

**BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS**

**IN THE MATTER OF
LUIS FERNANDO HESS
STATE BAR CARD NO. 24076436**

§
§
§

CAUSE NO.

52880

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Luis Fernando Hess, (hereinafter called "Respondent"), showing as follows:

1. Pursuant to Rules 190.1 and 190.3, Texas Rules of Civil Procedure (TRCP), Petitioner intends discovery in this case to be conducted under the Level II Discovery Control Plan.
2. This action is commenced by Petitioner pursuant to Part IX of the Texas Rules of Disciplinary Procedure. Petitioner is also providing Respondent a copy of Section 7 of this Board's Internal Procedural Rules, relating to Reciprocal Discipline Matters.
3. Respondent is a member of the State Bar of Texas and is licensed and authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at 8505 Technology Forest Place, Suite 501, The Woodlands, Texas 77381.
4. On or about May 17, 2012, an Information (Exhibit 1) was filed in the Supreme Court of the State of Missouri in a matter styled: IN RE: LUIS HESS, Respondent, in File No. DHP-12-023, OCDC No. 11-2100-OD. On or about July 16, 2012, a Joint Stipulation as to Discipline

(Exhibit 1) was filed in the Supreme Court of the State of Missouri in a matter styled: IN RE: LUIS HESS, Respondent, in File No. DHP-12-023, OCDC No. 11-2100-OD. The Joint Stipulation as to Discipline states that:

... Respondent is guilty of professional misconduct as a result of violating Rule 4-1.15(c) by commingling personal funds and client funds in the Trust Account, Rule 4-1.15(d) by failing to keep complete records of the Trust Account that expressly reflect the date, amount, source, and explanation for al[l] receipts, withdrawals, and disbursements of the funds or other property of clients or other parties, and Rule 4-1.15(f) by depositing client's advance payments of legal fees into the Trust Account.¹

On or about January 29, 2013, an Order (Exhibit 1) was entered in the Supreme Court of Missouri in a matter styled: In re: Luis Hess, Respondent, in No. SC93013, MBE# 62945, which states in pertinent part as follows:

...Now at this day, the Court being sufficiently advised and concerning the premises, and Informant and Respondent having filed a statement of acceptance of the decision of the Disciplinary Hearing Panel, The Court does find that Respondent violated Rules 4-1.15(c), 4-1.15(d) and 4-1.15(f) of the Rules of Professional Conduct and should be disciplined;

Now, therefore, it is ordered that Respondent, Luis Hess, is hereby reprimanded . . .

A certified copy of the disciplinary documents containing the Information, Joint Stipulation as to Discipline and Order is attached hereto as Petitioner's Exhibit 1 and made a part hereof for all intents and purposes as if the same were copied verbatim herein.

5. Petitioner prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, that this Board issue notice to Respondent, containing a copy of this Petition with exhibits, and an order directing Respondent to show cause within thirty (30) days from the date of the mailing of the notice, why the imposition of the identical discipline in this state would be unwarranted. Petitioner

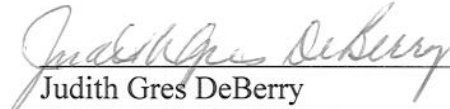
¹ Rule 4-1.14(f) states that "complete records of client trust accounts shall be maintained and preserved for a period of at least five years after termination of the representation or after the date of the last disbursement of funds, whichever is later. This rule violation is supported by facts recited in number 5 of the joint stipulation which states, "Respondent did not maintain full records reflecting the activity in his Trust Account, the source of funds being deposited into the Trust Account or documentation providing the support and explanation for the withdrawal or disbursements of funds from the Trust Account.

further prays that upon trial of this matter that this Board enters a judgment imposing discipline identical with that imposed by the Supreme Court of the State of Missouri and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

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**SUPREME COURT OF TEXAS
BOARD OF DISCIPLINARY APPEALS
INTERNAL PROCEDURAL RULES**

SECTION 1: GENERAL PROVISIONS	1
Rule 1.01 Definitions	1
Rule 1.02 General Powers	1
Rule 1.03 Additional Rules in Disciplinary Matters	1
Rule 1.04 Appointment of Panels	1
Rule 1.05 Record Retention	2
Rule 1.06 Trial Briefs	2
Rule 1.07 Service	2
Rule 1.08 Publication	2
Rule 1.09 Photocopying Costs	2
Rule 1.10 Abstracts	2
Rule 1.11 Hearing Setting and Notice	3
Rule 1.12 Time to Answer	3
Rule 1.13 Facsimile and Electronic Filing	3
Rule 1.14 Hearing Exhibits	4
Rule 1.15 BODA Work Product and Drafts	4
Rule 1.16 BODA Opinions	4
SECTION 2: ETHICAL CONSIDERATIONS	5
Rule 2.01 Representing or Counseling Parties in Disciplinary Matters And Legal Malpractice Cases	5
Rule 2.02 Confidentiality	5
Rule 2.03 Disqualification and Recusal of BODA Members	5
Rule 2.04 Communications with BODA	6
SECTION 3: CLASSIFICATION APPEALS	6
Rule 3.01 Notice of Appeal	6
Rule 3.02 Complaint on Appeal	6
Rule 3.03 Notice of Disposition	6
SECTION 4: APPEALS FROM EVIDENTIARY PANEL HEARINGS	6
Rule 4.01 Signing, Filing, and Service	6
Rule 4.02 Computation of Time	7
Rule 4.03 Record on Appeal	7
Rule 4.04 Time to File Record	8
Rule 4.05 Copies of the Record	9
Rule 4.06 Requisites of Briefs	9
Rule 4.07 Oral Argument	10
Rule 4.08 Motions Generally	11
Rule 4.09 Motions for Extension of Time	11
Rule 4.10 Decision and Judgment	11
Rule 4.11 Involuntary Dismissal	12
SECTION 5: PETITIONS TO REVOKE PROBATION	12
Rule 5.01 Initiation and Service	12
Rule 5.02 Hearing	12
SECTION 6: COMPULSORY DISCIPLINE MATTERS	13
Rule 6.01 Initiation of Proceeding	13
Rule 6.02 Notice of Decision	13
SECTION 7: RECIPROCAL DISCIPLINE MATTERS	13
Rule 7.01 Initiation of Proceeding	13
Rule 7.02 Order to Show Cause	13
Rule 7.03 Attorney's Response	13
SECTION 8: DISTRICT DISABILITY COMMITTEE HEARINGS	13
Rule 8.01 Appointment of District Disability Committee	13
Rule 8.02 Hearing Order	14
Rule 8.03 Provisions for Physical or Mental Examinations	15
Rule 8.04 Ability to Compel Attendance	15
Rule 8.05 Respondent's Right to Counsel	15
Rule 8.06 Limited Discovery	15
Rule 8.07 Hearing	16
Rule 8.08 Notice of Decision	16
Rule 8.09 Confidentiality	16
SECTION 9: DISABILITY REINSTATEMENTS	16
Rule 9.01 Petition for Reinstatement	16
Rule 9.02 Discovery	17
Rule 9.03 Physical or Mental Examinations	17
Rule 9.04 Judgment	17
SECTION 10: APPEALS FROM BODA TO THE SUPREME COURT	18
Rule 10.01 Docketing by the Clerk	18
Rule 10.02 Appellate Rules to Apply	18

**SUPREME COURT OF TEXAS
BOARD OF DISCIPLINARY APPEALS
INTERNAL PROCEDURAL RULES**

SECTION 1: GENERAL PROVISIONS

Rule 1.01 Definitions

- (a) “BODA” is the Board of Disciplinary Appeals.
- (b) “Chair” is the member elected by BODA to serve as chairperson.
- (c) “Classification” is the determination pursuant to TEXAS RULES OF DISCIPLINARY PROCEDURE (“TRDP”) 2.10 by the Chief Disciplinary Counsel (“CDC”) whether a grievance constitutes a “complaint” or an “inquiry.”
- (d) “Clerk” is the executive director or other person appointed by BODA to assume all duties normally performed by the clerk of a court.
- (e) “Executive Director” is the executive director of BODA.
- (f) “Panel” is any three-member grouping of BODA.
- (g) “Party” is a complainant, respondent, or the CDC.

Rule 1.02 General Powers

Pursuant to TRDP 7.08J, BODA shall have and exercise all the powers of either a trial court or appellate court, as the case may be, in hearing and determining disciplinary proceedings; except that BODA judgments and orders shall be enforced in accordance with TRDP 15.03.

Rule 1.03 Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TEXAS RULES OF CIVIL PROCEDURE (“TRCP”), TEXAS RULES OF APPELLATE PROCEDURE (“TRAP”), and TEXAS RULES OF EVIDENCE (“TRE”) apply to all disciplinary matters before BODA, except appeals from classification decisions, which are governed by Section 3 of these Internal Rules.

Rule 1.04 Appointment of Panels

- (a) BODA may consider any matter or motion through appointment of a panel, except as specified in subpart (b) of this Rule. The chair may delegate appointment of panels for any BODA action to the executive director. Decisions shall be by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting *en banc*. Nothing

contained in these rules shall be construed to give a party the right to be heard by BODA sitting *en banc*.

