

**IN THE SUPREME COURT  
STATE OF MISSOURI**

**IN RE:**

**JOHN E. TRESSLAR**

1015 Locust Street  
Suite 415  
St. Louis, MO 63101

Missouri Bar No. 35364

Respondent.

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**Supreme Court No. SC98544**

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**INFORMANT'S BRIEF**

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## **STATEMENT OF JURISDICTION**

This action is one in which the Informant, Region X, Division 1, Disciplinary Committee, is seeking to discipline an attorney licensed in the State of Missouri for violations of the Missouri Rules of Professional Conduct. Jurisdiction over attorney discipline matters is established by Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040, R.S.Mo. 2016.

**STATEMENT OF FACTS****PROCEDURAL HISTORY**

June 28, 2019	Information
July 18, 2019	Respondent's Unopposed Motion for Additional Time to Answer Information
July 18, 2019	Order Granting Extension of Time
August 30, 2019	Respondent's Answer and Affirmative Defenses to Information
September 5, 2019	Appointment of Disciplinary Hearing Panel
January 13, 2020	Disciplinary Hearing Panel (DHP) Hearing
March 23, 2020	DHP Decision
April 1, 2020	Acceptance of DHP Decision by Informant
April 21, 2020	Rejection of DHP Decision by Respondent

**BACKGROUND AND DISCIPLINARY HEARING**

Respondent was licensed as an attorney on or about October 11, 1985. Respondent's license is in good standing. **App. Vol. 1, 41.**<sup>1</sup> Respondent is a solo practitioner and has his own law firm in St. Louis, Missouri: John E. Tresslar, LLC. **App.**

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<sup>1</sup> Citations to the record are denoted by the appropriate Appendix Volume and page reference followed by the Exhibit number, if applicable, for example "**App. Vol. \_ A. \_\_** (Ex. \_\_)."

**Vol. 1, A209.** Respondent concentrates his area of practice in criminal defense and personal injury. **Id.** During the relevant time herein, Respondent was responsible for the maintenance and administration of the law firm's trust account and operating account. **App. Vol. 1, A274.** At all times relevant herein, Respondent maintained and used the following client trust account: Account No. XXX-XXX-0835, in the account name of John E. Tresslar Lawyers Trust Account (hereinafter, "Trust Account") and the following operating account: Account No. XXX-XXX-0843, in the account name of John E. Tresslar, P.C. **App. Vol. 1, A41; App. Vol. 2, A356-A374 (Ex. 5), A375-A406 (Ex. 6).** Respondent maintained his Trust Account and Operating Account with Pulaski Bank until Pulaski Bank became Busey Bank. **Id.** Thereafter, Respondent continued to maintain his Trust Account and Operating Account with Busey Bank with the same bank account numbers. **Id.**

Respondent has prior discipline. Specifically, Informant issued Respondent Letters of Admonition pursuant to Rule 5.11 on January 25, 1998 for violation of Rule 4-1.3 (Diligence), Rule 4-5.1 (Responsibilities of a Partner or Supervisory Lawyer), and Rule 4-5.3 (Responsibilities Regarding Nonlawyer Assistants), and on December 23, 1992 for violation of Rule 4-1.3 (Diligence). **App. Vol. 1, A209-A212; A336-A339 (Ex. 3).** The Letters of Admonition were accepted by Respondent. **Id.** In addition, Respondent was tax suspended pursuant to Rule 5.245 on February 2, 2009. **App. Vol. 1, A212-A213; A346-A347 (Ex. 3).** The Supreme Court reinstated Respondent's license on April 8, 2009. **App. Vol. 1, A212-A213; A348-A349 (Ex. 3).** Respondent has also received two guidance letters for communication and one guidance letter for a Trust Account overdraft. **(App. Vol. 1, A340-345) (Ex. 3).**

The Informant filed an Information with the required Notice on June 28, 2019. **App. Vol. 1, A5-A19.** The charges of ethical violations against Respondent are set forth in the Information in two counts. The first count charged Respondent with violations of Rules 4-1.15(a)(5), 4-1.15(a)(6), 4-1.15(f), in addition to the following violations in connection with his representation of clients Ahmed Tauqir, Tim Green, Thomas Litel, and Audrey Patterson:

A. Ahmed Tauqir

1. Rule 4-1.3 (Diligence);
2. Rule 4-1.4(a) (Communication);

B. Thomas Litel, Ahmed Tauqir, and Audrey Patterson

1. 4-8.4(c) (Misconduct-involving dishonesty, fraud, deceit, or misrepresentation).

The second Count of the Information charged Respondent with the following violations in connection with his representation of Brian Puszkas: Rule 4-8.4(c) (Misconduct-involving dishonesty, fraud, deceit, or misrepresentation); 4-8.4(d) (Misconduct-conduct prejudicial to the administration of justice); and, Rule 4-3.3(a)(1) (Making false statements to the tribunal). Respondent was also charged with a Rule 4-8.4(c) violation (Misconduct-involving dishonesty, fraud, deceit, or misrepresentation) in connection with his representation of Tim Green. Respondent filed his Answer and Affirmative Defenses on February 28, 2019. **App. Vol. 1, A40-A59.**

The disciplinary hearing was conducted on January 13, 2020. Prior to the commencement of the hearing, the Chair addressed Informant's Motion for Leave to

Amend by Interlineation to add client Tauqir Ahmed to Informant's Rule 4-8.4(c) charge in paragraph 36.a. of the Information. **App. Vol. 1, A98.** Informant's Motion was sustained without objection. **Id.** During the course of the disciplinary hearing, Informant's Exhibits 1-15 and Respondent's Exhibits 21-25 were admitted without objection. **App. Vol. 1, A99-A100; A142, A233.**

The Disciplinary Hearing Panel issued its decision on March 23, 2020 and recommended disbarment. **App. Vol. 3, A555-A577.** Informant filed its letter of acceptance with the Advisory Committee on April 1, 2020. **App. Vol. 3, A578.** Respondent rejected the decision on April 21, 2020. **App. Vol. 3, A579-A580.**

1. Respondent's Representation of Tauqir Ahmed

On or about March 22, 2016, Tauqir Ahmed, M.D., retained the services of Respondent on behalf of his one of his daughters in connection with a juvenile proceeding involving a restraining order, and entered into an hourly fee agreement with Respondent. **App. Vol. 1, A41.** The fee agreement provided Respondent's hourly rate of \$250.00 and required a \$1,000.00 retainer fee. **Id.** Dr. Ahmed remitted the \$1,000.00 retainer fee to Respondent which Respondent deposited into his Trust Account on April 1, 2016. **Id.**

After the conclusion of the juvenile proceeding, both of Dr. Ahmed's daughters were expelled from their high school. **App. Vol. 1, A42.** Thereafter, on or about May 25, 2016, Dr. Ahmed met with Respondent in connection with a potential lawsuit for the alleged wrongful expulsion of his daughters. **Id.** Respondent informed Dr. Ahmed that his retainer fee for this matter would be \$7,500.00. **Id.** On May 26, 2016, Dr. Ahmed remitted to Respondent the \$7,500.00 for the requested retainer fee. **Id.** Respondent

deposited the check into his Trust Account on May 31, 2016. **Id.**

Dr. Ahmed began applying to other private schools on behalf of his daughters during the latter part of 2016. **App. Vol. 1, A105.** Between the winter of 2016 and the spring of 2017, Dr. Ahmed emailed, texted and telephoned Respondent on numerous occasions to obtain guidance on how to respond to private school inquiries concerning his daughters' expulsion and to also inquire about the status of the lawsuit. **App. Vol. 1, A42, A105-A107.** Respondent failed to timely respond to Dr. Ahmed's emails, text messages and telephone calls. **App. Vol. 1, A42, A105-A107.**

After reaching Respondent in the spring of 2017, Dr. Ahmed requested an in-person meeting with Respondent. **App. Vol. 1, A106.** That meeting took place on June 16, 2017. **App. Vol. 1, A42-A43, A106.** During that meeting, Dr. Ahmed asked Respondent about his work product and Respondent's progress on the lawsuit. **App. Vol. 1, A106-A107.** Respondent provided him with "the face sheet of the case" and some handwritten notes on a legal pad containing a list of potential allegations. **App. Vol. 1, A107, A136, A277-A281, A283.** Seeing no progress on his daughters' case, Dr. Ahmed terminated Respondent's representation on June 16, 2017 and asked Respondent for his client file and a refund of his retainer. **App. Vol. 1, A107.** Respondent said that he would mail Dr. Ahmed's check along with the remainder of his file. **App. Vol. 1, A108.** There was no discussion, however, as to the amount of the refund during the meeting. **Id.**

Over the next few months, Dr. Ahmed sent Respondent several text messages, emails and left numerous telephone messages inquiring about the status of his refund. **App. Vol. 1, A109.** In late August or September 2017, Respondent replied to one of Dr.

Ahmed's text messages stating that the check was "in the mail." **App. Vol. 1, A110.**

On November 10, 2017, Dr. Ahmed sent Respondent a letter via certified mail, return receipt requested. **App. Vol. 1, A111.** In the letter, Dr. Ahmed stated that "[t]his is our last attempt to resolve this amicably." **App. Vol. 1, A111; App. Vol. 3, A420 (Ex. 7A).** Dr. Ahmed informed Respondent that if they were unable to do so, he would report the matter to the Office of Chief Disciplinary Counsel. **App. Vol. 1, A111-112; App. Vol. 3, A420 (Ex. 7A).**

In or about November or December 2017, after Dr. Ahmed received confirmation of Respondent's receipt of his November 10, 2017 letter, Dr. Ahmed received a refund check from Respondent in the amount of \$4,500.00. **App. Vol. 1, A112; App. Vol. 3, A419 (Ex. 7A).** Respondent, however, provided no billing statements or invoices detailing the services rendered for the earned fees. **App. Vol. 1, A112.**

On or about February 5, 2018, Dr. Ahmed filed a complaint with the Office of Chief Disciplinary Counsel ("OCDC") for Respondent's lack of diligence and communication and for Respondent's misappropriation of his funds. **App. Vol. 3, A410-A421 (Ex. 7A).** On April 16, 2018, Respondent filed a written response to the complaint and included with his response an undated bill in the amount of \$4,000.00 for services rendered between May 27, 2016 and December 5, 2016. **App. Vol. 3, A422-A425 (Ex. 7B).** The bill reflected an August 16, 2016, entry for "begin draft of lawsuit." **App. Vol. 3, A424-A425 (Ex. 7B).** Respondent never provided Dr. Ahmed with the undated \$4,000.00 bill prior to the complaint being filed. **App. Vol. 1, A113-A115 (Ex. 7B).** Respondent never provided Dr. Ahmed with a draft copy of the lawsuit reflected in the undated bill. **App. Vol. 1, A115.**

## 2. Audit of Respondent's Trust Account and Operating Account

At the request of the Informant, OCDC investigator, Kelly Dillon (“Dillon”), audited Respondent’s Trust Account and Operating Account and prepared account examination spreadsheets reflecting checks, withdrawals, and deposits from March 1, 2016 to July 31, 2018 (the “Audit”). **App. Vol. 1, A145-A146; App. Vol. 2, A356-A374 (E. 5), A375-A406 (Ex. 6).** The Audit was subsequently expanded to January 31, 2014 – March 30, 2019 for the Trust Account. **App. Vol. 1, A149.**

The Audit revealed the following systematic issues with Respondent’s trust accounting practice during the Audit period: (1) Respondent did not maintain individual client ledgers for his Trust Account, (2) Respondent did not maintain a receipt and disbursement journal; and, (3) Respondent transferred funds from his Trust Account to his Operating Account without maintaining adequate records regarding the reasons for the transfers. **App. Vol. 1, A49, A56-A57.**

The Audit further revealed, with respect to Dr. Tauqir Ahmed’s case, that:

- a. The \$7,500.00 retainer check was deposited on May 31, 2016 into the Trust Account.
- b. Per Respondent’s undated billing statement (for May 26, 2016 – December 5, 2016), the unearned portion of Dr. Ahmed’s retainer was \$3,500.00.
- c. By November 4, 2016, the balance in Respondent’s Trust Account was \$1,784.01.

d. In or about November or December 2017, Respondent remitted a check in the amount of \$4,500.00 drawn on Respondent's Trust Account.

