

IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:

HENRY V. GRIFFIN,
P.O. Box 1437
Hollister, MO 65673-1437

Respondent.

)
)
)
)
)
)
)

Supreme Court #SC98235

INFORMANT'S BRIEF

OFFICE OF CHIEF DISCIPLINARY
COUNSEL

ALAN D. PRATZEL

Chief Disciplinary Counsel #29141

PATRICIA J. SHILLING #36356

Special Representative, Region XV, Div I
302 E. Church St.

Ozark, MO 65721

(417) 581-3646 - Telephone

Email: pjs@styronlaw.com

ATTORNEYS FOR INFORMANT

TABLE OF CONTENTS

COVER PAGE 1

TABLE OF CONTENTS 2

TABLE OF AUTHORITIES..... 3

STATEMENT OF JURISDICTION 5

STATEMENT OF FACTS..... 6

 A. PROCEDURAL HISTORY..... 6

 B. RESPONDENT’S PRIOR DISCIPLINARY HISTORY 6

 C. CONDUCT UNDERLYING THE INFORMATION..... 7

 D. THE DISCIPLINARY HEARING PANEL'S DECISION 10

 E. THE DISCIPLINARY HEARING PANEL'S RECOMMENDATION 14

POINTS RELIED ON

 I 15

 II..... 17

LEGAL ARGUMENT

 I..... 19

 II..... 23

CONCLUSION 29

CERTIFICATE OF SERVICE..... 30

CERTIFICATION: RULE 84.06(C)..... 30

TABLE OF AUTHORITIES

CASES

In re Coleman, 295 S.W.3d 857 (Mo. banc 2009)..... 18, 25

In re Donaho, 98 S.W.3d 871 (Mo. banc 2003) 18, 26

In re Griffey, 873 S.W.2d 600 (Mo. banc 1994)..... 18, 24

In re Kazanas, 96 S.W.3d 803 (Mo. banc 2003) 18, 24

OTHER AUTHORITIES

ABA Annotated Standards for Imposing Lawyer Sanctions, Standard 1.1 (2015)..... 25

ABA Standards for Imposing Lawyer Sanctions (1986 ed., as amended 1992) 24

ABA Standards for Imposing Lawyer Sanctions, Purpose and Nature of Sanctions
(1986 ed., as amended 1992) 25

ABA Standards for Imposing Lawyer Sanctions, Standard 4.12 26

ABA Standards for Imposing Lawyer Sanctions, Standard 4.42 27

ABA Standards for Imposing Lawyer Sanctions, Standard 4.62 27

ABA Standards for Imposing Lawyer Sanctions, Standard 7.2 27

ABA Standards for Imposing Lawyer Sanctions, Standard 9.2 24, 28

ABA Standards for Imposing Lawyer Sanctions, Standard 9.22(a)..... 28

ABA Standards for Imposing Lawyer Sanctions, Standard 9.22(i)..... 28

ABA Standards for Imposing Lawyer Sanctions, Standard 9.3 24

ABA Standards for Imposing Lawyer Sanctions, Ch. II, “Theoretical Framework,”
(1986 ed., as amended 1992) 25, 26

RULES

RULE 4-1.15.....20, 28

RULE 4-1.15(a) 15, 19, 20

RULE 4-1.15(d) 15, 19, 20

RULE 4-4.1(a) 15, 19, 20

RULE 4-4.1(b) 15, 19, 21

RULE 4-8.4(c) 15, 19, 21

RULE 4-8.4(d) 16, 20, 22

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

A. PROCEDURAL HISTORY

March 29, 2019	Information
May 29, 2019	Respondent's Answer to Information
June 6, 2019	Appointment of Disciplinary Hearing Panel
August 27, 2019	DHP Hearing
September 27, 2019	DHP Decision
October 4, 2019	Rejection of DHP decision by Informant
December, 2019	Record Submitted

B. RESPONDENT'S PRIOR DISCIPLINARY HISTORY

On June 25, 1999 in case 99-0219 Respondent was admonished for violating Rules 4-1.3 (Diligence) and Rule 4-1.4 (Communication).

On June 14, 2006 in case 06-173-P Respondent was admonished for violating Rules 4-1.1 (Competence), Rules 4-1.3 (Diligence) and Rule 4-1.4 (Communication).

On February 2, 2009 in case Tax-09-2539 Respondent was suspended for violating Rule 5.245 (failure to pay tax).

