funds or to a nonprofit organization or government agency pursuant to the laws or rules governing lawyer conduct of the jurisdiction in which the financial institution is located; or

(5) foundation, for the current reporting period, has exempted the lawyer or law firm from the requirement of maintaining an IOLTA account and depositing client and third person funds therein because a lawyer or law firm:

(A) maintains an IOLTA account that has not and cannot reasonably be expected to produce interest or dividends in excess of allowable reasonable fees; or

(B) establishes that no eligible institution within reasonable proximity to his, her or its office offers IOLTA accounts.

The foundation may establish criteria and procedures by which an exemption under this Rule 4-1.15(l)(5) may be obtained.

The trust accounts of lawyers or law firms exempt under this Rule 4-1.15(l)(5) shall be non-interest-bearing, except that such accounts shall be interest-bearing if funds held for particular clients or matters warrant one or more non-IOLTA accounts under Rule 4-1.15(k)(3).

(m) A lawyer shall securely store a client's file for 10 years after completion or termination of the representation absent other arrangements between the lawyer and client. If the client does not request the file within 10 years after completion or termination of the representation, the file shall be deemed abandoned by the client and may be destroyed.

A lawyer shall not destroy a file pursuant to this Rule 4-1.15(m) if the lawyer knows or reasonably should know that:

(1) a legal malpractice claim is pending related to the representation;

(2) a criminal or other governmental investigation is pending related to the representation;

(3) a complaint is pending under Rule 5 related to the representation; or

(4) other litigation is pending related to the representation.

Items in the file with intrinsic value shall never be destroyed.

A lawyer destroying a file pursuant to this Rule 4-1.15(m) shall securely store items of intrinsic value or deliver such items to the state unclaimed property agency. The file shall be destroyed in a manner that preserves client confidentiality.

A lawyer's obligation to maintain trust account records as required by Rule 4-1.15(a) to (l) is not affected by this Rule 4-1.15(m).

COMMENT

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any recordkeeping rules established by law or court order. See, e.g., ABA Model Financial Recordkeeping Rule.

[2] While normally it is impermissible to commingle the lawyer's own funds with client funds, Rule 4-1.15(e) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the funds is the lawyer's.

[3] Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account, and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[4] Rule 4-1.15(j) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

[5] The obligations of a lawyer under this Rule 4-1.15 are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this Rule 4-1.15.

[6] A lawyers' fund for client protection provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer must participate where it is mandatory, and, even when it is voluntary, the lawyer should participate.

SUPPLEMENTAL MISSOURI COMMENT

In 2007, Rule 4-1.15 was amended to require lawyers to maintain IOLTA accounts if not exempted by Rule 4-1.15(l). It is expected that a lawyer or law firm will exercise good faith judgment in determining whether funds of a client or third party are of such a nominal amount or are expected to be held by the lawyer for such a short period of time that the funds cannot earn interest or dividend income for the client or third party in excess of the costs incurred to secure such income. All relevant factors should be considered in this determination, including, for example, the cost of establishing and maintaining accounts for the benefit of clients or third persons, service charges, accounting fees and tax reporting procedures, the nature of the transactions involved and the likelihood of delay. It is also expected that placement of the funds

will be reviewed at reasonable intervals if the funds remain on hand to determine if changed circumstances require further action with respect to such funds. The amended Rule 4-1.15 conforms with the decision in *Brown v. Legal Foundation of Washington*, 538 U.S. 216 (2003).

Amended Rule 4-1.15 also requires that IOLTA funds be deposited with institutions paying interest and dividends comparable to rates paid to the institution's own other similarly-situated non-IOLTA customer. This recognizes that additional options have developed and are being offered in the marketplace by financial institutions from which qualifying IOLTA balances should also benefit. Apart from the important goal of fairness in the treatment of IOLTA funds, the comparability and other modifications in amended Rule 4-1.15 are important to the purposes of the IOLTA program: providing a source of funds to support civil legal services to the poor, improve the administration of justice, and promote other programs for the benefit of the public as are specifically approved from time to time by this Court.