**App. Vol. 1, A152-153; App. Vol. 3, A429-A433 (Ex. 8).**

The Audit further reflected that Respondent advanced a payment to client Tim Green from the Trust Account prior to the deposit of any monies into the Trust Account on Mr. Green's behalf. **App. Vol. 1, A154-A155.** In addition, Respondent disbursed a settlement payment to Tim Green, based upon a deposit, before a reasonable period of time passed allowing the deposited funds to be actually collected by the bank in which his Trust Account was held. Specifically:

a. On November 14, 2017, Respondent remitted a check to client Tim Green in the amount of \$2,000.00 drawn on the Trust Account.

b. On June 19, 2018, Respondent deposited \$30,000.00 into the Trust Account representing settlement proceeds from his representation of client Tim Green.

c. On June 21, 2018, Respondent remitted a check to Tim Green in the amount of \$16,000.00 drawn on the Trust Account.

d. Prior to November 14, 2017, Respondent had not deposited any funds into the Trust Account on behalf of client Tim Green.

**App. Vol. 1, A154-A156.**

The Audit also reflected that Respondent deposited client settlement funds into the Trust Account on behalf of client Thomas Litel, retaining a portion of such funds to satisfy payments to third-party providers on his client's behalf, and prior to making such payments

the balance of the Trust Account fell below the amount of necessary client funds that should have been retained in the Trust Account. In particular:

- Respondent served as co-counsel to Jason Charpentier for a personal injury matter for client Thomas Litel.
- On September 20, 2017, Respondent deposited \$100,000.00 into the Trust Account representing settlement proceeds received on behalf of Thomas Litel. Respondent disbursed a portion of the settlement proceeds retaining \$23,055.43 of those funds in the Trust Account for payment to the following third parties and/or Mr. Litel: \$3,440.00 for Barnes Jewish Hospital; \$6,615.43 for Accelerated Care; and, \$13,000.00 for Momentum Funding.
- On April 6, 2018, the balance of the Trust Account fell to \$21,640.65.
- On July 5, 2018, the Accelerated Care check in the amount of \$6,615.43 posted to Respondent's Trust Account. On July 3, 2018, the Barnes Jewish Hospital check in the amount of \$2,064.00 posted to Respondent's Trust Account.

**App. Vol. 1, A157-A162.**

The Audit further reflected that Respondent deposited client funds into the Trust Account and despite retaining a portion of such funds to satisfy payments to third party

providers on his clients' behalf, such payments were never paid and/or funds due clients were never remitted by Respondent. In particular:

- a. Respondent never remitted the \$13,000.00 payment to Momentum Funding in the Thomas Litel matter or the \$1,376.00 due Mr. Litel after a negotiated reduction in his Barnes Jewish Hospital bill. **App. Vol. 1, A162.**
- b. Client Audrey Patterson
  - i. On July 21, 2017, Respondent deposited a \$25,000.00 settlement check into his Trust Account representing settlement proceeds from his representation of client Audrey Patterson.
  - ii. Respondent disbursed a portion of the settlement proceeds retaining \$3,980.00 of those funds in the Trust Account for payment to Mid America Spine & Rehab.
  - iii. Mid America Spine & Rehab was never paid from Respondent's Trust Account.

**App. Vol. 1, A165.**

3. Respondent's Representation of Brian Puszkcar

Brian Puszkcar retained Respondent for representation in a personal injury matter and a workers' compensation matter for injuries sustained during the course of employment with Southwestern Bell, stemming from the same incident in 2009. **App. Vol. 1, A52.** On or about August 16, 2012, Sedgwick Claims Management Services, Inc. (on behalf of Southwestern Bell) and Mr. Puszkcar reached a resolution on Mr. Puszkcar's workers'

compensation claim. **Id.** Sedgwick Claims Management Services, Inc. (hereinafter, “Sedgwick”) provided Respondent with notice of its subrogation claim on January 12, 2012, via a letter sent by certified mail. **Id.** Respondent acknowledged Sedgwick’s lien in an email to Sedgwick dated September 17, 2013. **Id.**

In September 2013, Respondent settled Mr. Puszkar’s personal injury claim against the third party for \$200,000.00. **Id.** Respondent disbursed the personal injury settlement proceeds, retaining \$51,220.00 of the proceeds for payment of Sedgwick’s subrogation lien. **Id.** Respondent informed Kit Trentin, of Sedgwick, on September 30, 2013 via email, that he would be sending a check for \$51,220.00 in satisfaction of its lien. **App. Vol. 1, A53.** On September 9, 2014, Heather Tobias, of Sedgwick, sent Respondent an email requesting Sedgwick’s lien payment. **Id.** On September 17, 2014, Respondent sent Heather Tobias an email stating, “[c]heck is going out today.” **Id.** By February 18, 2015, seventeen months after settlement of Puszkar’s personal injury case, Respondent had still failed to remit the subrogation payment of \$51,220.00 to Sedgwick.

The following year, Sedgwick retained the law firm of Hennessy & Roach, PC (“Hennessy & Roach”) to collect the subrogation funds from Respondent. **Id.** On February 29, 2016, Respondent represented to attorney James Hodges of Hennessy & Roach, via email, that “[y]ou’ll have the check this week....” **Id.** Respondent requested that Mr. Hodges provide a letter for Respondent’s file indicating that he was authorized to receive the check for Sedgwick. **Id.** Mr. Hodges provided Respondent with the requested letter on March 1, 2016. **Id.** Respondent thereafter failed to remit the Sedgwick subrogation payment as represented in his February 29, 2016 email.

On March 11, 2016, Hennessy & Roach, on behalf of Sedgwick, filed a cause of action against Respondent and Brian Puszkcar in the Circuit Court of the City of St. Louis, styled *Sedgwick Claims Management Services, Inc. a/s/o Southwestern Bell Telephone Company v. John Tresslar and Brian Puszkcar*, Cause No. 1622-CC005540 (the “Sedgwick Litigation”), seeking monies owed for its subrogation lien. On March 14, 2016, Respondent entered his appearance on his own behalf and also filed an Entry of Appearance on behalf of Mr. Puszkcar, as Mr. Puszkcar’s attorney. **App. Vol. 1, A54.** Respondent neither advised Mr. Puszkcar of the Sedgwick Litigation nor did he obtain consent from Mr. Puszkcar to represent him. **Id.** On March 28, 2016, Respondent filed an Answer on his own behalf and filed an Answer on behalf of Mr. Puszkcar without Mr. Puszkcar’s knowledge or consent. **Id.**

On November 23, 2016, Sedgwick filed a motion to enforce the settlement it had reached with Respondent on its subrogation claim. **App. Vol. 1, A54-A55.** On March 30, 2017, the Circuit Court entered a judgment against Respondent and Brian Puszkcar in the amount of \$51,220.00 plus costs (the “Judgment”). **App. Vol. 1, A55.** Respondent signed the Judgment on his own behalf and as Brian Puszkcar’s attorney. **App. Vol. 3, A519 (Ex. 14).** Respondent never informed Mr. Puszkcar of the Judgment entered against him. **App. Vol. 1, A221-A222.**

DISCIPLINARY HEARING TESTIMONY

1. Testimony of Dr. Tauqir Ahmed

During the disciplinary hearing, Dr. Tauqir Ahmed testified that between the winter of 2016 and the spring of 2017, he repeatedly texted, called, and emailed Respondent for the status of progress on his daughters' case. **App. Vol. 1, A104-A106.** Dr. Ahmed said that he informed Respondent via emails or text messages that the suit against his daughters' former high school was a time sensitive matter because he was applying to other private schools on behalf of his daughters. **App. Vol. 1, A107.** Therefore, it was important to resolve the wrongful suspension matter as soon as possible. **Id.**

Dr. Ahmed testified that it was not until his last meeting with Respondent on June 16, 2017, that Respondent provided him with a list of three or four potential allegations for the lawsuit notwithstanding his repeated requests for updates on Respondent's progress throughout the preceding six months. **App. Vol. 1, A136.** Dr. Ahmed testified that before their meeting ended, Respondent informed him that "the check would be in the mail in a few days." **App. Vol. 1, A108.** Dr. Ahmed received a partial refund of his retainer in November or December of 2017. **App. Vol. 1, A109.** Dr. Ahmed testified that he did not receive any billing records with the check explaining how Respondent earned the \$3,000.00 that he kept. **App. Vol. 1, A112, A114.**

2. OCDC Investigator's Testimony of the Audit Findings

During the disciplinary hearing, Ms. Dillon, the OCDC Investigator, provided detailed testimony of the Audit findings for Respondent's following clients: Tim Green; Dr. Tauqir Ahmed; Audrey Patterson; Thomas Litel; and, Brian Puszkar.

a. Client Tim Green

Tim Green had retained Respondent to represent him in a personal injury action. Ms. Dillon testified that Respondent advanced a \$2,000.00 settlement payment to Mr. Green on November 14, 2017 from Respondent's Trust Account prior to depositing any settlement funds in that account on Mr. Green's behalf. **App. Vol. 1, A154-A155.** It was not until several months later that Mr. Green's personal injury case was settled. On June 19, 2018, Respondent deposited Mr. Green's settlement check into his Trust Account and disbursed Mr. Green's share of his settlement funds two days later. **Id.** Ms. Dillon testified that Respondent disbursed funds belonging to other clients when he remitted the advance payment to Mr. Green and that Respondent risked doing the same when he disbursed Mr. Green's settlement share two days after depositing the settlement check. **App. Vol. 1, A155-A156.** Ms. Dillon stated that Respondent should have waited ten days to ensure that the funds were actually collected by his bank before disbursing Mr. Green's funds. **App. Vol. 1, A156.**

b. Client Dr. Tauqir Ahmed

Ms. Dillon testified that Respondent depleted a portion of Dr. Ahmed's funds prior to remitting Dr. Ahmed's \$4,500.00 refund in November 2017. **App. Vol. 1, A153.** Dr. Ahmed's \$7,500.00 retainer check was deposited into Respondent's Trust Account on May 31, 2016. **App. Vol. 1, A152.** By November 4, 2016, Respondent's Trust Account fell to a balance of \$1,784.01. **App. Vol. 1, A152-A153.**