On September 27, 2010 Respondent was admonished in case 10-1598-OD for violating Rule 4-1.15 (Safekeeping Property).

On March 28, 2013 in case 12-1571-XV Respondent was admonished for violating Rules 4-1.3 (Diligence) and Rule 4-1.4 (Communication).

C. CONDUCT UNDERLYING THE INFORMATION

1. Count I: Escrow Agent for Erie Shore, LLC and Vintro Group of Companies, LLC.

In January 2018 Respondent acted as an escrow agent for a transaction between Erie Shore, LLC, as seller and Vintro Group of Companies, LLC as buyer. **App 276.** Vintro Group of Companies, LLC was proposing to buy a hotel and water park located in Sandusky, Ohio from Erie Shore, LLC. **App 275.** Erie Shore, LLC was represented by attorney Kirk Halpin. **App 69.** Attorney Halpin filed a complaint against Respondent, launching the Office of Chief Disciplinary Counsel's investigation and the filing of this Information. **App 122-220.**

Pursuant to the purchase agreement, Vintro Group of Companies, LLC was to deposit the sum of \$200,000.00 with an escrow agent of its choosing. Vintro Group of Companies, LLC chose Respondent as the escrow agent. **App 123.** Respondent had on prior occasions represented Vintro Group of Companies, LLC, and its principal member, Mr. Inderjit Grewal. **App 269.** He had represented Mr. Grewal on more than a dozen occasions. **App 69.** Respondent's obligations as escrow agent were set forth in Section 14.4 of the Purchase Agreement which stated that the escrow agent shall hold the deposit in an escrow account until the closing, or sooner termination of the agreement. **App 163.** Subparagraph (b) of Section 2.3 of the Purchase Agreement provides that all interest earned on the Deposit while held by the Escrow Agent shall be paid to the party to whom the Deposit is paid. **App 137.**

On January 24, 2018 Respondent signed and provided a letter that was sent to Kirk Halpin, attorney for Erie Shore, LLC confirming that buyer had deposited the earnest money deposit of \$200,000.00 with Respondent as escrow agent. **App 74.** The letter specifically stated that Griffin Law Firm was in receipt of an earnest money deposit in the amount of \$200,000.00 from the Buyer. **App 205-206.** On February 10, 2018, Mr. Halpin sent an email to Respondent asking for confirmation of authenticity of the deposit and requesting that Respondent do the following:

1. Confirm the letter of January 24, 2018 was authentic and contained Respondent's signature;
2. Provide a copy of the deposit check or acknowledgement of receipt of wire from the bank; and
3. If a check was received, let him know when the check was deposited and confirm that funds have now cleared and are fully available.

App. 207-208.

On February 12, 2018 Respondent provided a written response to the February 10, request to Mr. Halpin as follows:

“The letter is authentic and contains my signature. As stated, I will be following the instructions for escrow set forth in Section 2.3 (a) of the Purchase and Sale Agreement.” **App 210.**

The letter also stated, “I am only the escrow agent for this transaction, and any further questions regarding this matter should be directed to the Buyer’s legal counsel.” The letter also contained a cc: to Client. **App 210.** When questioned by the Informant as to the identity of the client who was sent a copy of the letter, Respondent answered that it was either Inderjit Grewal or Vintro Group of Companies or both. **App 298.**

On May 18, 2018, Mr. Halpin sent a letter to Respondent stating buyer was in breach and demanding that Respondent pay the earnest money deposit to seller. **App 215.** On May 29, 2018 Mr. Halpin sent an email to Respondent demanding that he interplead the monies into court. **App 220.** Respondent did not respond to Mr. Halpin’s demands for payment **App 292.** In his response to Mr. Halpin’s disciplinary complaint Respondent stated that he was instructed to return the check to Buyer. Respondent stated that he never deposited the check and returned it to Buyer as instructed by Buyer. Respondent stated that he was acting as escrow agent for the Buyer and that he had been instructed to hold the check until money “went hard” at which time he was to deposit the check and proceed as directed by the Buyer. **App 221-222.** Respondent said he never cashed the check; he said that he kept it in a file cabinet. **App 284.** Respondent admitted that he was taking instructions from Inderjit Grewal and he was not acting as an independent escrow agent. **App 301.**