(b) Any disciplinary matter naming a BODA member as respondent shall be considered by BODA sitting *en banc*.

Rule 1.05 Record Retention

Records of appeals from classification decisions shall be retained by the BODA clerk for a period of at least three (3) years from the date of disposition. Records of other disciplinary matters shall be retained for a period of at least five (5) years from the date of final judgment, or for at least one (1) year after the date a suspension or disbarment ends, whichever is later.

Rule 1.06 Trial Briefs

In any disciplinary proceeding before BODA, all trial briefs and memoranda must be filed with the clerk no later than ten (10) days before the hearing, except upon leave of BODA.

Rule 1.07 Service

In any disciplinary proceeding before BODA initiated by service of a petition upon the respondent, service shall be by personal service, certified mail with return receipt requested and delivery restricted to respondent as addressee only, or in any other manner permitted by applicable rule(s) and authorized by BODA that is reasonably calculated under all the circumstances to apprise the respondent of the proceeding and to give him or her reasonable time to appear and answer. The CDC may serve a petition by certified mail itself without the appointment of a private process server. To establish service by certified or registered mail, the return receipt must contain the respondent's signature.

Rule 1.08 Publication

The office of the CDC shall publish these rules as part of the TDRPC and TRDP and notify each respondent in a compulsory discipline, reciprocal discipline, revocation of probation, or disability matter filed with BODA where these rules are available.

Rule 1.09 Photocopying Costs

The clerk of BODA may charge to the requestor a reasonable amount for the reproduction of non-confidential documents filed with BODA. BODA may set a fee for the reproduction of documents. The fee shall include compensation for staff and recovery of actual production costs.

Rule 1.10 Abstracts

BODA may, in its sole discretion, periodically prepare abstracts of inquiries, grievances, or disciplinary proceedings for publication pursuant to Texas Gov't Code § 81.072(b)(3) and Part VI of the TRDP.

Rule 1.11 Hearing Setting and Notice

(a) **Original Petitions.** For any compulsory case, reciprocal case, revocation of probation, or other matter initiated by the CDC filing a petition with BODA, the CDC may contact the BODA clerk for the next regular available hearing date before filing the original petition. The CDC may then include in the petition a hearing notice specifying the date, time, and place of the hearing. The hearing date must be at least thirty (30) days from the date that the petition is served on the respondent, except in the case of a petition to revoke probation.

(b) **Filing without notice.** The CDC may file any matter with BODA without first obtaining a hearing date so long as it thereafter serves notice on the respondent of the date, time, and place of the hearing in accordance with TRCP 21a (or other applicable TRCP) at least thirty (30) days before the hearing date, except in the case of a petition to revoke probation.

(c) **Expedited settings.** If a party desires a hearing on a matter on a date other than the next regular available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. The expedited hearing setting must be at least thirty (30) days from the date of service of the petition, motion or other pleading, except in the case of a petition to revoke probation. BODA may grant or deny a request for an expedited hearing date in its sole discretion.

(d) **Setting notices.** BODA shall notify the parties by first class mail of any hearing date, other than a hearing set on the next regularly available hearing date as noticed in an original petition or motion.

(e) **Announcement docket.** Attorneys and parties appearing before BODA shall check in with the BODA clerk in the courtroom immediately prior to the time docket call is scheduled to begin. The chair will call an announcement docket immediately following the call to order of BODA hearings. Attorneys for each party with a matter on the docket shall appear at that time to give their announcement of readiness, a time estimate for the hearing, and any preliminary motions or matters. The chair will set and announce the order of cases to be heard following the docket announcements.

Rule 1.12 Time to Answer

An answer to any matter pending before BODA may be filed at any time prior to the day of the hearing on the merits except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

Rule 1.13 Facsimile and Electronic Filing

(a) Any document required to be filed with BODA may be filed by facsimile transmission with a copy to the BODA clerk by first class mail. A document filed by facsimile will be considered filed the day it is received if received before 5:00 p.m. on a regular business day. Any document received by facsimile after 5:00 p.m. or received on a weekend or holiday officially observed by the State of Texas will be considered filed the next regular business day.

(b) Any document required to be filed with BODA may be filed by emailing a copy of the document file to the email address designated by BODA for that purpose with a copy sent to the BODA clerk by first class mail. A document filed by email will be considered filed the day it is received if received before 5:00 p.m. on a regular business day. Any document received by email after 5:00 p.m. or received on a weekend or holiday officially observed by the State of Texas will be considered filed the next regular business day. The date and time of receipt shall be determined by the date and time shown on the BODA clerk's email.

(c) It is the responsibility of the party filing a document by facsimile or email to obtain the correct telephone number or email address for BODA and confirm that the document was received by BODA in legible form. Any document which is illegible or which cannot be opened as part of an email attachment by BODA will not be considered received or filed. Parties using facsimile or email filing must still comply with TRCP requirements for signatures.

(d) Papers will not be deemed filed if sent to any individual BODA member or other office or address.

Rule 1.14 Hearing Exhibits

Counsel should provide an original and twelve copies of any document, pleading, exhibit, or other material which the attorney intends to offer or otherwise make available to the BODA members at a hearing and not already filed with BODA prior to the hearing.

Rule 1.15 BODA Work Product and Drafts

Without limiting any exceptions or exemptions from disclosure contained in any other rules or statutes, a document or record of any nature, regardless of electronic or physical form, characteristics, or means of transmission, created or produced in connection with or related to BODA's adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, by BODA staff or interns, or any other person acting on behalf of or at the direction of BODA.

Rule 1.16 BODA Opinions

(a) BODA may render judgment with or without written opinion in any disciplinary matter. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and shall be made available to the public reporting services, print or electronic, for publishing. A majority of the members who participate in considering the disciplinary matter must determine if an opinion will be written. The names of the participating members must be noted on all written opinions of BODA.

(b) Only a member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this Rule, in hearings in which evidence is taken, no member may participate in the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.

(c) A BODA determination in an appeal from a grievance classification decision under TRDP 2.10 is not a judgment for purposes of this Rule and may be issued without a written opinion.

SECTION 2: ETHICAL CONSIDERATIONS

Rule 2.01 Representing or Counseling Parties in Disciplinary Matters And Legal Malpractice Cases

(a) No current member of BODA shall represent a party with respect to any disciplinary action or proceeding. No current member of BODA shall testify voluntarily or offer to testify voluntarily on behalf of a party in any disciplinary action or proceeding.

(b) No current BODA member may serve as an expert witness providing opinions regarding the TDRPC.

(c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

Rule 2.02 Confidentiality

(a) All BODA deliberations are confidential and shall not be disclosed by BODA members or staff. Classification appeals files and disability suspension files are confidential pursuant to the TRDP.

(b) If subpoenaed or otherwise compelled by law to testify in any proceeding, members of BODA shall not disclose matters discussed in conference concerning any disciplinary case, unless required to do so by a court of competent jurisdiction. If subpoenaed or otherwise compelled to attend any disciplinary proceeding, including depositions, a member of BODA shall promptly notify the chair of BODA and the CDC.

Rule 2.03 Disqualification and Recusal of BODA Members

(a) BODA members are subject to disqualification and recusal respectively as provided in TRCP 18b.

(b) BODA members may, in addition to recusals pursuant to (a) above, voluntarily recuse themselves from any discussion and voting for any other reason.

(c) Nothing in these rules shall impute disqualification to lawyers who are members of or associated with BODA members' firms from serving on grievance committees or representing parties in disciplinary or legal malpractice cases; however, BODA members shall recuse themselves from any matter in which any lawyer who is a member of or associated with a BODA member's firm represents a party in any disciplinary proceeding or before BODA.

Rule 2.04 Communications with BODA

Correspondence or other communications relative to any matter pending before BODA must be conducted with the clerk and shall not be addressed directly to or conducted with any BODA member.

SECTION 3: CLASSIFICATION APPEALS

Rule 3.01 Notice of Appeal

(a) If the grievance filed by the complainant is not classified as a complaint, the CDC shall notify the complainant of his or her rights to appeal as set out in TRDP 2.10 or other applicable rule.

(b) To facilitate the potential filing of an appeal, the CDC shall send the complainant an Appeal Notice form with the classification disposition which shall include, but is not limited to, the docket number of the matter, the time deadline for appealing as set out in TRDP 2.10 or other applicable provision, and information for mailing or faxing the Appeal Notice to BODA.

Rule 3.02 Complaint on Appeal

BODA shall review only the original grievance on appeals from classification decisions. The CDC shall forward a copy of the complete grievance to BODA with supporting documentation as originally filed. BODA shall not consider any supplemental information which was not reviewed as part of the original screening and classification decision.

Rule 3.03 Notice of Disposition

BODA shall mail complainant, respondent, and the CDC written notice of the decision of the appeal by first class mail to the addresses provided BODA by the CDC in the appeal transmittal.