Respondent's undated invoice indicates that Dr. Ahmed's refund should have only been \$3,500.00. **App. Vol. 3, A424-A425, (Ex. 7B).** Ms. Dillon testified that

Respondent's Trust Account fell to less than the amount of funds Respondent should have been holding in his Trust Account on November 4, 2016 whether Dr. Ahmed's refund was supposed to be \$4,500.00 or \$3,500.00. **App. Vol. 1, A153.**

c. Client Audrey Patterson

Ms. Dillon testified that Respondent depleted a portion of Ms. Patterson's funds prior to remitting payment to Mid America Spine & Rehab, Ms. Patterson's third-party medical provider. **App. Vol. 1, A165.** Respondent deposited Ms. Patterson's settlement check in the amount of \$25,000.00 into his Trust Account in July 21, 2017. **App. Vol. 1, A164.** Respondent disbursed payments to himself in the amount of \$7,500.00 and to the client in the amount of \$13,520.00, leaving a balance of \$3,980.00 in the Trust Account to pay Mid-America Spine & Rehab. **Id.** On August 22, 2018, Respondent's Trust Account balance fell to \$3,423.85. **Id.** At that time, Respondent had not remitted payment to Mid America Spine & Rehab. Respondent's Trust Account balance fell to less than the amount of funds Respondent should have been holding in his Trust Account on August 22, 2018. **App. Vol. 1, A165.**

d. Client Thomas Litel

Ms. Dillon testified that when she initially requested Respondent's Trust Account records for Thomas Litel, Respondent told her that Mr. Litel was not his client and that he would request the settlement summary and send it to her. **App. Vol. 1, A157.** Ms. Dillon testified she believed that Respondent's statement was false because Mr. Litel's settlement check was deposited into Respondent's Trust Account and made payable to Respondent, the client, and Jason Charpentier, another attorney. **Id.** Ms. Dillon testified that she

contacted Mr. Charpentier and requested proof of payment for Momentum Funding and for the balance owed to Barnes-Jewish Hospital (“Barnes”).<sup>2</sup> **App. Vol. 1, A157.** Mr. Charpentier, however, initially informed Ms. Dillon that he was not able to provide proof because it was Respondent who disbursed the payments. **App. Vol. 1, A158.**

Ms. Dillon testified that she was able to obtain additional documentation to facilitate her investigation of the Litel matter when Mr. Charpentier appeared before counsel for the Informant for a sworn statement on April 4, 2019. **App. Vol. 1, A159.** Ms. Dillon was also present. **Id.** Ms. Dillon testified that her investigation revealed that the settlement check was deposited into Respondent’s Trust Account on September 20, 2017. **Id.** Disbursements were thereafter made to Mr. Litel, Mr. Charpentier, and many of Mr. Litel’s medical providers. **Id.** Ms. Dillon testified that between February 2018 and October 2018, Respondent’s Trust Account fell below the amount of funds that he should have been holding in trust on behalf of Mr. Litel in each of the following months: February 2018; April 2018; July 2018; and, October 2018. **App. Vol. 1, A160-A161.** On October 19, 2018, Respondent’s Trust Account reached an all-time low of \$823.85 with the outstanding balances still due Momentum Funding in the amount of \$13,000.00 and Mr. Litel in the amount of \$1,376.00. **App. Vol. 1, A161-A162.** Ms. Dillon testified that Momentum Funding and the balance of Mr. Litel’s settlement were never paid from Respondent’s Trust

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<sup>2</sup> The original amount due Barnes was \$3,340.00. **App. Vol. 1, A200-A201.** A reduced payment in the amount of \$2,064.00 had been negotiated with Barnes leaving a balance due to Mr. Litel of \$1,374.00. **Id.**

Account. Mr. Charpentier, however, provided proof of payment to Momentum Funding and Mr. Litel for the balances due during his sworn statement on April 4, 2019 and stated that he paid them from his own funds. **App. Vol. 1, A162-A163; App. Vol. 3, A491-A492 (Ex. 11).**

e. Client Brian Puszkur

Ms. Dillon testified that her Audit revealed that there were IRS tax levies against Respondent's Operating Account. **App. Vol. 1, A166.** Ms. Dillon stated that it has been her experience that when there has been a misappropriation of client funds, that attorney might be having difficulty meeting financial obligations. **Id.** She, therefore, often checks Case.net to determine whether any judgments have been entered against the attorney being audited. **App. Vol. 1, A167.** It was during her check on Case.net that she discovered the judgment entered against Respondent and his client, Brian Puszkur, in the Sedgwick Litigation for its subrogation lien. **Id.** Ms. Dillon testified that she contacted Mr. Puszkur and asked if he was aware of the Sedgwick Litigation or the judgment. **App. Vol. 1, A169-A170.** Mr. Puszkur informed her that he was not and that he was under the belief that the funds withheld from his 2013 personal injury settlement had been paid to satisfy Sedgwick's lien. **App. Vol. 1, A170.**

f. Respondent's Trust Accounting Practice

Ms. Dillon testified that the Audit revealed the following systematic issues with Respondent's trust accounting practice for the Audit period of January 2014-March 2019: (1) Respondent did not maintain individual client ledgers for his Trust Account, (2) Respondent did not maintain a receipt and disbursement journal; and, (3) Respondent transferred funds

from his Trust Account to his Operating Account without maintaining sufficient records documenting the reasons for the transfers or to which clients the transfers related. **App. Vol. 1, A49, A56-A57.**

### 3. Testimony of John Charpentier

Mr. Charpentier testified that he contacted Respondent after learning from Ms. Dillon that there were outstanding balances due Mr. Litel and Momentum Funding. **App. Vol. 1, A202-A203.** Mr. Charpentier said that he met with Respondent at a local restaurant and told Respondent that he was aware that Momentum Funding had not been paid. **App. Vol. 1, A203.** He asked Respondent “if he could make good on it and [Respondent] said no.” **Id.** Mr. Charpentier testified that he remitted the balances owed to Momentum Funding and Mr. Litel in February 2019 with funds from his operating account. **App. Vol. 1, A204-A206.**

Mr. Charpentier said that he contacted Respondent several months later, after learning that Respondent had settled a case, and asked him about reimbursement. **App. Vol. 1, A205-A206.** Respondent reimbursed Mr. Charpentier for the payments made to Momentum Funding and Mr. Litel on September 9, 2019. **App. Vol. 1, A231.**

### 4. Respondent’s Disciplinary Hearing Testimony

Respondent provided little explanation, if any, for his lack of communication with Dr. Ahmed or for his lack of progress on Dr. Ahmed’s daughters’ wrongful expulsion case. Respondent mentioned that he was diagnosed with leukemia in 2016 for which he received chemotherapy for seven consecutive days, and that he completed treatment prior to January

1, 2017.<sup>3</sup> **App. Vol. 1, A261-A262.** Respondent also stated that he was going through some marital problems. He separated from his wife in 2014 for about six months and again in 2016 or 2017 for almost the entire year. **App. Vol. 1, A263.** They reconciled in 2018 because their son was getting married. **Id.**

Respondent stated, however, that he discussed with Dr. Ahmed “over several different conversations” the difficulty in pursuing the wrongful expulsion claim, but admitted that he did not provide Dr. Ahmed with his conclusions until the meeting in June which consisted of “three or four potential allegations” handwritten on a “legal pad.” **App. Vol. 1, A237, A279-A280, A193.**

With respect to his client, Tim Green, Respondent testified that Mr. Green contacted him and asked him for an advance due to a crisis. **App. Vol. 1, A274.** Respondent said that Mr. Green’s case was a clear liability case and that a settlement was forthcoming. **Id.** Respondent admitted that he knew that he was disbursing someone else’s funds to Mr. Green at the time of the \$2,000.00 advance. **App. Vol. 1, A274-A275.**

Respondent testified that to his knowledge all clients and third parties had been paid. **App. Vol. 1, A278.** Respondent testified that he remitted payment of \$3,980.00 to Mid-

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<sup>3</sup> Respondent stated in his May 15, 2018 supplemental response to Dr. Ahmed’s complaint that he was diagnosed with leukemia in 2017 and received chemotherapy. Specifically, Respondent’s letter to the OCDC states “[t]here was a period of time that I was unavailable to see them because I was diagnosed with leukemia last year and I had to undergo chemotherapy treatments.” **App. Vol. 3, A428.**

America Spine & Rehab, Audrey Patterson's medical provider, on January 2, 2020 and confirmed that the payment cleared his account. **App. Vol. 1, A231-A232.** Respondent testified that he reimbursed Jason Charpentier for his payments to Mr. Litel and Momentum Funding on September 9, 2019 and satisfied the Judgment for Sedgwick's lien on September 30, 2019. **App. Vol. 1, A232-A233.** A Satisfaction of Judgment was signed by Sedgwick on September 30, 2019 and filed with the court that same day. **App. Vol. 1, A232-A233, A295 (Ex. 24).**

When asked why he allowed the Judgment to be entered against Mr. Puszkas without Mr. Puszkas's knowledge, Respondent gave a non-responsive answer and stated, "if I didn't pay it, there had to be things going on with my business or my home life. It should have been paid." **App. Vol. 1, A227.** Respondent added that he was "about four years into treatment for depression" and that he knew that he should have paid the lien promptly out of the settlement funds. **Id.** Respondent added further that Mr. Puszkas was a friend of his and that he took advantage of their friendship. **Id.**

Respondent testified about additional personal and emotional problems that he had during the Audit period (including his marital issues as discussed above). Respondent mentioned (without any elaboration) that he had a son being treated for psychiatric issues. **Id.** Respondent further testified that "[his] life was a mess and that [he] let it get out of hand." **Id.** Respondent believed that his conduct did not reflect a dishonest motive but stated that it was "obviously selfish." **App. Vol. 1, A267.** Respondent also said that he was remorseful for his conduct. **App. Vol. 1, A270.**

Respondent testified about his pro bono and charitable work, his involvement with

his church and community, and his involvement in various bar associations. **App. Vol. 1, A247-A259.** Respondent testified about the recent changes he has made to his trust accounting practice. Respondent stated that he met with his current counsel for “a one hour presentation on how to handle the trust account,” that he is using new law firm practice management and accounting software, and that he had not taken on any new cases for about five or six months at the time of the disciplinary hearing. **App. Vol. 1, A265-A266.**

### **DISCIPLINARY HEARING PANEL’S DECISION**

On March 17, 2020, the Disciplinary Hearing Panel issued its decision. The Panel found nearly all the factual allegations in the Information as true and concluded that:

*(Rules 4-1.3 and 4-1.4(a))*

- Respondent is guilty of professional misconduct as a result of violating Rule 4-1.3 in that,
  - Respondent failed to diligently represent Dr. Ahmed in his potential claim for wrongful expulsion of his daughters’ case when after more than twelve months of representation Respondent failed to present Dr. Ahmed with any memorandum of his research or a draft copy of the petition despite billing Dr. Ahmed for the same.
  - Respondent failed to promptly refund the unearned portion of Dr. Ahmed’s advanced retainer fee after Dr. Ahmed terminated Respondent’s services.
- Respondent is guilty of professional misconduct as a result of violating Rule 4-1.4(a) in that Respondent failed to respond to reasonable requests for information from Dr. Ahmed regarding the status of his daughters’ case.