Respondent, in his response to Mr. Halpin’s disciplinary complaint, admitted that he served as escrow agent, admitted that he received an earnest money deposit from buyer, admitted that the check was never deposited and that it was ultimately returned to

the buyer as directed by the buyer. **App 221-222.** In response to the Information Respondent admitted that he served as escrow agent that Buyer was to deposit \$200,000 with the escrow agent, that he never deposited the check and returned it to Buyer as instructed by Buyer. **App 254-256.** In his sworn testimony to the regional disciplinary committee, Respondent admitted that he drafted and signed the Verification of Deposit in the amount of \$200,000.00 dated January 24, 2018 addressed To Whom It May Concern. **App 278-282.** Respondent admitted that he received the email from attorney Halpin dated February 10, 2018 requesting verification of authenticity. **App 281.** Respondent admitted that the letter dated February 12, 2018, was his reply to attorney Halpin. **App 281.** Respondent admitted that he received a letter and an email from attorney Halpin demanding turnover of the earnest money deposit and that he did not respond. **App 292.**

Ultimately, Erie Shore, LLC and Vintro Group of Companies did resolve their issues and Buyer and Seller completed the transaction and the sale closed later in September 2018. **App 406.**

2. Count II: *Branson Knights Inn, LLC v. SOMO Legal Services, LLC.*

Informant elects to not proceed on Count II of the Information.

D. THE DISCIPLINARY HEARING PANEL'S DECISION

1. Count I: Escrow Agent for Erie Shore, LLC and Vintro Group of Companies, LLC.

The Disciplinary Hearing Panel found that Respondent was guilty of professional misconduct under Rule 4-8.4(a) as a result of violating:

1. Rule 4-1.15(a). Respondent failed to maintain third party funds in a separate account. Respondent testified that he agreed to serve as an escrow agent and accepted an escrow check for \$200,000.00 from the Buyer. However, pursuant to the Escrow Agreement, Respondent had a duty to deposit the funds in a trust account. The Buyer instructed Respondent to hold the check until he received further instructions. Respondent followed Buyer's instructions and physically held the check in a file and did not deposit it. When the Purchase Agreement was not closed, the Seller demanded payment of the escrow fund and discovered that there was no escrow deposit. Instead, Buyer requested Respondent return the check to him and Respondent obeyed that request. That left the Seller without recourse. **App 413-414.**

2. Rule 4-1.15(d) by failing to deliver or account for funds belonging to a third party. Respondent received an escrow check for \$200,000.00. He did not deposit the funds in a trust account as required by the Purchase Agreement. Instead, Buyer told Respondent to hold the check and Respondent followed Buyer's instructions. When Seller demanded payment of escrow funds Respondent did not have funds in his possession to pay. He returned the escrow check to the Buyer. Had Respondent deposited the check and been uncertain who was entitled to the funds, he could have filed an Interpleader and allowed the circuit court to determine who was entitled to the funds. Respondent violated this rule by obeying instructions of the Buyer, rather than abiding by the terms of the Purchase Agreement. **App 414.**

3. Rule 4-4.1(a) by making a false or misleading statement of material fact to a third person. Respondent agreed to serve as Escrow Agent under Informant's Exhibit 1, Subpart 1, the Purchase Agreement. Informant's Exhibit 1, Subpart 2 was Respondent's Verification of Deposit dated January 28, 2018, where Respondent stated he received from Buyer the escrow deposit of \$200,000.00 pursuant to the Purchase Agreement. This Verification gave the impression that Respondent had the money in hand, not just a check representing the money. Informant's Exhibit 1, Subpart 3 was an email from Seller's attorney to Respondent and Respondent's response. Seller's attorney specifically asked Respondent to confirm he had deposited the check and that the funds had cleared and were fully available. Respondent's response referred to the letter mailed January 28, 2018, and confirmed that it was authentic. Respondent stated he would follow instructions for escrow set forth in Section 2.3(a) of the Purchase Agreement. Respondent's statement in that regard was false and misleading because he did not deposit the escrow check. **App 414-415.**

4. Rule 4-4.1(b) by failing to disclose a material fact when disclosure was necessary to avoid assisting in a fraudulent act by a client. In Respondent's letter of February 12, 2018, Informant's Exhibit 1, Subpart 2, Respondent stated he would abide by the duties of an Escrow Agent as set forth in the Purchase Agreement. In Respondent's letter received as Informant's Exhibit 1, Subpart 3, Respondent referred Seller's attorney to seek additional information from Buyer's attorney. Respondent failed to disclose he was holding Buyer's escrow check and had not deposited it, at Buyer's

instruction. That violated Respondent's duty to Seller, and appeared to assist Buyer in a fraudulent act under the terms of the Purchase Agreement. **App 415.**