SECTION 4: APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01 Signing, Filing, and Service

(a) **Signing.** Each brief, motion or other paper filed shall be signed by at least one attorney for the party or by the party *pro se* and shall give the State Bar of Texas identification number, mailing address, telephone number, email address, and telecopier number, if any, of each attorney whose name is signed thereto, or of the party (if applicable).

(b) **Number of Copies.** Each party shall file an original and two (2) copies of all briefs and motions with the clerk. Only one copy of the clerk's record and reporter's record shall be filed.

(c) **Service.** Copies of all papers other than the record filed by any party shall, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

Rule 4.02 Computation of Time

(a) **Beginnings of Periods.** The date the chair of the evidentiary panel signs its decision shall constitute the date of notice under TRDP 2.21.

(b) **TRAP Followed.** Computation of time for purposes of this section shall follow TRAP 4.1 and 9.2(b).

Rule 4.03 Record on Appeal

(a) **Contents.** The record on appeal shall consist of a clerk's record and where necessary to the appeal, a reporter's record.

(b) **Stipulation as to Record.** The parties may designate parts of the clerk's record and reporter's record to be included in the record on appeal by written stipulation filed with the custodian of records of the evidentiary panel.

(c) **Responsibility for Filing Record.** The custodian of records of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record if a notice of appeal has been filed. The court reporter is responsible for timely filing the reporter's record if a notice of appeal has been filed, the appellant has requested that the reporter's record be prepared, and the party responsible for initiating the appeal has paid the reporter's fee or has made satisfactory arrangements with the reporter. The party initiating the appeal shall pay the cost of preparing the record.

(d) **Clerk's Record.**

- (1) Unless otherwise stipulated by the parties, the clerk's record on appeal shall include all papers on file with the evidentiary panel, including, but not limited to, the election letter, all pleadings upon which the hearing was held, the docket sheet, the evidentiary panel's charge, the final hearing order with attachments or exhibits, any findings of fact and conclusions of law, all other pleadings, the judgment or other order(s) appealed from, the notice of decision sent each party, any post-submission pleadings and briefs, and any notice of appeal.
- (2) Upon receipt of a copy of the notice of appeal, the custodian of records in the individual CDC office which conducted the evidentiary hearing shall prepare and transmit the clerk's record to BODA. If the CDC is unable for any reason to prepare and transmit the clerk's record by the due date, it shall promptly notify BODA and the parties, explain the reason(s) why it cannot be timely filed, and give the date by which it expects the clerk's record can be filed.
- (3) The clerk's record should be in the following form:
 - (i) contain a detailed index identifying each document included in the record, the date of filing, and the page where it first appears;

- (ii) arranged in ascending chronological order by document by date of filing or occurrence;
- (iii) tabbed with heavy index tabs to show the beginning of each document;
- (iv) consecutively numbered in the bottom right-hand corner of the pages;
- (v) bound together so that the record will lie flat when opened; and
- (vi) contain the custodian's certification that the documents contained in the clerk's record are true and correct copies and are all the documents required to be filed.

(e) **Reporter's Record.** The appellant, at or before the time prescribed for perfecting the appeal, shall make a written request to the official reporter for the reporter's record, designating the portion of the evidence and other proceedings to be included. A copy of such request shall be filed with the evidentiary panel and BODA and be served on the appellee. The reporter's record shall be certified by the official court reporter.

(f) **Non-Stenographic Recordings.** All testimony and evidence may be recorded at the evidentiary hearing by means other than stenographic recording, including videotape recordings; however, the non-stenographic recording shall not dispense with the requirement of a stenographic transcription of the hearing. In appeals to BODA, the non-stenographic recording must be transcribed and the transcription filed as the reporter's record.

(g) **Other Requests.** At any time before the clerk's record is prepared or within ten (10) days after service of a copy of appellant's request for the reporter's record, any party may request additional portions of the evidence and other proceedings to be included therein.

(h) **Inaccuracies or Defects.** Any inaccuracies in the record may be corrected by an agreement of the parties. Any dispute regarding the reporter's record shall be submitted by BODA to the evidentiary panel for resolution and to conform the reporter's record.

Rule 4.04 Time to File Record

(a) **Timetable.** The clerk's record and reporter's record (including a non-stenographic recording which has been transcribed) shall be filed with the BODA clerk within thirty (30) days after the date the notice of appeal is received by BODA. Failure to file either the clerk's record or the reporter's record within such time shall not affect BODA's jurisdiction, but shall be grounds for BODA exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or to apply presumptions against the appellant.

(b) **If No Record Filed.**

- (1) If the clerk's record or reporter's record has not been timely filed, the BODA clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within thirty (30) days. The BODA clerk must send a copy of this notice to all the parties and the evidentiary panel.
- (2) If no reporter's record is filed due to appellant's fault, and if the clerk's record has been filed, BODA may, after first giving the appellant notice and reasonable opportunity to cure, consider and decide those issues or points that do not require a reporter's record for a decision. BODA may do this if no reporter's record has been filed because:
 - (i) the appellant failed to request a reporter's record; or
 - (ii)(a) appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record; and
 - (b) the appellant is not entitled to proceed without payment of costs.

(c) **Supplemental Record.** If anything material to either party is omitted from the clerk's record or reporter's record BODA may, upon written motion of a party or upon its own motion, direct a supplemental record to be certified and transmitted by the CDC or the official court reporter.

Rule 4.05 Copies of the Record

The record shall not be withdrawn from the custody of the BODA clerk. Any party may obtain a copy of the record or any designated part thereof by making written request to the clerk and paying copying charges.

Rule 4.06 Requisites of Briefs

(a) **Appellant's Filing Date.** Appellant's brief must be filed within thirty (30) days after the later of the date on which the clerk's record or the reporter's record was timely filed.

(b) **Appellee's Filing Date.** Appellee's brief must be filed within thirty (30) days after the filing of appellant's brief.

(c) **Contents.** Briefs shall contain:

- (1) a complete list of the names and addresses of all parties to the final decision and their counsel;
- (2) a table of contents with page references where the discussion of each point relied upon may be found and also an index of authorities alphabetically arranged, together with reference to the pages of the brief where the same are

cited. The subject matter of each point or group of points shall be indicated in the table of contents;

- (3) a brief general statement of the nature of the cause or offense and the result;
- (4) a statement of the points upon which an appeal is predicated or the issues presented for review;
- (5) a brief of the argument;
- (6) prayer for relief; and,
- (7) an appendix consisting of copies of pertinent parts of the record upon which the party relies.

(d) **Length of Briefs.** Briefs shall be typewritten or otherwise legibly printed on letter-size (8½" x 11") paper and shall not exceed fifty (50) pages in length, exclusive of pages containing names and addresses of parties, table of contents, index of authorities, points of error, and any addenda or appendix containing statutes, rules, regulations, etc., except upon leave of BODA.

(e) **Amendment or Supplementation.** Briefs may be amended or supplemented upon leave of BODA.

(f) **Failure to File a Brief.** If the appellant fails to timely file a brief, BODA may:

- (1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure and the appellee is not significantly injured by the appellant's failure to timely file a brief; or
- (2) decline to dismiss the appeal and give further direction to the case as it considers proper.

Rule 4.07 Oral Argument

(a) **Request.** A party desiring oral argument before BODA shall request same in writing and include the request in the notice of appeal or on the front cover of that party's first brief. BODA may grant or deny the request in its sole discretion. If oral argument is granted, the clerk shall notify the parties of the time and place for submission. BODA may also advance cases without oral argument or direct parties on its own initiative to appear and submit oral argument on a case. The parties may agree to submit the case without argument after requesting same.

(b) **Time Allowed.** Each party shall have twenty (20) minutes in which to argue. BODA may, upon request of a party or in its discretion, extend or shorten the time allowed for oral argument.

Rule 4.08 Motions Generally

An application for an order or other relief shall be made by filing a motion with the BODA clerk for same supported by sufficient cause with proof of service on all other parties. The motion shall state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other papers shall be served and filed with the motion. A party may file a response to a motion at any time before BODA rules on the motion or by any deadline set by BODA. BODA may determine a motion before a response is filed.

Rule 4.09 Motions for Extension of Time

(a) **When due.** Any request for extension of time other than to file a brief must be filed with the BODA clerk no later than fifteen (15) days after the last day allowed for filing the item in question.

(b) **Contents.** All motions for extension of time shall be in writing, comply with BODA Internal Procedural Rule 4.08, and specify the following:

- (1) the date of notice of decision of the evidentiary panel, together with the number and style of the case;
- (2) if the appeal has been perfected, the date when the appeal was perfected;
- (3) the original deadline for filing the item in question;
- (4) the length of time requested for the extension;
- (5) the number of extensions of time which have been granted previously regarding the item in question; and,
- (6) the facts relied upon to reasonably explain the need for an extension.

(c) **For Filing Reporter's Record.** When an extension of time is requested for filing the reporter's record, the facts relied upon to reasonably explain the need for an extension must be supported by an affidavit of the court reporter, which shall include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.