*(Rules 4-3.3(a)(1), 4-8.4(c), and 4-8.4(d))*

- Respondent violated Rule 4-3.3(a)(1), Rule 4-8.4(c), and Rule 4-8.4(d) when:
  - Respondent represented to the court that he was retained by Mr. Puszkas to represent him in *Sedgwick Claims Management Services, Inc. a/s/o Southwestern Bell Telephone Company v. John Tresslar and Brian Puszkas*, Cause No. 1622-CC005540, when Respondent knew that he was never authorized to represent Mr. Puszkas in that case.
  - Respondent entered his appearance on behalf of Mr. Puszkas without Mr. Puszkas's knowledge or consent and allowed a judgment to be entered against Mr. Puszkas.

*(Rule 4-1.15)*

- Respondent violated Rule 4-1.15(a)(5) when he made in excess of one hundred electronic transfers from the Trust Account to his Operating Account between March 2, 2016 and July 31, 2018 and did not document the reasons for the transfers or to which clients the transfers related.
- Respondent is guilty of professional misconduct as a result of violating Rule 4-1.15(a)(6) by making a disbursement to client Tim Green, based upon a deposit, before a reasonable period of time had passed for the funds to be actually collected by the financial institution in which his Trust Account was held.
- Respondent violated Rule 4-1.15(f) when he:
  - a. Failed to keep a receipt and disbursement journal,
  - b. Failed to keep individual client ledgers, and

- c. Failed to keep records to show why he made electronic transfers from Trust Account to his Operating Account.

*(Rule 4-8.4(c))*

- Respondent violated Rule 4-8.4(c) during his representation of clients Dr. Ahmed, Mr. Litel, Ms. Patterson, Tim Green, and Mr. Puszkas, as set forth below.
  - Respondent failed to remit payment to clients or third parties and/or depleted their share of funds prior to remitting payment (to the client or third party), thereby misappropriating Dr. Ahmed's, Mr. Litel's, and Ms. Patterson's settlement funds.
  - Respondent advanced a payment to client Tim Green from the Trust Account prior to the deposit of any settlement funds being deposited into the Trust Account on behalf of Tim Green.
  - Respondent allowed a judgment to be entered against Mr. Puszkas for non-payment of Sedgwick's subrogation lien despite having withheld funds from Mr. Puszkas's settlement for payment of the subrogation lien.
  - Respondent failed to remit payment to Sedgwick for its subrogation lien and depleted said funds from his Trust Account thereby misappropriating Mr. Puszkas's settlement funds.
  - Respondent represented to Mr. Litel, Ms. Patterson, and Mr. Puszkas in their settlement statements that he was withholding a portion of their settlement funds in trust to pay third-party creditors and/or lien holders but failed to do so and

knowingly converted Mr. Litel's and Mr. Puszkar's funds when the balance of his Trust Account fell below the amount he was to have held in trust.

**App. Vol. 3, A555-A577.**

The Panel found overwhelming evidence that Respondent misappropriated more than \$65,000.00 belonging to clients Brian Puszkar and Thomas Litel between September 2013 and July 31, 2018, and, therefore, disbarment was the presumptive sanction for Respondent's gross misconduct. **App. Vol. 3, A573.**

The Panel went on to consider whether, under the *ABA Standards*, Respondent's testimony of mitigating factors justified a reduction in the degree of discipline to be imposed. During the hearing, Respondent testified about his personal and emotional problems. **App. Vol. 1, A261-A262.** Respondent testified that he was diagnosed with depression in 2009 and has been on medication since that time. **App. Vol. 1, A260-A262.** Respondent also testified that he was diagnosed with leukemia in 2016 for which he was treated with seven days of chemotherapy. **App. Vol. 1, A260-A262.** Respondent testified about periods of separation with his wife but pointed out that they reconciled each time and have now been married for 32 years. **App. Vol. 1, A259, A262.** Respondent also briefly mentioned a son who had been treated for psychiatric issues. **App. Vol. 1, A263.**

Evidence was presented during the hearing that all clients and third parties were eventually paid. The Panel specifically noted that it was only after Dr. Ahmed threatened to file a bar complaint that Respondent refunded a portion of Dr. Ahmed's advanced retainer, and the payments in the Litel, Patterson, and Puszkar matters were not made until several months after the Information was filed. **App. Vol. 3, A574.** The Panel did not

consider such untimely payments to be mitigating factors under ABA *Standard* 9.32(d) (timely good faith effort to make restitution or to rectify consequences of misconduct). The Panel stated that “[it] is not persuaded that Respondent’s payments to his client and third parties months after the Information was filed (or upon the threat of a bar complaint) constitute a good faith effort where such funds were intentionally misappropriated.” **Id.**

Respondent testified that his none of his conduct was committed with a dishonest motive. **App. Vol. 1, A267.** The Panel disagreed finding that Respondent knowingly misappropriated \$51,220.00 of Mr. Puszkas’s money instead of satisfying the subrogation lien owed to Sedgwick. **App. Vol. 1, A574.** The Panel noted that over the course of two years, Respondent made repeated representations to Sedgwick such as, “[c]heck is going out today and “[y]ou’ll have the check this week.” **App. Vol. 3, A574-A575.**

The Panel considered, as mitigating evidence under ABA *Standard* 9.32(g), Respondent’s character and reputation through his own testimony of his pro bono and charitable work, his involvement with his church and community, and his involvement in various bar associations. **App. Vol. 1, A247-A259.** The Panel, however, discounted Respondent’s testimony of remorse as a mitigating factor under ABA *Standard* 9.32(l) as minimal evidence of Respondent’s purported remorse was offered during the hearing. Respondent’s counsel elicited the following testimony from Respondent during the disciplinary hearing:

**Q:** And are you remorseful about what’s happened?

**A:** Very much so. I like what I do. I think I’m a good lawyer.

**App. Vol. 1, A270.**

The Panel did not find Respondent's sparse testimony of remorse credible or even remotely persuasive. **App. Vol. 3, A575.** As additional mitigating factors, the Panel considered Respondent's "reasonable" cooperativeness during the disciplinary process, under ABA *Standard 9.32(e)*, and the remoteness of Respondent's prior disciplinary which history predates 2009, under *Standard 9.32(m)*. **Id.**

The Panel found that none of the mitigating factors were sufficiently compelling to justify a downward departure from the presumptive discipline of disbarment, but noted that the following aggravating factors, under ABA *Standard 9.22*, that reinforced its decision that the appropriate discipline was disbarment: Respondent's prior disciplinary history (ABA *Standard 9.22(a)*); Respondent engaged in a pattern of misconduct (ABA *Standard 9.22(c)*); Respondent also violated multiple rules of professional misconduct during the representation of his clients as discussed above (ABA *Standard 9.22(d)*); and Respondent's 27 years of experience in the practice of law at the beginning of the OCDC investigator's audit period (ABA *Standard 9.22(i)*). **App. Vol. 3, A575-A577.**

The Panel further found that Respondent's motives were dishonest as noted above and that Respondent exhibited selfish motives by his own admission (ABA *Standard 9.22(b)*). Respondent testified, in part, during the hearing:

**Q:** Do you believe that the activities that have been discussed during this hearing reflect a dishonest or selfish motive on your part?

**A:** I don't think they were – I don't think I was trying to be dishonest. It was definitely selfish on my part.

**App. Vol. 1, A267.**

As a further aggravating factor, the Panel found that Respondent was dishonest during the course of the disciplinary proceedings (ABA *Standard* 9.22(f)). Respondent's statement to Ms. Dillon, the OCDC investigator, during the course of the disciplinary investigative process, that Mr. Litel was not his client, was clearly false. **App. Vol. 3, A576-A577.** Respondent entered his appearance on behalf of Mr. Litel in the litigation and was also named on the settlement check as one of Mr. Litel's attorneys. **Id.**

On March 23, 2020, the Disciplinary Hearing Panel recommended that Respondent be disbarred. On April 1, 2020, Informant accepted the decision. On April 21, 2020, Respondent rejected the decision.

**POINTS RELIED ON**

**I.**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE RESPONDENT ENGAGED IN PROFESSIONAL MISCONDUCT WHILE REPRESENTING TAUQIR AHMED IN THAT:**

- 1. RESPONDENT VIOLATED RULE 4-1.3 BY FAILING TO DILIGENTLY REPRESENT TAUQIR AHMED IN HIS POTENTIAL CLAIM AGAINST HIS DAUGHTERS' HIGH SCHOOL FOR WRONGFUL EXPULSION WHEN AFTER MORE THAN TWELVE MONTHS OF REPRESENTATION RESPONDENT FAILED TO PRESENT TAUQIR AHMED WITH ANY SIGNIFICANT PROGRESS ON HIS DAUGHTERS' CASE OTHER THAN A HANDWRITTEN LIST OF THREE OR FOUR POTENTIAL ALLEGATIONS DESPITE BILLING TAUQIR AHMED FOR "BEGIN DRAFT OF THE LAWSUIT" WHEN NO SUCH DRAFT WAS EVER PROVIDED TO TAUQIR AHMED;**
- 2. RESPONDENT FAILED TO PROMPTLY REFUND THE UNEARNED PORTION OF TAUQIR AHMED'S ADVANCED RETAINER FEE AFTER RESPONDENT'S SERVICES WERE TERMINATED IN VIOLATION OF RULE 4-1.3; AND,**
- 3. RESPONDENT FAILED TO RESPOND TO REASONABLE**

**REQUESTS FOR INFORMATION FROM TAUQIR AHMED  
REGARDING THE STATUS OF HIS DAUGHTERS' CASE  
AND REFUND IN VIOLATION OF RULE 4-1.4(a).**

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

*In re Ehler*, 319 S.W.3d 442 (Mo. banc 2010)

*In re Farris*, 472 S.W. 3d 549 (Mo. banc 2015)

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

ABA/BNA Lawyers Manual on Professional Conduct, Lawyer Client Relationship  
§31:501 (2005)

Rule 4-1.3, Rules of Professional Conduct

Rule 4-1.4(a), Rules of Professional Conduct

**POINTS RELIED ON**

**II.**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE RESPONDENT ENGAGED IN THE FOLLOWING PROFESSIONAL MISCONDUCT RELATING TO HIS FORMER CLIENT, BRIAN PUSZKAR, IN THAT:**