5. Rule 4-8.4(c) by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. Respondent appeared to lead Seller and his attorney to believe that Buyer had complied with the terms of the Purchase Agreement. That was false and a misrepresentation. Buyer gave a \$200,000.00 escrow check to Respondent but with instructions not to deposit it. Respondent's conduct in following instructions of Buyer was dishonest regarding the Seller. **App 415.**

6. Rule 4-8.4(d) by engaging in conduct prejudicial to the administration of justice. The purchase of the property for which Respondent was escrow agent did not close. Seller's attorney demanded the escrow deposit be paid by letter dated May 18, 2018, see Informant's Exhibit 1, Subpart 5. Respondent failed to respond to Seller's attorney; Respondent did not release the escrow funds, did not interplead the funds, did not return phone calls, or respond to correspondence. Seller's attorney filed a complaint with OCDC on June 4, 2018 because of Respondent's conduct in this regard. By failing to fulfill his duties [duties] as escrow agent, and failing to respond to Seller's attorney, Respondent engaged in conduct prejudicial to the administration of justice. **App 415-416.**

2. Count II: *Branson Knights Inn, LLC v. SOMO Legal Services, LLC.*

The Disciplinary Hearing Panel found Informant failed to meet its burden of proof in regard to Count II and that Respondent's conduct as alleged in Count II did not constitute a violation of the rules of professional misconduct. **App 416.** .

E. THE DISCIPLINARY HEARING PANEL'S RECOMMENDATION

The Disciplinary Hearing Panel recommended that Respondent be placed on probation for one year. **App 418.** Informant rejected the DHP recommendation. **App. 419.**

POINTS RELIED ON

I.

**RESPONDENT IS GUILTY OF PROFESSIONAL MISCONDUCT IN THE
ERIE SHORE, LLC AND VINTRO GROUP OF COMPANIES, LLC
MATTER BY:**

- A. RULE 4-1.15(a) – FAILING TO MAINTAIN THIRD PARTY FUNDS IN A SEPARATE ACCOUNT;**
- B. RULE 4-1.15(d)– FAILING TO DELIVER OR ACCOUNT FOR FUNDS BELONGING TO A THIRD PARTY;**
- C. RULE 4-4.1(a) – MAKING A FALSE OR MISLEADING STATEMENT OF A MATERIAL FACT TO A THIRD PERSON;**
- D. RULE 4-4.1(b) – FAILING TO DISCLOSE A MATERIAL FACT WHEN DISCLOSURE WAS NECESSARY TO AVOID ASSISTING IN A FRAUDULENT ACT BY A CLIENT;**
- E. RULE 4-8.4(c) – ENGAGING IN CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT, OR MISREPRESENTATION;**

**F. RULE 4-8.4(d) – ENGAGING IN CONDUCT
PREJUDICIAL TO THE ADMINISTRATION OF
JUSTICE.**

II.

SUSPENSION OF RESPONDENT'S LICENSE IS THE APPROPRIATE SANCTION IN THIS CASE WHERE RESPONDENT FAILED TO COMPLY WITH THE REQUIREMENTS OF THE RULES OF PROFESSIONAL CONDUCT BECAUSE:

- A. THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS SUGGEST SUSPENSION AS THE APPROPRIATE SANCTION;**
- B. RESPONDENT KNEW OR SHOULD HAVE KNOWN THAT HE WAS DEALING IMPROPERLY WITH CLIENT PROPERTY AND CAUSED INJURY OR POTENTIAL INJURY TO THE CLIENT.**
- C. RESPONDENT KNOWINGLY DECEIVED A CLIENT AND CAUSED INJURY OR POTENTIAL INJURY TO THE CLIENT.**
- D. RESPONDENT KNOWINGLY ENGAGED IN CONDUCT THAT IS A VIOLATION OF A DUTY OWED AS A PROFESSIONAL AND CAUSED INJURY OR POTENTIAL INJURY TO THE**

**CLIENT, THE PUBLIC AND THE LEGAL
SYSTEM.**

In re Kazanas, 96 S.W.3d 803 (Mo. banc 2003)

In re Griffey, 873 S.W.2d 600 (Mo. banc 1994)

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

In re Donaho, 98 S.W.3d 871 (Mo. banc 2009)

LEGAL ARGUMENT

I.