Rule 4.10 Decision and Judgment

(a) **Decision.** BODA may affirm in whole or in part the decision of the evidentiary panel, modify the panel's finding(s) and affirm the finding(s) as modified, reverse in whole or in part the panel's finding(s) and render such decision as the panel should have rendered, or reverse the panel's finding(s) and remand the cause for further proceedings to be conducted by:

- (1) the panel that entered the finding(s); or,

- (2) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.

(b) **Notice of Orders and Judgment.** When BODA renders judgment or grants or overrules a motion, the clerk shall give notice to the parties or their attorneys of record of the disposition made of the cause or of the motion, as the case may be. The notice shall be given by first-class mail and be marked so as to be returnable to the clerk in case of nondelivery.

(c) **Mandate.** In every case where BODA reverses or otherwise modifies the judgment appealed from, BODA shall issue a mandate in accordance with its judgment and deliver it to the evidentiary panel.

Rule 4.11 Involuntary Dismissal

Under the following circumstances and on any party's motion or on its own initiative after giving at least ten days' notice to all parties, BODA may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmance may occur if the appeal is subject to dismissal

- (a) for want of jurisdiction;
- (b) for want of prosecution; or
- (c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.

SECTION 5: PETITIONS TO REVOKE PROBATION

Rule 5.01 Initiation and Service

(a) Before filing a motion with BODA seeking to revoke the probation of an attorney who has been sanctioned, the CDC shall contact the BODA clerk to confirm whether the next regular available hearing date will comply with the thirty-day requirement of TRDP. The chair may designate a three-member panel to hear the motion, if necessary, to meet the thirty-day requirement of TRDP 2.23.

(b) Upon filing of the motion, the CDC shall serve the respondent in accordance with TRDP 2.23 with the motion and supporting documents, if any, in accordance with the TRCP and these rules. The CDC shall notify BODA of the date service is obtained on the respondent.

Rule 5.02 Hearing

Within thirty (30) days of service of the motion on the respondent, BODA shall docket and set the matter for a hearing and notify the parties of the time and place for the hearing; however, upon a showing of good cause by a party or upon its own motion, BODA may continue the case to a future hearing date as circumstances require.

SECTION 6: COMPULSORY DISCIPLINE MATTERS

Rule 6.01 Initiation of Proceeding

Pursuant to TRDP 8.03, the CDC shall file a petition for compulsory discipline with BODA and serve the respondent in accordance with the TRDP and Rule 1.07 above.

Rule 6.02 Notice of Decision

The BODA clerk shall mail a copy of the judgment to the parties within ten (10) days from the date the decision is signed by the chair. Transmittal of the judgment shall include all information required by the TRDP and the Supreme Court.

SECTION 7: RECIPROCAL DISCIPLINE MATTERS

Rule 7.01 Initiation of Proceeding

(a) Pursuant to TRDP 9.01 and 9.02, the CDC shall file a petition for reciprocal discipline with BODA when information is received indicating that an attorney licensed to practice law in Texas has been disciplined in another jurisdiction.

(b) The petition shall request that the respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction including a copy of the order or judgment, if any, rendered against the respondent. The CDC shall serve the respondent in accordance with Rule 1.07 above.

Rule 7.02 Order to Show Cause

Upon the filing of the petition with BODA, the chair shall immediately issue a show cause order including a hearing setting notice and forward it to the CDC, who shall serve the order on the respondent. The CDC shall notify BODA of the date service is obtained.

Rule 7.03 Attorney's Response

If, on or before the thirtieth day after service of the show cause order and hearing notice by the CDC, the respondent does not file an answer but thereafter appears at the hearing, BODA may, at the discretion of the chair, receive testimony from the respondent relating to the merits of the petition for reciprocal discipline.

SECTION 8: DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01 Appointment of District Disability Committee

(a) If the evidentiary panel of the grievance committee finds pursuant to TRDP 2.17P(2) or the CDC believes pursuant to TRDP 2.14C that a respondent is suffering from a disability, the rules in this section shall apply to the District Disability Committee *de novo* proceeding held pursuant to TRDP Part XII.

(b) Upon receiving an evidentiary panel's finding or the CDC's report that an attorney is believed to be suffering from a disability, the BODA chair shall appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. The BODA clerk shall notify the CDC and respondent that a committee has been appointed and notify the respondent where the procedural rules governing disability proceedings are available.

(c) A respondent notified to appear at a District Disability Committee hearing may, at any time, waive that hearing in writing and enter into an agreed judgment of indefinite disability suspension or probated suspension, provided that the respondent is competent to so waive the hearing. If the respondent is not represented, the waiver shall include a statement by the respondent that he has been advised of his right to have counsel appointed for him and that he waives that right.

(d) All pleadings, motions, briefs, or other matters to be filed with the District Disability Committee shall be filed with the BODA clerk.

(e) Should any member of the District Disability Committee become unable to serve, the BODA chair may appoint a substitute member.

Rule 8.02 Hearing Order

(a) Upon being notified that the District Disability Committee has been appointed by BODA, the CDC shall, within twenty (20) days, file with the BODA clerk and then serve upon the respondent either in person or by certified mail, return receipt requested with delivery restricted to the respondent as addressee with a copy by first class mail, a proposed hearing order containing a list of names and addresses of all witnesses expected to be called to testify before the District Disability Committee and all exhibits expected to be offered. If service is by certified mail, the return receipt with the respondent's signature must be filed with the BODA clerk.

(b) The respondent shall, within twenty (20) days after receiving the CDC's proposed hearing order, file with the BODA clerk and serve the CDC by certified mail a proposed hearing order including a list of names and addresses of all witnesses expected to be called to testify before the District Disability Committee and all exhibits expected to be offered. Respondent's failure to timely file the proposed hearing order will not affect the responsibility of the District Disability Committee to issue a final hearing order.

(c) The District Disability Committee chair may adopt either the CDC's proposed hearing order, the respondent's proposed hearing order, or an order of his or her own. The BODA clerk shall prepare the final hearing order at the instruction of the District Disability Committee chair and send to the parties by first class mail. The BODA clerk shall set the final hearing date at the instruction of the chair. The adopted order shall be the final hearing order and shall contain a date, time, and place for the hearing. That order may contain provisions requiring a physical or mental examination of the respondent.

(d) Requests for an extension of time to file the proposed hearing order by either party must be by written motion filed with the BODA clerk.

Rule 8.03 Provisions for Physical or Mental Examinations

(a) Upon motion by the CDC or upon its own motion, the District Disability Committee may order the respondent to submit to a physical and/or mental examination by a qualified health care or mental health care professional. The respondent shall be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination. Any objections(s) to the motion for an exam and request for a hearing shall be filed with the BODA clerk within fifteen (15) days of receipt of the motion.

(b) The examining professional shall file with the BODA clerk his detailed written report setting out findings, including results of all tests made, diagnoses and conclusions, and deliver a copy to the CDC and to the respondent.

(c) Nothing contained herein shall be construed to limit the respondent's right to an examination by a professional of his choice in addition to any exam ordered by BODA.

Rule 8.04 Ability to Compel Attendance

The respondent and the CDC may, if they so choose, confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses, enforceable by an order of a district court of proper jurisdiction, is available to the respondent and the CDC, by requesting a subpoena be issued as provided in TRCP 176.

Rule 8.05 Respondent's Right to Counsel

(a) The notice to the respondent that a District Disability Committee has been appointed and the notice transmitting the CDC's proposed hearing order shall state that the respondent may request appointment of counsel by BODA to represent him or her at the disability hearing.

(b) If the respondent wishes to have counsel appointed pursuant to TRDP Rule 12.02, a written request must be filed with the BODA clerk within sixty (60) days of the date respondent receives the CDC's proposed hearing order. Any request for appointment of counsel after sixty (60) days from the date of receipt of the proposed hearing order must show good cause for the failure to do so timely and that the request is not sought for delay only.

Rule 8.06 Limited Discovery

(a) In the sole discretion of the District Disability Committee, limited discovery is permissible upon a clear showing of good cause and substantial need. The parties seeking discovery must file with the BODA clerk a verified written request for discovery showing good cause and substantial need with the proposed hearing order.

(b) If good cause and substantial need are demonstrated, the District Disability Committee shall by written order permit the discovery, including in the final hearing order limitations or deadlines on the discovery. Such discovery, if any, as may be permitted, must be conducted by methods provided in the TRCP in effect at the time and may upon motion be enforced by a district court of proper jurisdiction.

(c) A decision of a District Disability Committee on a discovery matter may be reviewed only on appeal of the entire case. A reversal of the case may not be based upon the granting or denial of a discovery request without a showing of material unfairness or substantial harm.

Rule 8.07 Hearing

(a) The party seeking to establish the disability must prove by a preponderance of the evidence that the respondent is suffering from a disability as defined in the TRDP. The chair of the District Disability Committee shall admit all such probative and relevant evidence as he or she deems necessary for a fair and complete hearing, generally in accord with the TRE; provided, however, that the admission or exclusion of evidence shall be in the sole discretion of the chair. No ruling on evidence shall be a basis for reversal solely because it fails to strictly comply with the TRE.