**RESPONDENT VIOLATED RULES 4-3.3(a)(1) AND 4-8.4(d) WHEN HE FALSELY REPRESENTED TO THE COURT THAT HE WAS AUTHORIZED BY BRIAN PUSZKAR TO REPRESENT HIM AS A NAMED DEFENDANT IN THE LAWSUIT FILED BY SEDGWICK CLAIMS MANAGEMENT SERVICES, INC. A/S/O SOUTHWESTERN BELL TELEPHONE COMPANY V. JOHN TRESSLAR AND BRIAN PUSZKAR FOR RECOVERY OF ITS SUBROGATION LIEN WHERE RESPONDENT FAILED TO REMIT THE LIEN PAYMENT TO SEDGWICK FROM THE FUNDS THAT RESPONDENT WITHHELD FROM BRIAN PUSZKAR'S SETTLEMENT TO PAY THE LIEN; AND,**

- 1. RESPONDENT VIOLATED RULE 4-8.4(c) WHEN RESPONDENT ENTERED HIS APPEARANCE ON BEHALF OF BRIAN PUSZKAR WITHOUT BRIAN PUSZKAR'S KNOWLEDGE OR CONSENT AND ALLOWED A JUDGMENT TO BE ENTERED AGAINST BRIAN PUSZKAR**

**DESPITE HAVING WITHHELD FUNDS FROM BRIAN  
PUSZKAR'S SETTLEMENT TO PAY SEDGWICK'S  
SUBROGATION LIEN.**

Rule 4-3.3(a), Rules of Professional Conduct

Rule 4-8.4(c), Rules of Professional Conduct

Rule 4-8.4(d), Rules of Professional Conduct

**POINTS RELIED ON**

**III.**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE RESPONDENT VIOLATED RULE 4-1.15 IN THAT:**

- 1. RESPONDENT MADE MORE THAN ONE HUNDRED ELECTRONIC TRANSFERS FROM THE TRUST ACCOUNT TO HIS OPERATING ACCOUNT BETWEEN JULY 2014 AND MARCH 2019 WITHOUT DOCUMENTING THE REASONS FOR THE TRANSFERS OR TO WHICH CLIENTS THE TRANSFERS RELATED IN VIOLATION OF RULE 4-1.15(a)(5);**
- 2. RESPONDENT MADE A DISBURSEMENT TO CLIENT TIM GREEN, BASED UPON A DEPOSIT, BEFORE A REASONABLE PERIOD OF TIME HAD PASSED FOR THE FUNDS TO BE ACTUALLY COLLECTED BY THE FINANCIAL INSTITUTION IN WHICH HIS TRUST ACCOUNT IS HELD IN VIOLATION OF RULE 4-1.15(a)(6); AND,**
- 3. RESPONDENT FAILED TO KEEP OR HAVE THE FOLLOWING REQUIRED TRUST ACCOUNTING RECORDS IN VIOLATION OF RULE 4-1.15(f): A RECEIPT AND DISBURSEMENT JOURNAL; INDIVIDUAL CLIENT**

**LEDGERS; AND RECORDS TO SHOW WHY HE MADE  
ELECTRONIC TRANSFERS FROM TRUST ACCOUNT TO  
HIS OPERATING ACCOUNT.**

Rule 4-1.15(a)(5), Rules of Professional Conduct

Rule 4-1.15(a)(6), Rules of Professional Conduct

Rule 4-1.15(f), Rules of Professional Conduct

**POINTS RELIED ON**

**IV.**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE THE RESPONDENT VIOLATED RULE 4-8.4(c), IN THAT:**

- 1. RESPONDENT DEPLETED CLIENT SETTLEMENT FUNDS AND/OR THIRD-PARTY FUNDS PRIOR TO REMITTING PAYMENT TO RESPONDENT'S CLIENTS OR TO THIRD PARTIES; AND;**
- 2. RESPONDENT ADVANCED A PAYMENT TO CLIENT TIM GREEN FROM THE TRUST ACCOUNT PRIOR TO THE DEPOSIT OF ANY SETTLEMENT FUNDS BEING DEPOSITED INTO THE TRUST ACCOUNT ON BEHALF OF TIM GREEN.**

*In re Abbey*, 169 A.3d 865 (D.C. 2017)

*In re Ehler*, 319 S.W.3d 442 (Mo. banc 2010)

*In re Schaeffer*, 824 S.W.2d 1 (Mo. banc 1992)

Rule 4-8.4(c), Rules of Professional Conduct

**POINTS RELIED ON**

**V.**

**THE SUPREME COURT SHOULD DISBAR RESPONDENT BECAUSE THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS, CASE LAW, AND AGGRAVATING FACTORS SUGGEST THAT DISBARMENT IS THE APPROPRIATE DISCIPLINE.**

*In re Belz*, 258 S.W. 3d 38 (Mo. banc 2008)

*In re Ehler*, 319 S.W.3d 442 (Mo. banc 2010)

*In re Farris*, 472 S.W.3d 549 (Mo. banc 2015)

*In re Wiles*, 107 S.W.3d 228 (Mo. banc 2003)

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

Rule 4-8.4(c), Rules of Professional Conduct

**ARGUMENT**

**I.**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT’S LICENSE BECAUSE RESPONDENT ENGAGED IN PROFESSIONAL MISCONDUCT WHILE REPRESENTING TAUQIR AHMED IN THAT:**

- 1. RESPONDENT VIOLATED RULE 4-1.3 BY FAILING TO DILIGENTLY REPRESENT TAUQIR AHMED IN HIS POTENTIAL CLAIM AGAINST HIS DAUGHTERS’ HIGH SCHOOL FOR WRONGFUL EXPULSION WHEN AFTER MORE THAN TWELVE MONTHS OF REPRESENTATION RESPONDENT FAILED TO PRESENT TAUQIR AHMED WITH ANY SIGNIFICANT PROGRESS ON HIS DAUGHTERS’ CASE OTHER THAN A HANDWRITTEN LIST OF THREE OR FOUR POTENTIAL ALLEGATIONS DESPITE BILLING TAUQIR AHMED FOR “BEGIN DRAFT OF THE LAWSUIT” WHEN NO SUCH DRAFT WAS EVER PROVIDED TO TAUQIR AHMED;**
- 2. RESPONDENT FAILED TO PROMPTLY REFUND THE UNEARNED PORTION OF TAUQIR AHMED’S ADVANCED RETAINER FEE AFTER RESPONDENT’S SERVICES WERE TERMINATED IN VIOLATION OF RULE 4-1.3; AND,**
- 3. RESPONDENT FAILED TO RESPOND TO REASONABLE**

**REQUESTS FOR INFORMATION FROM TAUQIR AHMED  
REGARDING THE STATUS OF HIS DAUGHTERS' CASE  
AND REFUND IN VIOLATION OF RULE 4-1.4(a).**

1. Standard of Review

Professional misconduct is established by a preponderance of the evidence. *In re Coleman*, 295 S.W. 3d 857, 863 (Mo. banc. 2009). This Court reviews the evidence de novo and reaches its own conclusion of law. *Id.* In matters of attorney discipline, the disciplinary panel's decision is advisory. *In re Farris*, 472 S.W.3d 549, 557 (Mo. banc 2015). An attorney must comply with the Rules of Professional Conduct as set forth in Supreme Court Rule 4 as a condition of retaining his license. *In re Shelhorse*, 147 S.W.3d 79, 80 (Mo. banc 2004). Violation of the Rules of Professional Conduct by an attorney is grounds for discipline. *Id.*

2. Violation of Rule 4-1.3

Rule 4-1.3 provides that “[a] lawyer shall act with reasonable diligence and promptness in representing a client.” Rule 4-1.3, see also, *In re Crews*, 159 S.W.3d 355, 359 (Mo. banc 2005).

Tauqir Ahmed, M.D., retained Respondent on or about May 26, 2016 to pursue a cause of action against his daughters' former high school for wrongful expulsion. **App. Vol. 1, A42.** During the latter part of 2016, Dr. Ahmed began trying to reach Respondent via telephone, email and/or text messages regarding Respondent's progress on his daughters' case. **App. Vol. 1, A42, A105-A107.** In his telephone, email and/or text messages, Dr. Ahmed, advised Respondent that he and his wife were applying to other

private high schools for their daughters for the upcoming third quarter and that time was of the essence to resolve the expulsion matters. **App. Vol. 1, A105.** Between November of 2016 and the spring of 2017, Dr. Ahmed made numerous unsuccessful attempts via text, telephone, or email to reach Respondent regarding the status of the lawsuit. **App. Vol. 1, A42, A105-A107.**

Dr. Ahmed finally reached Respondent in the spring of 2017 and requested an in-person meeting with Respondent. **App. Vol. 1, A106.** That meeting took place on June 16, 2017. **Id.** During the meeting, Dr. Ahmed requested that Respondent provide him with Respondent's "work product and any progress on the lawsuit." **Id.** Respondent provided Dr. Ahmed with "the face sheet of the case" that contained the names of the parties to the lawsuit and some handwritten notes of potential allegations. **App. Vol. 1, A107, A277-A281, A283.** Seeing little to no progress on the case, Dr. Ahmed terminated Respondent's services and requested his client file and a refund. **App. Vol. 1, A107.** Respondent told him that the check would be "in the mail" in a few days. **App. Vol. 1, A108.**

Over the next several months, Dr. Ahmed contacted Respondent on multiple occasions via email, text, and telephone inquiring about the status of his refund. **App. Vol. 1, A109.** In August or September 2017, Respondent replied to a text message from Dr. Ahmed stating that the check was "in the mail." **App. Vol. 1, A110.**

On November 10, 2017, Dr. Ahmed sent Respondent a letter via certified mail, return receipt requested. **App. Vol. 1, A111; App. Vol. 3, A420-A421 (Ex. 7A).** In the letter, Dr. Ahmed stated that "[t]his is our last attempt to resolve this amicably." **Id.** Dr. Ahmed informed Respondent that if they were unable to do so, he would report the matter

to the Office of Chief Disciplinary Counsel. **Id.** In or about November or December 2017, Respondent sent a refund check in the amount of \$4,500.00 to Dr. Ahmed but provided no billing statements or invoices detailing the services rendered for the purported earned fee. **App. Vol. 1, A112.**

Dr. Ahmed filed a complaint with the OCDC on February 5, 2016. **App. Vol. 3, A410-A421 (Ex. 7A).** Respondent filed a written response to the complaint and included an undated bill in the amount of \$4,000.00, at Respondent's hourly rate of \$250.00, for services rendered between May 27, 2016 and December 5, 2016. **App. Vol. 3, A422-A425 (Ex. 7A).** The bill reflected a four hour time entry for May 31, 2016, with the description "research lawsuit" and a one hour time entry on August 16, 2016 with the description "begin draft of lawsuit." **App. Vol. 3, A424-A425 (Ex. 7A).** Dr. Ahmed was not provided with the August bill prior to his receipt of Respondent's response to his complaint. **App. Vol. 1, A114.** Dr. Ahmed never received a copy of the draft lawsuit for which he was billed. **App. Vol. 1, A115.**

Respondent admitted in his Answer to the Information and during the hearing that he received Dr. Ahmed's telephone and text messages inquiring about the status of his daughters' case and the status of his refund. **App. Vol. 1, A42-A43, A269.** Respondent offered no explanation for his failure to diligently respond to Dr. Ahmed's inquiries. Respondent mentioned, however, that he was diagnosed with leukemia in 2016, for which he received one week of chemotherapy, and that he had some marital problems in 2016 or 2017. **App. Vol. 1, A259, A260-A263.** Respondent also testified that he discussed with Dr. Ahmed "over several different conversations" the difficulty in pursuing his claim for

wrongful expulsion, but admitted that he did not provide Dr. Ahmed with his conclusions that consisted of “some handwritten notes listing three or four potential allegations” on a “legal pad” until their last meeting in June 2017. **App. Vol. 1, A237, A277-281, 283.**

Respondent violated Rule 4-1.3 by failing to diligently represent Dr. Ahmed in pursuing a claim against his daughters’ high school. After more than twelve months of representation, Respondent’s only progress on the lawsuit provided to Dr. Ahmed consisted of the information sheet for the case and a handwritten list of three or four potential allegations on a legal pad. Respondent billed Dr. Ahmed for “beginning to draft the lawsuit” but never provided Dr. Ahmed the draft copy.