**RESPONDENT IS GUILTY OF PROFESSIONAL MISCONDUCT IN THE
ERIE SHORE, LLC AND VINTRO GROUP OF COMPANIES, LLC
MATTER BY:**

- A. RULE 4-1.15(a) – FAILING TO MAINTAIN THIRD PARTY FUNDS IN A SEPARATE ACCOUNT;**
- B. RULE 4-1.15(d) – FAILING TO DELIVER OR ACCOUNT FOR FUNDS BELONGING TO A THIRD PARTY;**
- C. RULE 4-4.1(a) – MAKING A FALSE OR MISLEADING STATEMENT OF A MATERIAL FACT TO A THIRD PERSON;**
- D. RULE 4-4.1(b) – FAILING TO DISCLOSE A MATERIAL FACT WHEN DISCLOSURE WAS NECESSARY TO AVOID ASSISTING IN A FRAUDULENT ACT BY A CLIENT;**
- E. RULE 4-8.4(c) – ENGAGING IN CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT, OR MISREPRESENTATION;**

**F. RULE 4-8.4(d) – ENGAGING IN CONDUCT
PREJUDICIAL TO THE ADMINISTRATION OF
JUSTICE.**

Respondent agreed to serve as an escrow agent and accepted an escrow check for \$200,000.00 from the Buyer. Pursuant to the escrow agreement and Rule 4-1.15, Respondent had a duty to deposit the funds in a trust account. The Purchase Agreement, which contained the escrow provisions, provided for disposition of interest earned on the deposit. Rather than follow the provisions of the Purchase Agreement, Respondent followed Buyer's instructions and physically held the check in a file drawer and did not deposit it. By not depositing the check, Respondent violated Rule 4-1.15(a).

At some point, the Buyer requested Respondent return the check to him and Respondent obeyed that request. Respondent was taking instructions from his client, Inderjit Grewal, principal of the Buyer, who he had represented previously on numerous occasions. Once Respondent returned the deposit to the Buyer, Seller was left without recourse and was limited in its ability to recover damages for breach, if appropriate. Respondent did not deposit the escrow funds in a trust account as required by the Purchase Agreement. Respondent violated Rule 4-1.15(d) by failing to abide by the terms of the Purchase Agreement.

Respondent should not have unilaterally released the deposit monies to Buyer. Respondent should have interpleaded the monies into court if a dispute arose as to who was entitled to the deposit. Respondent violated Rule 4-4.1(a) by sending a Verification

of Deposit dated January 28, 2018 which gave the false impression that Respondent had money in hand, not that he was just holding a check. In Respondent's letter of February 12, 2018 to Mr. Halpin, he failed to disclose that he was holding Buyer's escrow check and had not deposited it pursuant to the terms of the escrow agreement. This violated Respondent's duty to Seller and appeared to assist, or may have been designed to assist, Buyer in a fraudulent act under the terms of the Purchase Agreement, in violation of Rule 4-4.1(b).

Respondent was not truthful or forthcoming with the Seller's attorney regarding the escrow deposit. Respondent knew Mr. Halpin wanted to know that he had received the check and that it had cleared the bank. Respondent did not truthfully respond to Mr. Halpin's requests. Respondent's conduct in following the instructions of Buyer in regard to not depositing the check and returning the check was dishonest regarding the Seller and violated Rule 4-8.4(c).

Respondent accepted the duties of an escrow agent yet he failed to fulfill those duties. He did not follow the terms of the escrow agreement as set forth in the Purchase Agreement. If he had followed the directions of the escrow agreement he would have deposited the check in an interest-bearing account. Respondent was dishonest and untruthful with Mr. Halpin, the attorney for Seller, in that he failed to truthfully and honestly respond to Mr. Halpin's requests for information regarding the deposit. Respondent's dishonest and deceitful conduct involving the escrow deposit and his

failure to respond to Mr. Halpin's request for information was prejudicial to the administration of justice and violated Rule 4-8.4(d).

II.