(b) Such proceedings shall begin and conclude no earlier than thirty (30) days from the date the respondent receives the CDC's proposed hearing order nor later than ninety (90) days from that date; however, failure to do so does not affect the jurisdiction of the District Disability Committee to act. Nothing herein shall be construed to limit the parties' right to request a continuance of the hearing for good cause.

(c) If the Committee is unable for any reason to hold a hearing within ninety (90) days of the date the respondent receives the proposed hearing order, BODA may appoint a new committee to handle the case.

Rule 8.08 Notice of Decision

The District Disability Committee shall certify its finding and any recommendations to BODA which shall issue the final judgment in the matter.

Rule 8.09 Confidentiality

All proceedings before the District Disability Committee are closed to the public. All matters before the District Disability Committee are confidential and are not subject to disclosure, except as allowed by the TRDP or as may be required in the event of an appeal to the Supreme Court.

SECTION 9: DISABILITY REINSTATEMENTS

Rule 9.01 Petition for Reinstatement

(a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. All such petitions shall be filed with the BODA clerk. The petitioner shall also serve a copy of the petition on the CDC as set forth in TRDP 12.06. After the petition is filed, the TRCP shall apply except when in conflict with these rules. Service shall be in accordance with the TRDP and these rules.

(b) The petition shall set forth the information required by TRDP 12.06. If the judgment of disability suspension contained terms or conditions relating to misconduct by the petitioner prior to the suspension, the petition shall affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.

(c) Disability reinstatement proceedings before BODA are not confidential; however, BODA may seal all or any part of the record of the proceeding.

Rule 9.02 Discovery

The parties shall have sixty (60) days from the date of the filing of the petition for reinstatement in which to conduct discovery. The matter shall be set for a hearing by the BODA clerk on the next available hearing date after the expiration of the sixty (60) days, and the clerk shall so notify the parties of the time and place of the hearing. Nothing contained herein shall preclude either party from requesting a continuance for good cause.

Rule 9.03 Physical or Mental Examinations

(a) BODA may order the petitioner seeking reinstatement to submit to a physical and/or mental examination by a qualified health care or mental health care professional upon written motion of the CDC or its own motion. The petitioner shall be served with a copy of the motion and given at least seven (7) days to respond. BODA may grant or deny the motion with or without a hearing.

(b) The petitioner shall be given reasonable notice of the examination by written order specifying the name, address and telephone number of the person conducting the examination.

(c) The examining professional shall deliver to BODA and the parties a copy of a detailed written report setting out findings, including results of all tests made, diagnoses and conclusions.

(d) If the petitioner fails to submit to an examination as ordered, BODA may dismiss the petition without notice.

(e) Nothing contained herein shall be construed to limit the petitioner's right to an examination by a professional of his choice in addition to any exam ordered by BODA.

Rule 9.04 Judgment

If, after hearing all the evidence, BODA determines that the petitioner is not eligible for reinstatement, BODA may, in its discretion, either enter an order denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof as directed by BODA. The judgment may include such other orders as protecting the public and the petitioner's potential clients may require.

SECTION 10: APPEALS FROM BODA TO THE SUPREME COURT

Rule 10.01 Docketing by the Clerk

(a) All appeals to the Supreme Court from determinations by BODA on a decision of a District Grievance Committee's evidentiary panel concerning the imposition or failure to impose sanctions, appeals from determinations on compulsory discipline, reciprocal discipline, revocations of probation, and disability suspensions will be docketed by the clerk of the Supreme Court in the same manner as petitions for review.

(b) No fee shall be charged by the clerk for filing any appeal from BODA decisions.

(c) The notice of appeal must be filed directly with the clerk of the Supreme Court within fourteen (14) days after receipt of notice of a final determination by BODA. The record must be filed within sixty (60) days after BODA's determination. The appealing party's brief is due thirty (30) days after the record, and the responding party's brief must be filed within thirty (30) days thereafter.

(d) The BODA clerk shall include the information contained in subpart (c) above with transmittal of each final determination to the parties.

Rule 10.02 Appellate Rules to Apply

(a) The TRAP will apply to these appeals to the extent they are relevant. Oral argument may be granted on motion. The case shall be reviewed under the substantial evidence rule. The Court's decisions on sanctions, compulsory discipline, reciprocal discipline, revocations of probation, and disability suspension cases will be announced on the Court's orders. Following review by the Court, these appeals will be available for public inspection in the office of the Clerk of the Supreme Court, unless the file or some portion thereof is confidential under the TRDP.

(b) The Court may affirm a decision of BODA by order without written opinion.



CLERK OF THE SUPREME COURT

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

BILL L. THOMPSON
CLERK

TELEPHONE
(573) 751-4144

June 21, 2013

STATE OF MISSOURI -- SCT.:

I, BILL L. THOMPSON, Clerk of the Supreme Court of Missouri, do hereby certify that the attached is a true and correct copy of entire Case File, consisting of 34 pages, as fully as the same appears on file in my office in the proceeding styled: In re: Luis Hess, Respondent. Supreme Court No. SC93013.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court. Done at my office in the City of Jefferson, State aforesaid, this 21st day of June, 2013.

Bill L. Thompson

Clerk,

Don S. Knaebel

Deputy Clerk, Court en Banc

Exhibit

1

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Louis Hess
Suite 200
1095 Evergreen Circle
The Woodlands, TX 77380

2. Article Number

(Transfer from service label)

COMPLETE THIS SECTION OF DELIVERY

A. Signature

[Handwritten Signature]

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

2-5-13

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Certified Mail ☐ Express Mail
☒ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

- ☐ Yes

RE 537 965 510 US

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

CLT/Hess/SC93013

• Sender: Please print your name, address, and ZIP+4 in this box •

OFFICE OF
CLERK OF SUPREME COURT
P.O. BOX 150
JEFFERSON CITY, MO 65102

SEP 11 2013

SCANNED



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Luis Hess
Suite 200
1095 Evergreen Circle
The Woodlands, TX 77380

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

2-5-13

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☐ Certified Mail☐ Express Mail☒ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

RE 537 965 568 US

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

CLT/LUIS HARRIS/SC 93013

• Sender: Please print your name, address, and ZIP+4 in this box •

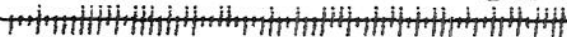
RECEIVED

OFFICE OF
CLERK OF SUPREME COURT
P.O. BOX 150
JEFFERSON CITY, MO 65102

FEB 11 2013

MISSOURI SUPREME COURT

SCANNED





**CLERK OF THE SUPREME COURT
STATE OF MISSOURI
POST OFFICE BOX 150
JEFFERSON CITY, MISSOURI
65102**

BILL L. THOMPSON
CLERK

TELEPHONE
(573) 751-4144

January 29, 2013

Mr. Carl Schaeperkoetter via e-filing system
Office of Chief Disciplinary Counsel
3335 American Avenue
Jefferson City, MO 65109

In Re: Luis Hess, Respondent.
Missouri Supreme Court No. SC93013

Dear Mr. Schaeperkoetter:

Please be advised certified copies of the corrected order of the Court issued on this date are available to counsel of record and Respondent via secure case.net. Respondent's bar number was incorrect on the original order. Certified copies of the corrected order have been sent to Respondent via regular and registered mail on this date.

Very truly yours,

Bill L. Thompson

BILL L. THOMPSON

cc:

Mr. Michael P. Downey via e-filing system
Mr. Luis Hess via e-filing system, regular and registered mail #RE 537 965 510 US
Suite 200
1095 Evergreen Circle
The Woodlands, TX 77380



Supreme Court of Missouri
en banc

CORRECTED ORDER
January 29, 2013

In re: Luis Hess,

Respondent.

)
) No. SC93013
) MBE# 62945

ORDER

Now at this day, the Court being sufficiently advised of and concerning the premises, and Informant and Respondent having filed a statement of acceptance of the decision of the Disciplinary Hearing Panel, the Court does find that Respondent violated Rules 4-1.15(c), 4-1.15(d) and 4-1.15(f) of the Rules of Professional Conduct and should be disciplined;

Now, therefore, it is ordered that Respondent, Luis Hess, is hereby reprimanded.

Fee pursuant to Rule 5.19(h) in the amount of \$750.00 payable to the Clerk of this Court to the credit of the Advisory Committee Fund taxed to Respondent.

Costs taxed to Respondent.

Day - to - Day

A handwritten signature of Richard B. Teitelman in black ink, written over a horizontal line.

Richard B. Teitelman
Chief Justice

STATE OF MISSOURI – SCT.:

I, BILL L. THOMPSON, Clerk of the Supreme Court of Missouri, do hereby certify that the foregoing is a true copy of the order of said court, entered on the 29th day of January, 2013, as fully as the same appears of record in my office.