Respondent also violated Rule 4-1.3 when he delayed refunding a portion of Dr. Ahmed’s advanced retainer fee until five months after Respondent’s termination, and only after Dr. Ahmed threatened to file a bar complaint.

### 3. Violation of Rule 4-1.4(a)

Rule 4-1.4(a)(1) requires a lawyer to “keep the client reasonably informed about the status of the matter.” Keeping a client informed entails responding to client telephone calls and letters. ABA/BNA Lawyers Manual on Professional Conduct, *Lawyer Client Relationship* § 31:501 (2005). “Communication with a client is essential to maintain a productive attorney-client relationship.” *In re Ehler*, 319 S.W.3d 442, 449 (Mo. banc 2010).

Respondent admitted in his answer to the complaint and during the hearing that he received several calls and text messages from Dr. Ahmed over several months requesting information about the status of the lawsuit and his refund, and that he did not timely

respond to Dr. Ahmed's requests. **App. Vol. 1, A42-A43, A269.** By his own admission, Respondent violated Rule 4-1.4(a) by failing to promptly comply with Dr. Ahmed's reasonable requests for information regarding the status of his daughters' lawsuit and his refund.

**ARGUMENT**

**II.**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE RESPONDENT ENGAGED IN THE FOLLOWING PROFESSIONAL MISCONDUCT RELATING TO HIS FORMER CLIENT, BRIAN PUSZKAR, IN THAT:**

- 1. RESPONDENT VIOLATED RULES 4-3.3(a)(1) AND 4-8.4(d) WHEN HE FALSELY REPRESENTED TO THE COURT THAT HE WAS AUTHORIZED BY BRIAN PUSZKAR TO REPRESENT HIM AS A NAMED DEFENDANT IN THE LAWSUIT FILED BY SEDGWICK CLAIMS MANAGEMENT SERVICES, INC. A/S/O SOUTHWESTERN BELL TELEPHONE COMPANY V. JOHN TRESSLAR AND BRIAN PUSZKAR FOR RECOVERY OF ITS SUBROGATION LIEN WHERE RESPONDENT FAILED TO REMIT THE LIEN PAYMENT TO SEDGWICK FROM THE FUNDS THAT RESPONDENT WITHHELD FROM BRIAN PUSZKAR'S SETTLEMENT TO PAY THE LIEN; AND,**
- 2. RESPONDENT VIOLATED RULE 4-8.4(c) WHEN RESPONDENT ENTERED HIS APPEARANCE ON BEHALF OF BRIAN PUSZKAR WITHOUT BRIAN PUSZKAR'S KNOWLEDGE OR CONSENT AND ALLOWED A**

**JUDGMENT TO BE ENTERED AGAINST BRIAN PUSZKAR  
DESPITE HAVING WITHHELD FUNDS FROM BRIAN  
PUSZKAR'S SETTLEMENT TO PAY SEDGWICK'S  
SUBROGATION LIEN.**

Rule 4-3.3(a)(1) provides that “[a] lawyer shall not knowingly make a false statement of fact to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.” Rule 4-3.3(a)(1). Rule 4-8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Rule 4-8.4(d) states that “[i]t is professional misconduct for a lawyer to ... engage in conduct that is prejudicial to the administration of justice.” Rule 4-8.4(d).

Respondent represented Brian Puszkcar in a worker’s compensation matter and a personal injury matter arising from the same incident. **App. Vol. 1, A52.** Mr. Puszkcar settled his workers’ compensation claim with Sedgwick Claims Management Services, Inc. (“Sedgwick”) on August 16, 2012. **Id.** Sedgwick provided Respondent with notice of its subrogation lien on Puszkcar’s third-party injury case. **Id.**

Mr. Puszkcar’s third-party personal injury case was settled in September 2013 for \$200,000.00. **Id.** On September 30, 2013, Respondent emailed Kit Trentin, the Sedgwick Claims Recovery Examiner, that he would be sending Sedgwick a check in the amount of \$51,220.00 in satisfaction of its subrogation lien. **App. Vol. 1, A53.** Respondent withheld that amount from Mr. Puszkcar’s personal injury settlement disbursement and informed Mr.

Puszkar that the Sedgwick lien would be satisfied from those withheld funds. **App. Vol. 1, A52; App. Vol. 3, A520 (Ex. 15).**

On March 11, 2016, after Respondent's continued failure to remit payment, Sedgwick filed a cause of action against Respondent and Brian Puszkar, seeking monies owed for its subrogation lien. **App. Vol. 1, A54.** Within five days of the filing of the lawsuit, Respondent entered his appearance on his own behalf and filed an Entry of Appearance on behalf of Mr. Puszkar, representing to the court that he was Mr. Puszkar's attorney. **Id.** Respondent also filed answers to Sedgwick's Petition on his behalf and on behalf of Mr. Puszkar. **Id.**

Sedgwick ultimately filed a Motion to Enforce Settlement on November 23, 2016, and noticed the same up for a hearing. **App. Vol. 1, A54.** On March 30, 2017, Respondent appeared in court on his behalf and on behalf of Mr. Puszkar for Sedgwick's motion hearing. **App. Vol. 3, A553 (Ex. 15).** The Court entered a judgment against Respondent and Mr. Puszkar in the amount of \$51,220.00, plus costs. **App. Vol. 1, A55.**

During the disciplinary hearing, Respondent testified that he and Mr. Puszkar were friends and that he took advantage of their friendship. **App. Vol. 1, A227.** Respondent admitted that he never advised Mr. Puszkar of the pending litigation, that he never obtained consent from Mr. Puszkar to represent him, and that he never advised Mr. Puszkar that a court entered a judgement against him because Respondent spent the \$51,220.00 that he withheld from Mr. Puszkar's settlement (to pay Sedgwick lien) in 2013. **App. Vol. 1, A219-A222.** Respondent's actions are the very essence of deceitful and dishonest conduct and constituted violations of Rule 4-8.4(c).

Further, because Respondent knew that he had no authorization to represent Mr. Puszkas, Respondent's misrepresentations to court that he was Mr. Puszkas's attorney by filing an Entry of Appearance and an Answer to the Petition, and by appearing in court as Mr. Puszkas's attorney for the motion hearing were made knowingly and with the intent to deceive the court in violation of Rule 4-3.3(a)(1). Such intentional misconduct perpetrated upon the court for more than a year supports an additional violation for conduct prejudicial to the administration of justice in violation of Rule 4-8.4(d).

**ARGUMENT**

**III.**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE RESPONDENT VIOLATED RULE 4-1.15 IN THAT:**

- 1. RESPONDENT MADE MORE THAN ONE HUNDRED ELECTRONIC TRANSFERS FROM THE TRUST ACCOUNT TO HIS OPERATING ACCOUNT BETWEEN JULY 2014 AND MARCH 2019 WITHOUT DOCUMENTING THE REASONS FOR THE TRANSFERS OR TO WHICH CLIENTS THE TRANSFERS RELATED IN VIOLATION OF RULE 4-1.15(a)(5);**
- 2. RESPONDENT MADE A DISBURSEMENT TO CLIENT TIM GREEN, BASED UPON A DEPOSIT, BEFORE A REASONABLE PERIOD OF TIME HAD PASSED FOR THE FUNDS TO BE ACTUALLY COLLECTED BY THE FINANCIAL INSTITUTION IN WHICH HIS TRUST ACCOUNT IS HELD IN VIOLATION OF RULE 4-1.15(a)(6); AND,**
- 3. RESPONDENT FAILED TO KEEP OR HAVE THE FOLLOWING REQUIRED TRUST ACCOUNTING RECORDS IN VIOLATION OF RULE 4-1.15(f): A RECEIPT AND DISBURSEMENT JOURNAL; INDIVIDUAL CLIENT**

**LEDGERS; AND RECORDS TO SHOW WHY HE MADE  
ELECTRONIC TRANSFERS FROM TRUST ACCOUNT TO  
HIS OPERATING ACCOUNT.**

1. Violation of subsection (a)(5) of Rule 4-1.15

Rule 4-1.15(a)(5) provides that withdrawals from a trust account shall be made only by check payable to a named payee, and not to cash, or by authorized electronic transfer.

The Trust Account Audit exhibit spreadsheet revealed that Respondent made more than one hundred electronic transfers from the Trust Account to the Operating Account between July 2014 and March 2019. **App. Vol. 2, A356-A374 (Ex. 5)**. Respondent admitted during the hearing that he did not have all the records documenting the electronic withdrawals and that the records that he did provide to Ms. Dillon “certainly weren’t adequate.” **App. Vol. 1, A223**.

Respondent’s failure to document the reasons for the more than one hundred transfers from his Trust Account to his Operating Account or to which clients the transfers related during the Audit period violated Rule 4-1.15(a)(5).

2. Violation of subsection (a)(6) of Rule 4-1.15

Rule 4-1.15(a)(6) provides that a lawyer shall not make a disbursement based upon a deposit “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.” Rule 4-1.15(a)(6).

Ms. Dillon testified that her Audit revealed that Respondent deposited a settlement check into his Trust Account on June 19, 2018 for client Tim Green and that he disbursed the client’s share of the settlement two days later. **App. Vol. 1, A155-A156**. Ms. Dillon

testified that attorneys should wait approximately ten (10) days after the deposit before making a disbursement to ensure that the funds are good funds in order to avoid the risk of drawing upon another client's funds before the banking institution has had time to collect the deposited funds. **App. Vol. 1, A156.**

Respondent violated Rule 4-1.15(a)(6) when he failed to wait until a reasonable period of time had passed to allow the settlement funds to be actually collected by his bank before disbursing Mr. Green's settlement check.

### 3. Violation of subsection (f) of Rule 4-1.15

Rule 4-1.15(f) provides that an attorney shall keep complete trust account records. It further provides that complete records shall include, among other things,

- a. A receipt and disbursement journal,
- b. Individual client ledgers, and
- c. Records of all electronic transfers from client trust accounts.