ADVISORY COMMITTEE REGULATION

(a) The advisory committee shall only approve a financial institution that files with the advisory committee an agreement in a form provided by the advisory committee.

(b) The financial institution shall agree:

(1) To report to the chief disciplinary counsel whenever any properly payable instrument or other debit is presented against a lawyer's client trust account containing insufficient funds, irrespective of whether or not the instrument or debit is honored;

(2) To cooperate with the chief disciplinary counsel's investigation related to a report;

(3) To maintain a copy of all records related to a report for a period of five years. Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon 30 days notice in writing to the advisory committee. If a bank or branch changes ownership, the new owner must seek approval from the advisory committee or provide notice of cancellation within 30 days, unless the new owner is a financial institution that is already approved;

(4) To make all reports within five days after the financial institution knows of the overdraft, in the following format:

(A) In the case of a dishonored instrument or debit, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of any dishonored instrument, if such a copy is normally provided to depositors;

(B) In the case of instruments or debits that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.

(c) The advisory committee shall annually publish a list of approved financial institutions, shall update the list seasonably, and shall provide a copy of the updated list to any Missouri lawyer upon written request. The advisory committee shall promptly publish notification of revocation of the approval of a financial institution and shall promptly notify the foundation.

(d) The report of an overdraft to the chief disciplinary counsel does not automatically result in disciplinary action. The lawyer shall be given an opportunity to explain the report, including providing evidence that the report resulted from an error by the financial institution.

(e) Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule. No

charges or fees related to an overdraft shall be removed from funds to be remitted to the foundation.

(f) Approval of a financial institution shall be revoked and the financial institution removed from the list of approved financial institutions if it is found to have engaged in a pattern of neglect or to have acted in bad faith in noncompliance with its obligations under the written agreement.

(1) The chief disciplinary counsel shall communicate any decision to seek revocation of approval to the financial institution in writing by certified mail at the address given on the agreement. The revocation notice shall state the specific reasons for which revocation is sought and advise of any right to reconsideration. The financial institution shall have 15 days from the date of receipt of the written notice to file a written request with the chief disciplinary counsel seeking reconsideration of the chief disciplinary counsel's decision. Failure of the financial institution to timely seek reconsideration, in writing, after receipt of notification is acceptance of revocation.

(2) If, after reconsideration, the chief disciplinary counsel notifies the financial institution of the intent to seek revocation, the financial institution shall accept or reject the revocation, in writing, within 15 days of the receipt of the notice. Failure of the financial institution to timely reject revocation, in writing, is acceptance of revocation. If revocation is rejected, the chief disciplinary counsel shall prepare an information. The procedures shall be the same as those set forth in Rule 5 for a disciplinary hearing on a lawyer. The approved status of the financial institution shall continue until such time as this process is final.

(3) Once revocation of the approval of the financial institution is final, the institution shall not thereafter be approved as a depository for attorney trust accounts until such time as the financial institution petitions the advisory committee for new approval, including in the petition a plan for curing any deficiencies that resulted in the prior revocation and for periodically reporting compliance with the plan in the future.

(g) Within 15 days of the date revocation becomes effective or of notification that the financial institution is canceling the agreement, a financial institution shall give written notification of the revocation action to all holders of lawyer trust accounts on deposit with the financial institution, and file a report with the chief disciplinary counsel of such notification contacts within 30 days.

(h) Any lawyer or law firm receiving notification from a financial institution that the institution's approval as a trust account depository has been revoked or that the financial institution is canceling its agreement shall remove all trust accounts from the financial institution within 30 days of receipt of such notice or by such later date as is required for the payment of all outstanding items payable from the trust account, and shall send written notice of compliance to the chief disciplinary counsel, including the name and address of the new trust account depository institution.

History:

Amended March 9, 1990, eff. July 1, 1990; Amended March 3, 1994, eff. July 1, 1994; Amended August 24, 2004, eff. January 1, 2005; Rev. July 1, 2007; Amended Dec. 18, 2007, eff. Jan. 1, 2008; Amended January 6, 2009, eff. January 6, 2009; Amended Oct. 8 & Oct. 29, 2009, eff. Jan. 1, 2010; Amended Oct. 30, 2012, eff. July 1, 2013.