IN TESTIMONY WHEREOF, *I have hereunto set my hand and affixed the seal of said Supreme Court. Done at office in the City of Jefferson, State aforesaid, this 29th day of January, 2013.*



Bill L. Thompson, Clerk

Cynthia Z. Taylor, Deputy Clerk



**CLERK OF THE SUPREME COURT
STATE OF MISSOURI
POST OFFICE BOX 150
JEFFERSON CITY, MISSOURI
65102**

BILL L. THOMPSON
CLERK

TELEPHONE
(573) 751-4144

January 29, 2013

Mr. Carl Schaeperkoetter via e-filing system
Office of Chief Disciplinary Counsel
3335 American Avenue
Jefferson City, MO 65109

In Re: Luis Hess, Respondent.
Missouri Supreme Court No. SC93013

Dear Mr. Schaeperkoetter:

Please be advised certified copies of the order of the Court issued on this date are available to counsel of record and Respondent via secure case.net. Certified copies of the order have been sent to Respondent via regular and registered mail on this date.

Very truly yours,

Bill L. Thompson

BILL L. THOMPSON

cc:

Mr. Michael P. Downey via e-filing system
Mr. Luis Hess via e-filing system, regular and registered mail #RE 537 965 568 US
Suite 200
1095 Evergreen Circle
The Woodlands, TX 77380



Supreme Court of Missouri
en banc

January 29, 2013

In re: Luis Hess,

Respondent.

)
) No. SC93013
) MBE# 62956

ORDER

Now at this day, the Court being sufficiently advised of and concerning the premises, and Informant and Respondent having filed a statement of acceptance of the decision of the Disciplinary Hearing Panel, the Court does find that Respondent violated Rules 4-1.15(c), 4-1.15(d) and 4-1.15(f) of the Rules of Professional Conduct and should be disciplined;

Now, therefore, it is ordered that Respondent, Luis Hess, is hereby reprimanded.

Fee pursuant to Rule 5.19(h) in the amount of \$750.00 payable to the Clerk of this Court to the credit of the Advisory Committee Fund taxed to Respondent.

Costs taxed to Respondent.

Day - to - Day

A handwritten signature in dark ink, reading "Richard B. Teitelman", is positioned above a horizontal line.

Richard B. Teitelman
Chief Justice

STATE OF MISSOURI – SCT.:

I, BILL L. THOMPSON, Clerk of the Supreme Court of Missouri, do hereby certify that the foregoing is a true copy of the order of said court, entered on the 29th day of January, 2013, as fully as the same appears of record in my office.

IN TESTIMONY WHEREOF, *I have hereunto set my hand and affixed the seal of said Supreme Court. Done at office in the City of Jefferson, State aforesaid, this 29th day of January, 2013.*



Bill L. Thompson, Clerk

Cynthia L. Twiley, Deputy Clerk



Supreme Court of Missouri
en banc

SC93013

In re: Luis Hess, Respondent.

- ☐ Sustained
- ☐ Overruled
- ☐ Denied
- ☐ Taken with Case
- ☐ Sustained Until
- ☒ Other

Order issued: Respondent's unopposed motion to supplement or correct the record regarding filing of acceptance sustained. Respondent's supplement/correction attached to the motion ordered filed.

By: _____

Richard B. Teitelman

Chief Justice

12/12/12

Date

IN THE SUPREME COURT OF MISSOURI

IN RE:

LUIS HESS,

Respondent.

)
)
)
)
)
)
)

Case No. 93013

**UNOPPOSED MOTION TO SUPPLEMENT OR
CORRECT THE RECORD REGARDING
FILING OF ACCEPTANCE**

COMES NOW Respondent Luis Hess by and through undersigned counsel and in response to the Informant's Statement of Acceptance of Disciplinary Hearing Panel Decision ("Statement of Acceptance") dated December 10, 2012, states that he did file an explicit Acceptance of the Hearing Panel's decision. In further support of this Motion, Mr. Hess states:

1. As the Statement of Acceptance reports, the Hearing Panel issued its opinion on October 25, 2012, recommending that Mr. Hess be reprimanded.
2. Under Rule 5.19, Mr. Hess therefore had until November 26 to accept or reject the hearing panel's decision.
3. On November 19, 2012, Mr. Hess through counsel timely filed notice with the Missouri Legal Ethics Counsel that he was accepting the panel's decision.

(See Attachment A.) Mr. Hess's counsel also served a copy of this Acceptance on the Informant's special counsel Barry Klinckhardt by email.

4. Apparently Mr. Hess's Acceptance was inadvertently not placed in the proper file, so the Acceptance Letter was not available to Informant when the Informant prepared its Statement of Acceptance.

5. Contrary to what is stated in paragraph 7 of the Statement of Acceptance, Mr. Hess did timely and explicitly file an acceptance of decision.

WHEREFORE, respondent Luis Hess requests that this Court enter an order of discipline consistent with the hearing panel's decision, or grant Mr. Hess any further relief that this Court deems just and proper

Respectfully submitted,

ARMSTRONG TEASDALE LLP

/s/ Michael P. Downey

Michael P. Downey, Mo. Bar #47757

7700 Forsyth Blvd, Suite 1800

Saint Louis, MO 63105

(314) 621-5070

mdowney@armstrongteasdale.com

COUNSEL FOR RESPONDENT
LUIS HESS

CERTIFICATE OF SERVICE

The undersigned certifies that on this 12th day of December, 2012, a true and accurate copy of the foregoing to document was by email upon the following

Carl Schaeperkoetter, Esq.
Office of Chief Disciplinary Counsel
3335 American Avelenue
Jefferson City, Missouri 65109
Email: carl.schaeperkoetter@courts.mo.gov

Barry J. Klinckhardt, Esq.
240 Larkin Williams Industrial Court
Fenton, Missouri 63026
Email: klinckhardt@sbcglobal.net

Counsel for Informant

/ s/ Michael P. Downey

**IN THE SUPREME COURT OF MISSOURI
EN BANC**

IN RE:)	
)	
LUIS HESS)	
1095 Evergreen Circle)	Supreme Court No.
Suite 200)	
The Woodlands, TX 77380)	
)	
Missouri Bar No. 62945)	
)	
Respondent.)	

STATEMENT OF ACCEPTANCE OF

DISCIPLINARY HEARING PANEL DECISION

Comes now Informant, Chief Disciplinary Counsel, and submits this Statement of Acceptance pursuant to Rule 5.19(c) in the above-styled case.

1. On May 17, 2012, an Information was filed pursuant to Rule 5.11(c) with the Missouri Supreme Court Advisory Committee against Respondent, Luis Hess, a copy of which is attached hereto as Ex. A.

2. On July 16, 2012, Respondent filed a Joint Stipulation as to Discipline as his Answer to the Information, a copy of which is attached hereto as Exhibit B.

3. On July 26, 2012, the Advisory Committee appointed a Disciplinary Hearing Panel to hear this case, in accordance with Rule 5.14(a).

4. The above-styled case was tried before the disciplinary hearing panel on September 18, 2012.

5. On October 25, 2012, the Advisory Committee received the decision issued by the Disciplinary Hearing Panel pursuant to Rule 5.16(c). The panel's decision was served on Informant and Respondent pursuant to Rule 5.16(e). A copy of the Disciplinary Hearing Panel Decision is attached hereto as Ex. C.

6. Informant filed an acceptance of the panel's decision with the Advisory Committee on November 7, 2012, a copy of which is attached hereto as Ex. D.

7. Although Respondent has not explicitly filed an Acceptance of the panel's decision, under Rule 5.19(a) failure to timely file notice of rejecting the panel's decision shall be deemed acceptance of the decision.

8. The panel's decision has been accepted by the parties.

9. Under Rule 5.19(a), the parties' deadline for timely rejection of the decision passed on November 26, 2012.

WHEREFORE, Informant states that under Rule 5.19(c), the case is ripe for the Court to issue a final order of discipline. Informant prays that the Court enter an order of discipline in accordance with the Disciplinary Hearing Panel's decision; Informant further prays that the Court order Respondent to pay administrative fees and costs.

Respectfully submitted,

ALAN D. PRATZEL #29141
Chief Disciplinary Counsel

By: 

Carl Schaeperkoetter #30467
Staff Counsel
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400 – Phone
(573) 635-2240 – Fax
Carl.Schaeperkoetter@courts.mo.gov

ATTORNEYS FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent by first-class mail on this 10th day of December, 2012 to:

Michael Downey
7700 Forsyth Blvd., Suite 1800
St. Louis, MO 63105



Carl Schaeperkoetter

PW

electronically filed - Supreme Court - December 10, 2012 - 11:34 AM CST

IN THE SUPREME COURT OF THE STATE OF MISSOURI

RECEIVED
AC/LEC
MAY 17 2012

IN RE: LUIS HESS

Respondent.