Respondent violated Rule 4-1.15(f) when he:

- a. Failed to keep a receipt and disbursement journal,
- b. Failed to keep individual client ledgers, and
- c. Failed to keep records to show why he made electronic transfers from Trust Account to his Operating Account.

Respondent admitted in his answer to the complaint and during the hearing that he failed to maintain adequate records of his electronic transfers, a receipt and disbursement journal, and individual client ledgers. **App. Vol. 1, A222-A223.** Respondent's admitted failure to maintain the required trust accounting records is a violation of Rule 4-1.15(f).

**ARGUMENT**

**IV.**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT’S LICENSE BECAUSE THE RESPONDENT VIOLATED RULE 4-8.4(c), IN THAT:**

- 1. RESPONDENT DEPLETED CLIENT SETTLEMENT FUNDS AND/OR THIRD-PARTY FUNDS PRIOR TO REMITTING PAYMENT TO RESPONDENT’S CLIENTS OR TO THIRD PARTIES; AND,**
- 2. RESPONDENT ADVANCED A PAYMENT TO CLIENT TIM GREEN FROM THE TRUST ACCOUNT PRIOR TO THE DEPOSIT OF ANY SETTLEMENT FUNDS BEING DEPOSITED INTO THE TRUST ACCOUNT ON BEHALF OF TIM GREEN.**

Rule 4-8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Converting client funds necessarily involves deceit and misrepresentation. *In re Ehler*, 319 S.W. 3d 442, 450 (Mo. banc 2010).

**1. Respondent Depleted Client Settlement Funds and/or Third-Party Funds Prior to Remitting Payment to Respondent’s Clients or to Third Parties**

There is no dispute in this case that Respondent depleted the funds of Thomas Litel, Dr. Tauqir Ahmed, Brian Puszkar, and Audrey Patterson. For each of these clients, Respondent’s Trust Account balance fell below the amount of funds that he should have

been holding in trust. When an attorney deposits client funds into an account used by the attorney for his own purpose, and particularly when the account balance is reduced to an amount less than the amount of the funds being held for the client, it is characteristic of misappropriation. *In re Schaeffer*, 824 S.W.2d 1, 5 (Mo. banc 1992).

a. Client Thomas Litel

Thomas Litel's personal injury settlement payment was deposited into Respondent's Trust Account on September 20, 2017. **App. Vol. 1, A159.** Over the course of the next several months, payments were disbursed to Mr. Charpentier, Mr. Litel, and to several of Mr. Litel's medical providers. **App. Vol. 1, A159-A161.**

Ms. Dillon testified that between February 2018 and October 2018, Respondent's Trust Account fell below the amount of funds that he should have been holding in trust for Mr. Litel in each of the following months: February 2018; April 2018; July 2018; and, October 2018. **App. Vol. 1, A160-A161.** On October 19, 2018, Respondent's Trust Account reached an all-time low of \$823.85 with outstanding balances still due Momentum Funding in the amount of \$13,000.00 and Barnes-Jewish in the amount of \$1,376.00. **App. Vol. 1, A161-A162.** Ms. Dillon testified the balance due Momentum Funding and the balance due Mr. Litel (after the reduction of the Barnes bill) were never paid from Respondent's Trust Account. **App. Vol. 1, A162-A163.**

Respondent misappropriated a portion of Mr. Litel's funds where Respondent never paid the balance due Momentum Funding and the balance due Mr. Litel from his Trust Account despite withholding the funds from Mr. Litel's personal injury settlement disbursement for payment of the same.

b. Client Brian Puszkar

Brian Puszkar's \$200,000.00 personal injury settlement was deposited into Respondent's Trust Account via wire transfer prior to the January 31, 2014 commencement date of Respondent's Trust Account Audit. **App. Vol. 1, A168.** Respondent disbursed the Mr. Puszkar's share and retained \$51,220.00 for the purpose of paying the Sedgwick lien. **App. Vol. 1, A52.**

Respondent testified that he became aware several months after the settlement check had been deposited that he had been taking Mr. Puszkar's money and had not paid the lien. **App. Vol. 1, A276.** Respondent testified:

As I look back on it, I think probably several months later I realized I had been taking that money, I hadn't paid it, and then it's like where I'm going to get the money to pay this off? So, it was not something that I was intending to do, it happened. I can't explain it.

**App. Vol. 1, A276-A277.**

Respondent misappropriated Mr. Puskar's funds when he failed to pay the subrogation lien after withholding \$51,220.00 from Mr. Puszkar's settlement and, by his own admission, started "taking" Mr. Puskar's money.

c. Client Tauqir Ahmed

Dr. Ahmed's \$7,500.00 retainer check was deposited into Respondent's Trust Account on May 31, 2016. **App. Vol. 1, A152-A153.** By November 4, 2016, Respondent's Trust Account balance fell to \$1,784.00. **App. Vol. 1, A152.**

A year later, Respondent refunded \$4,500.00 of Dr. Ahmed's retainer in November or December 2017. Respondent's undated invoice, however, indicated that Dr. Ahmed's refund should have only been \$3,500.00. **App. Vol. 3, A424-A425, (Ex. 7B)**. Respondent's Trust Account fell to less than the amount of funds Respondent should have been holding in his Trust Account on November 4, 2016 whether Dr. Ahmed's refund was supposed to be \$4,500.00 or \$3,500.00. **App. Vol. 1, A153**.

Ms. Dillon testified that Respondent had misappropriated a portion of Dr. Ahmed's funds by November 4, 2016, when Respondent's Trust Account balance fell to \$1,784.00. **App. Vol. 1, A153**. During the hearing, when asked if Respondent had already spent or transferred Dr. Ahmed's money from his trust by November 4, 2016, Respondent answered: "It appears I had. I honestly don't recall but -- Ms. Dillon's papers indicate that and I can't dispute anything she has." **App. Vol. 1, A282**.

d. Client Audrey Patterson

Audrey Patterson's settlement funds were deposited on July 21, 2017 in the amount of \$25,000.00. **App. Vol. 1, A164**. Respondent retained \$3,980.00 of the disbursement to pay Ms. Patterson's third-party medical provider, Mid America Spine & Rehab. **App. Vol. 1, A164-A165**. On August 22, 2018, Respondent's Trust Account balance fell to \$3,423.85 prior to remitting payment to Mid America Spine & Rehab. It was not until January 2, 2020, that Respondent remitted payment to Mid-America Spine & Rehab. **App. Vol. 1, A268, A294 (Ex. 23)**. Ms. Dillon testified that Respondent misappropriated a portion of Ms. Patterson's where his Trust Account fell below the amount of funds it should have held in trust for Ms. Patterson. **App. Vol. 1, A165**.

### 3. Client Tim Green

Ms. Dillon testified that her Audit revealed that Respondent remitted an advance settlement payment to client Tim Green on November 14, 2017 from the Trust Account when the Trust Account contained none of Green's funds. **App. Vol. 1, A154-A155.** Green's settlement check was not deposited into Respondent's Trust Account until June 19, 2018. **Id.** Ms. Dillon testified that Respondent was disbursing other client funds to Mr. Green at the time of the advance payment. **App. Vol. 1, A165.**

Respondent testified Mr. Green asked him for an advance on his settlement due to a crisis that he was going through. Ms. Dillon testified that Respondent misappropriated a portion of Ms. Patterson's where his Trust Account fell below the amount of funds it should have held in trust for Ms. Patterson. **App. Vol. 1, A274.** Respondent admitted that he knew that he was disbursing someone else's funds to Mr. Green at the time of the \$2,000.00 advancement. **App. Vol. 1, A274.** Notwithstanding Respondent's good Samaritan reasoning, his unauthorized use of another client's funds constitutes misappropriation. *See, In re Abbey*, 169 A.3d 865, 872 (D.C. 2017) (Misappropriation is "any unauthorized use of client funds entrusted to [the lawyer], including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom."). Respondent misappropriated the funds of other clients to remit the advance payment to Green.

## ARGUMENT

### V.

#### **THE SUPREME COURT SHOULD DISBAR RESPONDENT BECAUSE THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS, CASE LAW, AND AGGRAVATING FACTORS SUGGEST THAT DISBARMENT IS THE APPROPRIATE DISCIPLINE.**

The fundamental purpose of discipline is to protect the public and maintain the integrity of the legal profession. *In re Ehler*, 319 S.W.3d 442, 451 (Mo. banc 2010); *In re Wiles*, 107 S.W.3d 228, 229 (Mo. banc 2003). In determining an appropriate sanction for misconduct, the Court considers “the duty violated, the lawyer’s mental state, the actual or potential injury caused by the lawyer’s conduct, and the existence of aggravating or mitigating factors.” *In re Wiles*, 107 S.W. 3d at 229 (the Court considers the gravity of the attorney’s misconduct, as well as any mitigating or aggravating factors that tend to shed light on the attorney’s moral and intellectual fitness as an attorney).

In 1994, this Court began relying upon the ABA Standards for Imposing Lawyer Sanctions (1986 ed., as amended 1992) (“ABA Standards”) in determining appropriate discipline. *In re Farris*, 472 S.W. 3d 549, 562-563 (Mo. banc 2010). When an attorney violates multiple Rules of Professional Responsibility, as is charged in the case of Respondent, the ultimate sanction imposed should be at least consistent with the sanction for the most serious instance of misconduct. *In re Ehler*, 319 S.W. 3d 442 at 451. As discussed below, the most serious instances of misconduct in this case are Respondent’s misappropriation of client funds, Respondent’s false representation to the court that he

represented Mr. Puszkas as counsel of record in the lawsuit filed by Sedgwick, and Respondent's representation of Mr. Puszkas in the Sedgwick Litigation without Mr. Puszkas's knowledge or consent.

### Application of the ABA Standards

#### a. Respondent Knowingly Converted Client Money

ABA *Standard* 4.11 provides that absent aggravating or mitigating circumstances, disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client. ABA *Standard* 4.11. This Court has consistently agreed and found that disbarment is the presumptive appropriate discipline for misappropriating client funds. *See, In re Farris*, 472 S.W. 3d at 563; *In re Ehler*, 319 S.W. 3d 442 at 451; *In re Belz*, 258 S.W. 3d 38, 42 (Mo. banc 2008) (noting that, in the absence of mitigation or aggravating circumstances, Standard 4.11 provides that disbarment is the baseline sanction for failing to preserve client property).

Respondent's actions taken with respect to Mr. Puszkas's and Mr. Litel's settlement funds demonstrate that Respondent knowingly converted and misappropriated client funds. Respondent settled Mr. Puszkas's personal injury case in September 2013 and withheld \$51,220.00 from Mr. Puszkas's settlement funds to pay the Sedgwick subrogation lien. On September 30, 2013, Respondent emailed Sedgwick that he would be sending a check. **App. Vol. 1, A165.** On November 18, 2013, Sedgwick emailed Respondent regarding the status of the subrogation lien payment. **App. Vol. 3, A536 (Ex. 14).** On December 10, 2013, Sedgwick left a voicemail message for Respondent inquiring about same. **Id.** Between September 2013 and March 1, 2016, Respondent and Sedgwick engaged in more

than two dozen instances of communication regarding payment of the subrogation lien in fourteen separate months. **App. Vol. 3, A535-A552.** Respondent testified that he “realized several months later” after settling the personal injury case that the lien had not been paid and that he had been “taking” the money. **App. Vol. 1, A276.** Respondent’s testimony of his sudden “epiphany” that the lien had not been paid is disingenuous where the communications between Respondent and Sedgwick regarding the lien payment averaged almost bi-monthly for thirty months.