SUSPENSION OF RESPONDENT'S LICENSE IS THE APPROPRIATE SANCTION IN THIS CASE WHERE RESPONDENT FAILED TO COMPLY WITH THE REQUIREMENTS OF THE RULES OF PROFESSIONAL CONDUCT BECAUSE:

- A. THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS SUGGEST SUSPENSION AS THE APPROPRIATE SANCTION;**
- B. RESPONDENT KNEW OR SHOULD HAVE KNOWN THAT HE WAS DEALING IMPROPERLY WITH CLIENT PROPERTY AND CAUSED INJURY OR POTENTIAL INJURY TO THE CLIENT.**
- C. RESPONDENT KNOWINGLY DECEIVED A CLIENT AND CAUSED INJURY OR POTENTIAL INJURY TO THE CLIENT.**
- D. RESPONDENT KNOWINGLY ENGAGED IN CONDUCT THAT IS A VIOLATION OF A DUTY OWED AS A PROFESSIONAL AND CAUSED INJURY OR POTENTIAL INJURY TO THE**

**CLIENT, THE PUBLIC AND THE LEGAL
SYSTEM.**

In determining the appropriate sanction the Court relies on several sources. First, the Court applies its own standards to maintain consistency, fairness and ultimately, to accomplish the overriding goal of protecting the public and maintaining the integrity of the legal profession. Those standards are written into law when the Court issues opinions in attorney discipline cases. *In re Kazanas*, 96 S.W.3d 803, 806 (Mo. banc 2003). The Court also relies on the ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS (1986 ed., as amended 1992). Those guidelines recommend baseline discipline for specific acts of misconduct, taking into consideration the duty violated, the lawyer's mental state (level of intent), and the extent of injury or potential injury. *In re Griffey*, 873 S.W.2d 600 (Mo. banc 1994). Once the baseline discipline is known, the ABA Standards allow consideration of aggravating and mitigating circumstances. ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS Standards 9.2 and 9.3 (1986 ed., as amended 1992). The Court also considers as advisory the recommendation of the Disciplinary Hearing Panel who heard the case. In this instance, the Panel recommended only one year probation. Informant rejected the Panel's recommendation given the serious ethical violations present in this case.

The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely properly to discharge their professional duties to clients, the public, the legal

system and the legal profession. ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS, PURPOSE AND NATURE OF SANCTIONS (1986 ed., as amended 1992). In imposing discipline, the Court considers the ethical duty violated, the attorney's mental state, the extent of actual or potential injury caused by the attorney's misconduct, and any aggravating or mitigating factors. *In re Coleman*, 295 S.W.3d 857, 863 (Mo. Banc 2009).

The most important ethical duties are those obligations which a lawyer owes to clients. Ch. II, "Theoretical Framework," ABA STANDARDS (1986 ed., as amended 1992). In addition to the duties to his client, a lawyer owes a duty to the legal system. "Lawyers are officers of the court, and must abide by the rules of substance and procedure which share the administration of justice." *Id.* The privilege of practicing law carries with it the obligation to be worthy of the public's trust and confidence. Lawyers are required to continually demonstrate good character in all endeavors. Protecting the integrity and reputation of the courts and the bar are objectives of the lawyer disciplinary process. The public expects that anyone admitted to the practice of law will conform to minimum ethical standards of the legal profession. Lawyers can be subject to discipline for conduct that reflects adversely on their fitness to practice law. ABA Annotated Standards for Imposing Lawyer Sanctions. Standard 1.1 (2015)

In this case, Respondent took on the duties of an escrow agent for the transaction concerning Vintro Group of Companies, LLC and Erie Shores, LLC, however, he failed to fulfill those duties. He failed to follow the directions set forth in the Purchase Agreement regarding the escrow of the deposit. Respondent failed to act as a third party

neutral. Instead of following the directions set forth in the Purchase Agreement regarding the escrow deposit he followed the direction of his former client, much to his detriment. Respondent sent letters to the attorney for the seller which were misleading and misrepresented the actual state of facts regarding the escrow deposit. Mr. Halpin wanted to know that Mr. Griffin had received the check and that it had cleared the bank. Instead of answering Mr. Halpin's questions, Respondent stated he had received the funds from the buyer. He failed to respond to Mr. Halpin's other requests and failed to inform him that he was simply holding a check and had been instructed to not deposit it until instructed further. Respondent apparently saw nothing wrong with his conduct. Even though he was contractually and ethically obligated to deposit the funds to an interest bearing account, Respondent held a \$200,000.00 check in a file drawer.