)
) File No. DHP- 12-023
)
) OCDC No. 11-2100-OD
)
) -----
) Supreme Court Number:
)

INFORMATION

COMES NOW the Chief Disciplinary Counsel, pursuant to Missouri Supreme Court Rule 5, and states and alleges as follows:

1. Informant is the Chief Disciplinary Counsel appointed by this Court pursuant to Rule 5.06.
2. Informant has determined, pursuant to Rule 5.11, that probable cause exists to believe that Respondent is guilty of professional misconduct.
3. Respondent is a duly licensed attorney-at-law admitted to practice in and before all courts of this State, a member of the Bar of the State of Missouri, with Missouri Bar Number 62945, and at all times relevant herein has engaged in the practice of law and maintained an office at 4907 West Pine Blvd., St. Louis, Missouri 63108.
4. At all times relevant to this matter, Respondent maintained and used an attorney trust account ("Trust Account") with Parkside Financial Bank & Trust ("Parkside") and also maintained an account with Parkside to utilize for the general

EXHIBIT
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operating expenses of his law firm ("Operating Account").

5. Respondent at times would place personal funds into the Trust Account and would also deposit unearned advanced legal fees paid by his clients into the Operating Account.

6. Respondent did not maintain full records reflecting the activity in his Trust Account, the source of funds being deposited into the Trust Account or documentation providing the support and explanation for the withdrawal or disbursements of funds from the Trust Account.

7. In March of 2011 Respondent was retained by Kim Bass ("Bass") to represent her in the renegotiation of her mortgage interest rate and amortization schedule with her mortgage company. Respondent was paid a fee of \$3,250 for his services, with payment made in four equal installments, some of which were received prior to the services for which they were being paid having been performed. While those fees had not yet been earned, Respondent deposited those payments into his Operating Account.

8. In April of 2011 Respondent was retained by Joi Brown ("Brown") to represent him in a collection matter. At the time he was retained Respondent received \$600 for his fee for the services to be rendered. On April 13, 2011, prior to performing the services for which he was being retained, Respondent deposited the payment received from Brown into his Operating Account.

9. Respondent obtained a judgment in the Brown collection matter and

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subsequently commenced garnishment proceedings on Brown's behalf to execute on the judgment. When Brown received garnishment payments from the County Clerk's office he deposited those payments into his Operating Account.

10. Respondent made payments relating to the general operation of his law practice from his Trust Account, to wit:

a. On September 4, 2011, September 30, 2011, October 14, 2011 and November 1, 2011, Respondent made payments directly from his Trust Account to Kellen Gracey ("Gracey"), for services Gracey rendered as Respondent's law clerk;

b. On October 11, 2011, Respondent paid his monthly membership dues to BNI High Octane, a networking group to which Respondent belonged, out of his Trust Account;

c. On October 21, 2011, Respondent made payment to Jose Arayan, an individual he retained to provide legal marketing services, directly from his Trust Account; and

d. On August 3, 2011, September 4, 2011 and October 3, 2011 Respondent made his law office rent payment to Asprint Properties out of his Trust Account.

11. In addition to the payments referenced in the preceding paragraph, on November 1, 2011, Respondent issued Trust Account check number 1039 made payable

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to "Asprint Properties" in the amount of \$375.00, as payment for his November office rent.

12. At the time Trust Account check number 1039 was presented for payment there were insufficient funds in the Trust Account to cover such check. Accordingly, on November 7, 2011 Parkside, in compliance with the regulatory requirement set forth in amended Missouri Supreme Court Rule 4-1.15 and the related Advisory Committee Regulation effective January 1, 2010, sent an overdraft notification to the Office of Chief Disciplinary Counsel ("OCDC").

13. A review of Respondent's Trust Account for the period April 13, 2011 through November 7, 2011, reflects the deposit of personal funds into the Trust Account by Respondent. For example, Respondent made the following transfer of personal funds to his Trust Account: \$375 on August 9, 2011, \$400 on September 7, 2011; \$400 on October 7, 2011; \$1,500 on October 21, 2011; \$150 on October 25, 2011; and \$200 on November 7, 2011.

14. For the reasons set forth above, Respondent is guilty of professional misconduct as a result of violating Rule 4-1.15(c) by commingling personal funds and client funds in the Trust Account, Rule 4-1.15(d) by failing to keep complete records of the Trust Account that expressly reflect the date, amount, source, and explanation for all receipts, withdrawals, and disbursements of the funds or other property of clients or other parties, and Rule 4-1.15(f) by depositing client's advance payments of legal fees into the

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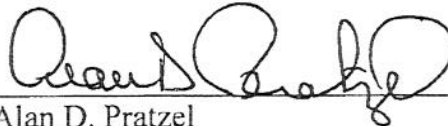
Trust Account.

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

DESIGNATION OF COUNSEL FOR INFORMANT

The Chief Disciplinary Counsel has designated the following Counsel of Record for Informant: Barry J. Klinckhardt, 240 Larkin Williams Industrial Court, Fenton, Missouri 63026.

Respectfully submitted this 9th day May, 2012.



Alan D. Pratzel
Chief Disciplinary Counsel

IN THE SUPREME COURT OF THE STATE OF MISSOURI

IN RE: LUIS HESS

)
) File No. DHP- 12-023
)
) OCDC No. 11-2100-OD
)
) _____
) Supreme Court Number:
)



Respondent.

JOINT STIPULATION AS TO DISCIPLINE

COMES NOW Informant, by and through its attorney undersigned, and
 Respondent and his attorney of record, and stipulate as follows:

1. Respondent is a duly licensed attorney-at-law admitted to practice in and before all courts of this State, a member of the Bar of the State of Missouri, with Missouri Bar Number 62945, and at all times relevant herein has engaged in the practice of law and maintained an office at 4907 West Pine Blvd., St. Louis, Missouri 63108.
2. Respondent received his license to practice law in the State of Missouri in September of 2010, shortly after his graduation from law school. Thereafter Respondent began his practice of law as a solo practitioner, with no support staff, and continued that practice at all times relevant to this Information. Respondent's license is currently in good standing with the Missouri Bar.
3. Respondent maintained and used an attorney trust account ("Trust Account") with Parkside Financial Bank & Trust ("Parkside") and also maintained an

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account with Parkside to utilize for the general operating expenses of his law firm ("Operating Account").

4. Respondent deposited personal funds into the Trust Account and deposited unearned advanced legal fees paid by his clients into the Operating Account.

5. Respondent did not maintain full records reflecting the activity in his Trust Account, the source of funds being deposited into the Trust Account or documentation providing the support and explanation for the withdrawal or disbursements of funds from the Trust Account.

6. In March of 2011 Respondent was retained by a client K.B. to represent her in the renegotiation of her mortgage interest rate and amortization schedule with her mortgage company. Respondent was paid a fee of \$3,250 for his services, with payment made in four equal installments, some of which were received prior to the services for which they were being paid having been performed. While those fees had not yet been earned, Respondent deposited those payments into his Operating Account.

7. In April of 2011 Respondent was retained by a client J.B. to represent him in a collection matter. At the time he was retained Respondent received \$600 for his fee for the services to be rendered. On April 13, 2011, prior to performing the services for which he was being retained, Respondent deposited the payment received from J.B. into his Operating Account.

8. Respondent obtained a judgment in the J.B. collection matter and subsequently commenced garnishment proceedings on J.B.'s behalf to execute on the judgment. When Respondent received garnishment payments from the County Clerk's office for J.B., Respondent deposited those payments into his Operating Account. Respondent subsequently delivered those garnishment payments to J.B. from his Operating Account.

9. Respondent made payments relating to the general operation of his law practice from his Trust Account when such payments should have been made from Respondent's Operating Account, to wit:

- a. On September 4, 2011, September 30, 2011, October 14, 2011 and November 1, 2011, Respondent made payments directly from his Trust Account to pay his law clerk's wages;
- b. On October 11, 2011, Respondent paid his monthly membership dues to a networking group out of his Trust Account;
- c. On October 21, 2011, Respondent made a payment to a legal marketer directly from his Trust Account; and
- d. On August 3, 2011, September 4, 2011 and October 3, 2011 Respondent made his law office rent payment to his landlord out of his Trust Account.

10. In addition to the payments referenced in the preceding paragraph, on November 1, 2011, Respondent issued Trust Account check number 1039 in the amount of \$375.00 to his landlord as payment for his November office rent.

11. At the time Trust Account check number 1039 was presented for payment there were insufficient funds in the Trust Account to cover such check. Accordingly, on November 7, 2011 Parkside, in compliance with the regulatory requirement set forth in amended Missouri Supreme Court Rule 4-1.15 and the related Advisory Committee Regulation effective January 1, 2010, sent an overdraft notification to the Office of Chief Disciplinary Counsel ("OCDC").

12. A review of Respondent's Trust Account for the period April 13, 2011 through November 7, 2011, reflects the deposit of personal funds into the Trust Account by Respondent. For example, Respondent made the following transfer of personal funds to his Trust Account: \$375 on August 9, 2011, \$400 on September 7, 2011; \$400 on October 7, 2011; \$1,500 on October 21, 2011; \$150 on October 25, 2011; and \$200 on November 7, 2011.