Further, even after Respondent “realized” that he had spent Mr. Puskar’s money, Respondent tried to cover up misappropriation. In response to Sedgwick’s several email inquiries about the status of the check, Respondent kept up with the pretense that he still had the funds stating: “check is going out today”; “I will get a check to you”; “I just got back into town. You’ll have the check this week”; “Please let me know how you want [the check].” **App. Vol. 3, A535-A552.** Respondent knowingly and intentionally misappropriated \$51,220.00 of Mr. Puszkars settlement funds where Respondent failed and refused to send payment to Sedgwick notwithstanding the almost bi-monthly communication that took place between September 30, 2013 and March 1, 2016 regarding the status of payment of Sedgwick’s subrogation lien.

After realizing that he had misappropriated \$51,220.00 of Mr. Puszkars money, Respondent did nothing prevent a repeat occurrence and misappropriated more than \$14,000.00 of Mr. Litel’s settlement funds. Respondent testified that he wrote checks for Barnes and Momentum Funding and gave them to his co-counsel, Mr. Charpentier, to mail. Respondent testified that after not hearing anything from Mr. Charpentier, he assumed they

were paid. **App. Vol. 1, A275.** Respondent said that he was not keeping track of the payments that had cleared his account. **App. Vol. 1, A276.** Given Respondent's knowledge at that time that the judgment for the Sedgwick lien was still outstanding, Respondent, at a minimum, acted recklessly with respect to Mr. Litel's settlement funds.

As noted above, the Missouri Supreme Court recognizes that disbarment is the baseline sanction for misappropriation. *In re Farris*, 472 S.W.3d at 562; *In re Belz*, 258 S.W.3d at 42. Respondent's knowing misappropriation of client funds makes disbarment the appropriate presumptive sanction. As explained by this Court in *In re McMillin*, 521 S.W. 3d 604, 611 (Mo. banc 2017), "there simply is no room in this profession for attorneys who take property held in trust for others and use it as their own."

2. Respondent's False Representations to the Court and Respondent's Representation of Mr. Puszkas without his Knowledge or Consent

ABA *Standard* 6.11 provides that, absent aggravating or mitigating circumstances, "[d]isbarment is generally appropriate when a lawyer, with intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding." ABA *Standard* 6.11.

Throughout the course of the Sedgwick Litigation, Respondent falsely represented to the court that he was Mr. Puszkas's attorney. Respondent entered his appearance on behalf of Mr. Puszkas, answered the petition, and appeared in court on behalf of Mr. Puszkas for the hearing on Sedgwick's Motion to Enforce Settlement. All of Respondent's

actions in the Sedgwick Litigation matter on behalf of Mr. Puszkar were taken without Mr. Puszkar's knowledge or consent. Disbarment is appropriate sanction for Respondent's intentional conduct in violation of Rule 4-3.3(a)(1), 4-8.4(c) and 4-8.4(d).

b. Aggravating and Mitigating Circumstances

Once misconduct is established, aggravating and mitigating circumstances must be evaluated prior to determining to depart from the presumptive sanction of disbarment. *In re Belz*, 258 S.W.3d at 42. Mitigating factors do not constitute a defense to a finding of misconduct but might justify a downward departure from the presumptively appropriate discipline. *In re Farris*, 475 S.W. 3d at 563; *see also*, ABA *Standard* 9.31 (mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed). Aggravating factors, on the other hand, may justify a greater level of discipline than the presumed discipline or confirm the presumed discipline is the appropriate discipline in a particular case. *In re Farris*, 475 S.W. 3d at 563; *see also*, ABA *Standard* 9.21 (aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed).

Respondent offered testimony of several mitigating factors during the disciplinary hearing. Respondent testified about his personal and emotional problems. (*Standard* 9.32(c)). Respondent testified that he was diagnosed with depression in 2009 and has been on medication since that time, but added that he was not using his depression as a "defense" because it did not meet the "standard". **App. Vol. 1, A260, A263.** Respondent also testified that he was diagnosed with leukemia in 2016 for which he was treated with

seven days of chemotherapy. **App. Vol. 1, A260-A262.** Respondent testified about periods of separation with his wife but pointed out that they reconciled each time and have now been married for 32 years. **App. Vol. 1, A259, A263.** Respondent also mentioned (without elaboration) a son who had been treated for psychiatric issues. **App. Vol. 1, A263.**

While Respondent's personal or emotional problems may be considered a mitigating factor under *ABA Standard 9.32(c)*, the Court's adoption in 2010 of Rule 5.285 makes consideration of any alleged mental disorder, including substance abuse, as a mitigating factor possible only by a respondent attorney's compliance with the rule. Therefore, to be considered as a mitigating factor, the respondent must obtain an independent licensed mental health professional's report diagnosing the mental disorder and stating that it caused or had a direct and substantial relationship to the professional misconduct. *See*, Rule 5.285(c). That was not done in this case. Respondent testified that he was not using his depression as a "defense," and it should neither be considered in mitigation of a sanction.

As further mitigating evidence under *ABA Standard 9.32(g)*, Respondent offered evidence of his character and reputation through his own testimony of his pro bono and charitable work, his involvement with his church and community, and his involvement in various bar associations. **App. Vol. 1, A247-A259.** Respondent also testified that he was remorseful. Respondent's testimony of remorse, however, was discounted by the Panel. In its decision, the Panel stated:

Minimal evidence of Respondent's purported remorse was offered during the hearing as a mitigating factor. (*Standard 9.32(1)*). Respondent's counsel elicited the following testimony from Respondent during the hearing:

**Q:** And are you remorseful about what's happened?

**A:** Very much so. I like what I do. I think I'm a good lawyer.

**App. Vol. 3, A575.** The Panel properly found that Respondent's sparse testimony of remorse was not credible or even remotely persuasive. **Id.**

Respondent testified that none of his conduct was committed with a dishonest motive. **App. Vol. 1, A267.** *See, ABA Standard 9.32(b)*. This Panel, however, disagreed, as does the Informant. The Panel found that Respondent knowingly misappropriated \$50,000.00 of Mr. Puszkar's money instead of satisfying the subrogation lien owed to Sedgwick. Then, over the course of more than two years, Respondent made repeated representations to Sedgwick such as, "[c]heck is going out today and "[y]ou'll have the check this week."

Respondent also presented evidence of his "reasonable" cooperativeness during the disciplinary proceeding through the testimony of the OCDC investigator, but Respondent's cooperation is tempered by his false statement to the OCDC investigator during the investigative stage of the disciplinary proceedings (discussed below). *See, ABA Standard 9.32(e)*. As an additional mitigating factor, Respondent's prior disciplinary history predates 2009. *See, ABA Standard 9.32(m)*.

This court has acknowledged that "in a rare but appropriate case a sanction other than disbarment may be appropriate for intentional misappropriation where mental illness

is shown to have played a role in the misconduct and other substantial mitigation factors are also present.” *In re Farris*, 472 S.W.3d at 567 (quoting *In re Belz*, 258 S.W. 3d at 46). In this case, Respondent testified that while he suffered from depression during the Audit period, it was not his intent to use his depression as a defense. As discussed above, Respondent’s testimony of depression should neither be considered as a mitigation factor as he did not comply with Rule 5.285. Further, the above analysis of Respondent’s additional mitigation factors demonstrates that none are substantial, and thus disbarment is the appropriate sanction for Respondent’s misconduct.

Several aggravating circumstances in this case reinforce the decision of Panel that the appropriate discipline is disbarment. Respondent has a prior disciplinary history. *See, ABA Standard, 9.22(a)*. Respondent was tax suspended in 2009. Respondent also engaged in a pattern of misconduct. *See, ABA Standard, 9.22(c)*. Respondent misappropriated the funds of Mr. Litel, Ms. Patterson, Dr. Ahmed, and Mr. Puszkas, and committed several Rule 4-1.15 trust accounting violations. Respondent has two prior admonitions for diligence violations, and the Panel found in this case that Respondent committed another diligence violation during his representation of Dr. Ahmed.

Respondent also violated multiple rules of professional misconduct during the representation of his clients as discussed above. *See, ABA Standard, 9.22(d)*. Respondent violated Rules 4-1.3, 4-1.4, 4-3.3(a)(1), 4-1.15, 4-8.4(c) and 4-8.4(d). Respondent had also been practicing law for approximately twenty-seven (27) years at the beginning of the OCDC investigator’s Audit period. *See, ABA Standard, 9.22(i)*.

The Panel found that Respondent's motives were dishonest as noted above and that Respondent exhibited selfish motives by his own admission. *See, ABA Standard, 9.22(b)*, Respondent testified, in part, during the hearing:

**Q:** Do you believe that the activities that have been discussed during this hearing reflect a dishonest or selfish motive on your part?

**A:** I don't think they were – I don't think I was trying to be dishonest. It was definitely selfish on my part.

**App. Vol. 1, A267.**

As a further aggravating factor, the Panel found that Respondent was dishonest during the course of the disciplinary proceedings. *ABA Standard, 9.22(f)*. Respondent's statement to the OCDC investigator, during the course of the disciplinary investigative process, that Mr. Litel was not his client was clearly false. Respondent entered his appearance on behalf of Mr. Litel in the litigation and was also named on the settlement check as one of Mr. Litel's attorneys.

In the face of all the evidence in this case, the public and the integrity of the profession is best protected by Respondent's disbarment. "The privilege to practice law is only accorded those who demonstrate the requisite mental attainment and moral character."

*In re Haggerty*, 661 S.W. 2d. 8, 10 (Mo. banc 1983).

**CONCLUSION**

For the reasons set forth above, the Chief Disciplinary Counsel respectfully requests this Court:

- (a) Find that Respondent violated Rules 4-1.3, 4-1.4(a), 4-3.3(a)(1), 4-8.1(a), 4-8.4(c), 4-1.15(a)(5), 4-1.15(a)(6), 4-1.15(f);
- (b) Disbar Respondent; and,
- (c) Tax all costs in this matter to Respondent, including the \$2,000.00 fee for disbarment, pursuant to Rule 5.19(h).

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

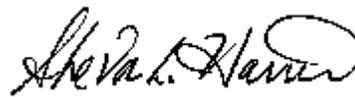
I hereby certify that on this 24<sup>th</sup> day of July, 2020, a copy of Informant's Brief is being served upon Respondent and Respondent's counsel through the Missouri Supreme Court electronic filing system pursuant to Rule 103.08.

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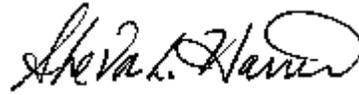


\_\_\_\_\_  
Shevon L. Harris

**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 14,105 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



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Shevon L. Harris