Respondent knowingly violated the Rules of Professional Conduct, and his ethical violations caused harm and hardship. "Misconduct involving subterfuge, failing to keep promises and untrustworthiness undermines public confidence in not only the individual but in the bar." *In re Donaho*, 98 S.W.3d 871, 874 (Mo. Banc 2003).

The Theoretical Framework of the ABA STANDARDS provides that when an attorney violates multiple Rules of Professional Responsibility the ultimate sanction should be at least consistent with the sanction for the most serious instance of misconduct and often should be greater than the sanction for the most serious misconduct. *Id.* In imposing sanction in this case we must start with Standard 4.12, the Recommended Sanction for failure to preserve the client's property.

Standard 4.42 provides that suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. In this case Respondent was dealing improperly with monies he was to hold for the parties to the transaction. He had an obligation to both the buyer and the seller to properly handle the escrow deposit, which he failed to do.

In addition, Standard 4.62 states that suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client. Again, in this case he was obligated to both the buyer and the seller. He had an obligation to be truthful and forthcoming to both buyer and seller regarding the status of the escrow monies.

Standard 7.2 provides that suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system. Respondent violated his duties to the parties to the transaction, the public and the legal system. The public should be able to trust that when an attorney is engaged as an escrow agent that he will abide by the terms of the escrow agreement. By failing to abide by the terms of the Purchase Agreement and escrow agreement, Respondent clearly violated duties owed to the parties as well as violating his duty to uphold the integrity of the legal profession. His failure to fulfill his duties as escrow agent reflects poorly on the legal profession as a whole.

Once the presumptive, or baseline, discipline is determined we must then consider applicable aggravating and mitigating circumstances as set forth below:

Standard 9.2 Aggravation.

The aggravating circumstances present in the instant case include:

1. Prior disciplinary offenses, Standard 9.22(a)

Respondent has received five admonitions; four for lack of diligence and communication and one for violating Rule 4-1.15 (safekeeping property). Respondent was once suspended under Rule 5.245.

2. Substantial experience in the practice of law, Standard 9.22(i)

Respondent has practiced law for forty years. Respondent has a lengthy disciplinary history. Respondent should have known his conduct was improper. Respondent's conduct as an escrow agent failed miserably.

Considering all applicable factors and standards, it is clear that suspension is the appropriate discipline for Respondent's professional misconduct. Probation is not an appropriate sanction in this case considering the seriousness of the violations, including mishandling of escrow funds, and the misrepresentation, dishonesty, fraud and deceit in responding to requests for information from the seller's attorney. Respondent's conduct reflects poorly on the legal profession and had the potential to cause great harm to the parties to the transaction and therefore warrants suspension.

CONCLUSION

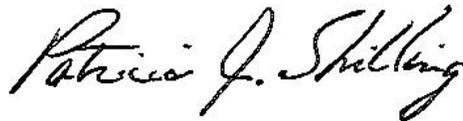
Respondent engaged in professional misconduct involving mishandling of escrow funds, together with engaging in behavior including dishonesty, fraud, deceit and misrepresentation. This conduct together with the presence of aggravating factors, including prior disciplinary history and substantial experience in the practice of law warrants the indefinite suspension of Respondent’s license with no reinstatement for a period of at least two years as an appropriate and warranted sanction.

Respectfully submitted,

**OFFICE OF CHIEF DISCIPLINARY
COUNSEL**

ALAN D. PRATZEL

Chief Disciplinary Counsel #29141



By:

Patricia J. Shilling, #36356
Special Representative, Region XV, Div I
302 E. Church St.
Ozark, MO 65721
(417) 581-3646 - Telephone
Email: pjs@styronlaw.com

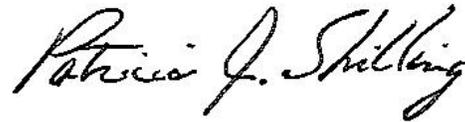
ATTORNEYS FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of January, 2020, the Informant’s Brief was sent through the Missouri Supreme Court e-filing system to:

Henry V. Griffin
P.O. Box 1437
Hollister, MO 65673-1437

Respondent



Patricia J. Shilling

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. The brief was served on Respondent through the Missouri electronic filing system pursuant to Rule 103.08;
3. Complies with the limitations contained in Rule 84.06(b);
4. Contains 4,825 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



Patricia J. Shilling