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Governments

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Mottl v. Mo. Lawyer Trust Account Found., 133 S.W.3d 142, 2004 Mo. App. LEXIS 408 (Mo. Ct. App. 2004), writ of certiorari denied by 543 U.S. 927, 125 S. Ct. 346, 160 L. Ed. 2d 227, 2004 U.S. LEXIS 6742, 73 U.S.L.W. 3235 (2004).

Overview: *A client's § 1983 action was properly dismissed for failure to state a claim because an attorney's act of depositing client funds into an IOLTA account was not attributable to the State since participation was voluntary.*

- Mo. Sup. Ct. R. 4-1.15 is a provision of the Missouri Rules of Professional Conduct that governs the safekeeping of property. Rule 4-1.15(d) through (g) governs Missouri's Interest on Lawyers' Trust Accounts program, which allows a lawyer holding client funds that are so small in amount or held so briefly that they cannot earn net interest for the client to pool those funds with others like them and distribute the interest from the pooled account to the Missouri Lawyer Trust Account Foundation. The Foundation, in turn, supports legal services for the poor. Mo. Sup. Ct. R. 4-1.15. Go To Headnote

Legal Ethics

...Client Relations > General Overview

In re Ehler, 319 S.W.3d 442, 2010 Mo. LEXIS 203 (Mo. 2010).

Overview: *Attorney who had previously been disciplined for mishandling of client funds was disbarred after misappropriating client funds for her personal use; that the attorney was going through an acrimonious divorce and experiencing parenting issues did not excuse her misappropriation of client funds.*

- The most important ethical duties are those obligations that a lawyer owes to clients. ABA Standards for Imposing Lawyer Sanctions 423 (1992). Those duties include safekeeping of client property, Mo. Sup. Ct. R. 4-1.15; the duty of diligence, Mo. Sup. Ct. R. 4-1.3 and 4-1.4; the duty of competence, Mo. Sup. Ct. R. 4-1.1; and the duty of candor, Mo. Sup. Ct. R. 4-8.4(c). Go To Headnote

In re Charron, 918 S.W.2d 257, 1996 Mo. LEXIS 23 (Mo. 1996).

Overview: *The attorney's license was suspended because while acting as the personal representative of an estate the attorney paid himself, which he was allowed to do, without advising the probate court.*

- Mo. Sup. Ct. R. 4-1.15(b) requires an attorney to promptly turn over any property the client has a right to receive. Go To Headnote

 ...Client Relations > Billing & Collection

In re Coleman, 295 S.W.3d 857, 2009 Mo. LEXIS 468 (Mo. 2009).

Overview: *An attorney violated Mo. Sup. Ct. R. 4-1.2 and 4-1.7 by entering into written agreements with his client purporting to give him the exclusive right to settle her cases, accepting a settlement without her consent, and seeking to enforce the agreement against her. He was eligible for probation because his actions arose out of ignorance of the rules.*

- Accurate records must be kept regarding which part of the funds in Interest on Lawyers' Trust Accounts is the lawyer's. Mo. Sup. Ct. R. 4-1.15(c), cmt. 2 (2008). Go To Headnote
- While duplicate records are not required by the rules of professional conduct, Mo. Sup. Ct. R. 4-1.15(c) (2008) requires that a lawyer preserve complete records of a client's trust account for five years. Go To Headnote

 ...Client Relations > Client Funds

In re Ehler, 319 S.W.3d 442, 2010 Mo. LEXIS 203 (Mo. 2010).