13. Respondent has been cooperative with the Disciplinary Counsel throughout its investigation and these proceedings and has clearly expressed his remorse in his failure to properly establish appropriate trust account procedures and the resultant commingling of client and personal funds. Furthermore, Respondent has voluntarily

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sought education on the proper handling of trust account funds and agreed to take webinar courses offered by the Missouri Bar relating to the management of attorney trusts accounts.

14. For the reasons set forth above, Respondent is guilty of professional misconduct as a result of violating Rule 4-1.15(c) by commingling personal funds and client funds in the Trust Account, Rule 4-1.15(d) by failing to keep complete records of the Trust Account that expressly reflect the date, amount, source, and explanation for all receipts, withdrawals, and disbursements of the funds or other property of clients or other parties, and Rule 4-1.15(f) by depositing client's advance payments of legal fees into the Trust Account.

SANCTION

15. Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. *ABA Standards for Imposing Lawyer Sanctions*, Section 4.13. In this case Respondent was negligent in failing to maintain adequate trust accounting procedures the absence of which resulted in the commingling of personal funds with client funds. There is no indication Respondent knew that he was not dealing properly with client property nor did Respondent fail to remit client funds promptly.

16. In considering the appropriate sanction for misconduct, absence of a prior

disciplinary record, absence of a dishonest or selfish motive, full and free disclosure to disciplinary board or cooperative attitude toward proceedings, inexperience in the practice of law and remorse are all factors which may be considered in mitigation. (*Id.* at Section 9.32 (a), (b), (c), (f) and (l))

17. While the facts of this matter make it close to a case warranting suspension, in consideration of the mitigating circumstances, an appropriate sanction in this case would be for Respondent to be issued a reprimand by this Court.

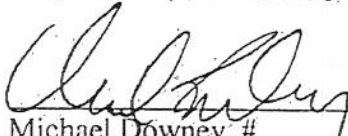
Respectfully submitted,

Date

7/16/2012

Date

Barry J. Klinckhardt, #38365
Attorney for Informant
240 Larkin Williams Industrial Court
Fenton, Missouri 63026
(586) 427-1432 (telephone)
Email: klinckhardt@sbcglobal.net



Michael Downey, #
Attorney for Respondent
7700 Forsyth Boulevard, Suite 1800
St. Louis, Missouri 63105
(314) 621-5060 (telephone)
Email: mdowney@armstrongteasdale.com

6/27/2012

Date



Luis F. Hess, #62945
Respondent

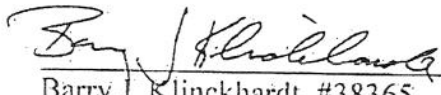
#527:

disciplinary record, absence of a dishonest or selfish motive, full and free disclosure to disciplinary board or cooperative attitude toward proceedings, inexperience in the practice of law and remorse are all factors which may be considered in mitigation. (*Id.* at Section 9.32 (a), (b), (e), (f) and (l))

17. While the facts of this matter make it close to a case warranting suspension, in consideration of the mitigating circumstances, an appropriate sanction in this case would be for Respondent to be issued a reprimand by this Court.

Respectfully submitted,

6/29/2012
Date


Barry J. Klinckhardt, #38365
Attorney for Informant
240 Larkin Williams Industrial Court
Fenton, Missouri 63026
(586) 427-1432 (telephone)
Email: klinckhardt@sbcglobal.net

Date

Michael Downey, #
Attorney for Respondent
7700 Forsyth Boulevard, Suite 1800
St. Louis, Missouri 63105
(314) 621-5060 (telephone)
Email: mdowney@armstrongteasdale.com

Date

Luis F. Hess, #62945
Respondent

#527:

Advisory Committee of the Supreme Court of Missouri

217 East McCarty Street
Jefferson City, Missouri 65101-3112

Overseeing Ethical Conduct
of Lawyers in the State of Missouri

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OCT 26 2012

OCDC

Richard E. Banks
St. Louis

Alvin L. Brooks
Kansas City

Doreen D. Dodson, Esq.
St. Louis

Sidney A. Dulle, CPA
Jefferson City

John C. Holstein, Esq.
Springfield

David P. Macoubrie, Esq.
Chillicothe

Susan Ford Robertson
Kansas City

Richard N. Priest
St. Louis

Dorothy White-Coleman, Esq.
St. Louis

Susan Appelquist, Esq.
Springfield

John Briscoe
New London

Jennifer Gille Bacon, Chair
Kansas City

October 25, 2012

Barry J. Klinckhardt
Attorney at Law
609 Audubon Place Court
Manchester, MO 63021

Michael Downey
Attorney at Law
7700 Forsyth Boulevard, Ste. 1800
St. Louis, MO 63105

Re: LUIS HESS; DHP-12-023

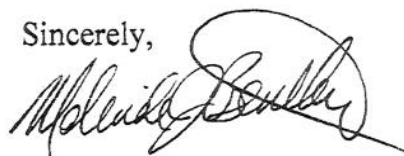
Dear Messrs. Klinckhardt and Downey:

The Advisory Committee received the decision of the Disciplinary Hearing Panel in this matter. Rule 5.19(a) provides:

Within 30 days after the panel's written decision is mailed pursuant to Rule 5.16(f), the chief disciplinary counsel and the respondent each shall file with the chair of the advisory committee a written notice stating whether that party accepts or rejects the decision of the panel. A copy of the written notice shall be served by first class United States mail, postage prepaid, on the opposing party. Failure to timely file a notice rejecting the decision shall be deemed acceptance.

As all parties have signed the Stipulation, a copy is not enclosed. Please file your written notice with this office within thirty (30) days of the date of this letter.

Sincerely,



Melinda J. Bentley
Legal Ethics Counsel

Enclosure

c: Alan Pratzel ✓



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AC/LEC
OCT 25 2012

Case No. DHP-12-023

OCDC No. 11-2100-OD

OCDC No. 11-2100-OD

OCDC No. 11-2100-OD

INTRODUCTION

Informant was represented by Barry J. Klinckhardt, Esq., Special Representative.

The Disciplinary Hearing Panel adopts the facts, conclusions, and recommendation set forth in the
 tion, which is attached and incorporated by this reference.

Dated:

Dated:

Dated:

SHERYL BUTLER, Public Member

IN THE SUPREME COURT OF THE STATE OF MISSOURI

IN RE:

LUIS HESS

Missouri Bar No.: 62945

Respondent.

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Case No. DHP-12-023

OCDC No. 11-2100-OD

DISCIPLINARY HEARING PANEL DECISION

INTRODUCTION

A hearing was held in this matter September 18, 2012. This matter was submitted to the Hearing Panel based upon a stipulation by the Parties. The Hearing Panel consists of: Chas. H. Steib, Presiding Officer; Dorothy L. White-Coleman, Attorney Member; and Sheryl Butler, Public Member.

Informant was represented by Barry J. Klinckhardt, Esq., Special Representative.

Respondent was represented by counsel, Michael Downey, Esq.

The Disciplinary Hearing Panel adopts the facts, conclusions, and recommendation set forth in the stipulation, which is attached and incorporated by this reference.

Respectfully submitted,

Dated: _____

CHAS. H. STEIB, Presiding Officer
1610 Des Peres Road, Suite 360
St. Louis, MO 63131-1813
(314) 862-7805

Concur:

Dated: 10-15-12


DOROTHY L. WHITE-COLEMAN, Attorney Member

Dated: _____

SHERYL BUTLER, Public Member

IN THE SUPREME COURT OF THE STATE OF MISSOURI

IN RE:

LUIS HESS

Missouri Bar No.: 62945

Respondent.

Case No. DHP-12-023

OCDC No. 11-2100-OD

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Respondent was represented by counsel, Michael Downey, Esq.

The Disciplinary Hearing Panel adopts the facts, conclusions, and recommendation set forth in the stipulation, which is attached and incorporated by this reference.

Respectfully submitted,

Dated: _____

CHAS. H. STEIB, Presiding Officer
1610 Des Peres Road, Suite 360
St. Louis, MO 63131-1813
(314) 862-7805

Concur:

Dated: _____

DOROTHY L. WHITE-COLEMAN, Attorney Member

Dated: Oct. 17, 2012


SHERYL BUTLER, Public Member

**OFFICE OF THE
CHIEF DISCIPLINARY COUNSEL**

3335 AMERICAN AVENUE
JEFFERSON CITY, MO 65109-1079
(573) 635-7400 FAX (573) 635-2240

SUPREME COURT OF MISSOURI

November 7, 2012

Missouri Supreme Court Advisory Committee
C/o Melinda J. Bentley, Legal Ethics Counsel
217 E. McCarty Street
Jefferson City, MO 65101

Re: Luis Hess; DHP-12-023

Dear Melinda:

Pursuant to Rule 5.19, this letter will serve as notice to the Chair of the Missouri Supreme Court Advisory Committee that Informant accepts the written decision of the Disciplinary Hearing Panel in the Luis Hess matter.

Sincerely,



Carl E. Schaeperkoetter
Staff Counsel

CS/ss

Cc: Michael Downey
7700 Forsyth Blvd., Ste. 1800
St. Louis, MO 63105