Overview: *Attorney who had previously been disciplined for mishandling of client funds was disbarred after misappropriating client funds for her personal use; that the attorney was going through an acrimonious divorce and experiencing parenting issues did not excuse her misappropriation of client funds.*

- Mo. Sup. Ct. R. 4-1.15(c) requires a lawyer to keep all client property or third-party property in the lawyer's possession separate from the lawyer's own property. This rule also requires that complete records of the client trust account be maintained and preserved for a period of at least five years, and an accounting must be completed promptly on a client's request. Additionally, Mo. Sup. Ct. R. 4-1.15(f) requires a lawyer, on receipt of client funds, to promptly notify the client and deliver the funds to the client. Go To Headnote

In re Coleman, 295 S.W.3d 857, 2009 Mo. LEXIS 468 (Mo. 2009).

Overview: *An attorney violated Mo. Sup. Ct. R. 4-1.2 and 4-1.7 by entering into written agreements with his client purporting to give him the exclusive right to settle her cases, accepting a settlement without her consent, and seeking to enforce the agreement against her. He was eligible for probation because his actions arose out of ignorance of the rules.*

- Mo. Sup. Ct. R. 4-1.15(c) (2008) explicitly states that there must be an account for client and third-party funds that is kept separate from any account holding an attorney's own funds. Go To Headnote
- Commingling personal and client funds is only permissible when necessary to pay bank service charges on Interest on Lawyers' Trust Accounts. Mo. Sup. Ct. R. 4-1.15(c), cmt. 2 (2008). Go To Headnote
- Accurate records must be kept regarding which part of the funds in Interest on Lawyers' Trust Accounts is the lawyer's. Mo. Sup. Ct. R. 4-1.15(c), cmt. 2 (2008). Go To Headnote
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Mottl v. Mo. Lawyer Trust Account Found., 133 S.W.3d 142, 2004 Mo. App. LEXIS 408 (Mo. Ct. App. 2004), writ of certiorari denied by 543 U.S. 927, 125 S. Ct. 346, 160 L. Ed. 2d 227, 2004

U.S. LEXIS 6742, 73 U.S.L.W. 3235 (2004).

Overview: *A client's § 1983 action was properly dismissed for failure to state a claim because an attorney's act of depositing client funds into an IOLTA account was not attributable to the State since participation was voluntary.*

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TOC: Missouri Court Rules > / . . . / > MAINTAINING THE INTEGRITY OF THE PROFESSION > **Rule 4-8.4. Misconduct**

Mo. Sup. Ct. R. 4-8.4

MISSOURI COURT RULES

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*** Rules current through October 2, 2014 ***

SUPREME COURT RULES
RULES GOVERNING THE MISSOURI BAR AND THE JUDICIARY
RULE 4. RULES OF PROFESSIONAL CONDUCT
MAINTAINING THE INTEGRITY OF THE PROFESSION

Mo. Sup. Ct. R. 4-8.4 (2014)

Review Court Orders which may amend this Rule

Rule 4-8.4. Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. It shall not be professional misconduct for a lawyer for a criminal law enforcement agency, regulatory agency, or state attorney general to advise others about or to supervise another in an undercover investigation if the entity is authorized by law to conduct undercover investigations, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency, regulatory agency, or state attorney general to participate in an undercover investigation, if the entity is authorized by law to conduct undercover investigations;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(g) manifest by words or conduct, in representing a client, bias or prejudice based upon race, sex, religion, national origin, disability, age, or sexual orientation. This Rule 4-8.4(g) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, or other similar factors, are issues.

COMMENT

[1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Rule 4-8.4 (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] Rule 4-8.4(c) recognizes instances where lawyers for criminal law enforcement agencies, regulatory agencies, or the state attorney general advise others about or supervise others in undercover investigations and provides an exception to allow the activity without the lawyer engaging in professional misconduct. The exception acknowledges current, acceptable practice of these entities. This exception is not intended to state or imply that an entity has the authority to conduct undercover investigations unless that authority is separately granted to the entity by law. Although the exception appears in this rule, it is also applicable to Rules 4-4.1 and 4-4.3. This exception does not authorize conduct otherwise prohibited by Rule 4-4.2. Nothing in the rule allows the lawyer to advise others about or supervise others in undercover investigations unless the criminal law enforcement agency, regulatory agency, or state attorney general is authorized by law to engage in such conduct.

[4] Rule 4-8.4(g) identifies the special importance of a lawyer's words or conduct, in representing a client, that manifest bias or prejudice against others based upon race, sex, religion, national origin, disability, age, or sexual orientation. Rule 4-8.4(g) excludes those instances in which a lawyer engages in legitimate advocacy with respect to these factors. A lawyer acts as an officer of the court and is licensed to practice by the state. The manifestation of bias or prejudice by a lawyer, in representing a client, fosters discrimination in the provision of services in the state judicial system, creates a substantial likelihood of material prejudice by impairing the integrity and fairness of the judicial system, and undermines public confidence in the fair and impartial administration of justice.

Whether a lawyer's conduct constitutes professional misconduct in violation of Rule 4-8.4(g) can be determined only by a review of all of the circumstances; e.g., the gravity of the acts and whether the acts are part of a pattern of prohibited conduct. For the purpose of Rule 4-8.4(g), "manifest ... bias or prejudice" is defined as words or conduct that the lawyer knew or should have known discriminate against, threaten, harass, intimidate, or denigrate any individual or group. Prohibited conduct includes, but is not limited to, unwelcome sexual advances, requests

for sexual favors, and other verbal or physical conduct of a sexual nature when:

(a) submission to that conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;

(b) submission to or rejection of such conduct by an individual is used as a factor in decisions affecting such individual; or

(c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile or offensive environment.

[5] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 4-1.2(f) concerning a good faith challenge to the validity, scope, meaning, or application of the law apply to challenges of legal regulation of the practice of law.

[6] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent, and officer, director, or manager of a corporation or other organization.

History:

Adopted September 28, 1993; Amended Nov. 21, 1995, eff. Jan. 1, 1996; Amended November 25, 2003, eff. January 1, 2004; Rev. July 1, 2007; Amended June 28, 2011, eff. Jan. 1, 2012; amended April 27, 2012, eff. July 1, 2012.

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TOC: Missouri Court Rules > / . . . / > MAINTAINING THE INTEGRITY OF THE PROFESSION > Rule 4-8.1. Bar admission and disciplinary matters

Mo. Sup. Ct. R. 4-8.1

MISSOURI COURT RULES

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SUPREME COURT RULES
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RULE 4. RULES OF PROFESSIONAL CONDUCT
MAINTAINING THE INTEGRITY OF THE PROFESSION

Mo. Sup. Ct. R. 4-8.1 (2014)

Review Court Orders which may amend this Rule

Rule 4-8.1. Bar admission and disciplinary matters

An applicant for admission to the bar or a lawyer in connection with a bar admission application or in connection with a disciplinary matter shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter; or

(c) knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule 4-8.1 does not require disclosure of information otherwise protected by Rule 4-1.6.

COMMENT

[1] The duty imposed by this Rule 4-8.1 extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule 4-8.1 applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own

conduct. Rule 4-8.1(b) also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

[2] Rule 4-8.1 is subject to the provisions of the fifth amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with Rule 4-8.1.

[3] A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship, including Rule 4-1.6 and, in some cases, Rule 4-3.3.

🔍 History:

Adopted September 28, 1993, eff. July 1, 1995; Rev. July 1, 2007.

LexisNexis (R) Notes:

🔍 Case Notes:

Legal Ethics

📄 ...Professional Conduct > General Overview

In re Shelhorse, 147 S.W.3d 79, 2004 Mo. LEXIS 127 (Mo. 2004).

Overview: *Where an attorney had no prior disciplinary history and his conduct did not directly harm a client or the public, his failure to comply with continuing legal education requirements and failure to respond to inquiries resulted in a public reprimand.*

- As a condition of retaining his or her privilege of practicing law in Missouri, an attorney must comply with rules of professional conduct. An attorney who admits to professional misconduct by not complying with continuing legal education requirements and by failing to respond to inquiries by disciplinary authorities violates Mo. Sup. Ct. R. 4-5.5(c) and 4-8.1(b) and Mo. Sup. Ct. R. 15. Go To Headnote

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DATED: January 22, 2015

SIGNED: Jason Peralta Declarant