

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:)
)
JAMES T. MADISON,) **Supreme Court #SC89654**
)
Respondent.)

INFORMANT'S BRIEF

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STATEMENT OF JURISDICTION

Jurisdiction over attorney discipline matters is established by Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMo 2000.

STATEMENT OF FACTS

Background

Respondent James T. Madison, born in 1964, was licensed to practice law in Missouri in 1997, at which time he commenced his solo practice. **App. 101 (T. 403)**. Respondent's Kansas City practice includes personal injury, medical malpractice, and wrongful death litigation, and a small amount of landlord/tenant matters. **App. 101 (T. 403)**.

Disciplinary History

The Court publicly reprimanded Respondent in an order issued on June 1, 1999. **App. 142**. Mr. Madison was reprimanded because he pled guilty to felony aggravated assault in a Johnson County, Kansas, state court. **App. 118 (T. 470-471)**. According to the criminal complaint, on September 1, 1998, Respondent intentionally placed another person in reasonable apprehension of immediate bodily harm with a deadly weapon. **App. 180**. Respondent testified at this disciplinary hearing that the assault arose out of a domestic dispute with his ex-wife. **App. 68 (T. 269)**. Respondent was sentenced to two years probation, with one of the special conditions of probation being to obtain anger management counseling. Respondent completed the anger management counseling before the probation was terminated on May 17, 2001. **App. 118 (T. 471)**.

On January 31, 2003, a regional disciplinary committee admonished Respondent for violating Rule 4-1.1 (competence), Rule 4-1.2 (lawyer shall abide by client's decisions concerning objectives of representation), and Rule 4-1.3 (diligence). **App. 136-138**. Respondent disputes that he received this admonition. **App. 119 (T. 473)**.

On March 1, 2006, Respondent was admonished for violating Rule 4-1.4 (communication). **App. 139-141.**

Disciplinary Case

In a letter dated October 24, 2005, then presiding judge J. D. Williamson of the Circuit Court of Jackson County alerted disciplinary authorities to alleged misconduct committed by Mr. Madison. Judge Williamson's letter enclosed statements from Judges Justine Del Muro, Gregory Gillis, John O'Malley, and other court personnel, all describing courthouse incidents with Mr. Madison. In addition, Judge Williamson's letter enclosed four letters written by Mr. Madison to Judges Del Muro and Gillis. **App. 150-176.**

After investigation by a regional disciplinary committee, a two-count information was filed on June 15, 2007, charging Respondent, in each count, with violation of Rule 4-8.2(a) (lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge), Rule 4-3.5(d) (lawyer shall not engage in conduct intended to disrupt a tribunal), and Rule 4-8.4(d) (professional misconduct for a lawyer to engage in conduct prejudicial to the administration of justice). **App. 143-149.** The alleged misconduct occurred in the course of Respondent's handling of cases pending before Judges Del Muro and Gillis in 2005.

Count I

Judge Gregory Gillis

Associate Circuit Judge Gillis sits in Division 27 of the Jackson County Circuit Court. He has been a judge for eight years. **App. 3 (T. 8)**. In 2005, he typically called a docket of landlord/tenant cases on Wednesdays. While landlord/tenant cases do not often involve complex legal issues, Judge Gillis likes to dedicate a separate day to call the landlord/tenant docket because the matters are potentially very contentious. **App. 4 (T. 9)**.

On Wednesday, March 16, 2005, Judge Gillis was presiding over a docket involving primarily landlord/tenant matters. One of the cases on the March 16, 2005, docket was *Houston Enterprises of Kansas City, LLC, v. Blancarte*. **App. 216-218**. Respondent Madison represented the plaintiff landlord in the rent and possession case.

The courtroom was crowded at the beginning of the docket call, with probably 100 people, mostly laypersons, present. **App. 4 (T. 12); 37 (T. 141-142)**. As a courtesy, Judge Gillis generally calls the cases in which lawyers have entered an appearance early in the docket. **App. 4 (T. 10)**. Both Respondent, for the plaintiff, and the tenant, Ms. Blancarte, responded to Judge Gillis' call of *Houston Enterprises v. Blancarte*. **App. 4 (T. 10)**. From the outset, Judge Gillis observed Respondent to be angry and upset at both him and the tenant. **App. 24 (T. 91)**. Although Respondent spoke politely, he had an angry scowl on his face. **App. 25 (T. 94-96)**.

At Judge Gillis' request, Respondent recited the relief sought by his client, the landlord. No witness appeared for the landlord. The tenant told Judge Gillis that she did

not agree that the landlord was owed all the relief requested. As is Judge Gillis' custom, he asked Respondent and the tenant to go out into the hall and attempt to reach a compromise agreement. It has been Judge Gillis' experience that most cases are informally resolved in this way. **App. 4 (T. 10-12).**

Although Respondent testified that after the judge's request he did discuss the case with Ms. Blancarte, neither Judge Gillis nor his judicial assistant saw Respondent leave the courtroom after the first encounter at the bench. **App. 4 (T. 11); 37 (T. 141-142); 103 (T. 412).** Instead, both Judge Gillis and his assistant observed Mr. Madison return to his seat in the courtroom, whereupon he commenced staring at Judge Gillis. **App. 26 (T. 98); 37 (T. 142-143).**

After about ten minutes, Judge Gillis called Respondent's case for a second time. Respondent told him the tenant admitted she had not paid rent, but that she claimed the landlord's agent had excused her rent for a period of time. **App. 4 (T. 10); 26 (T. 98-99).** The judge typically does not hold contested hearings on docket days, as there are many cases on the docket and the courtroom is crowded. **App. 37 (T. 141-142); 40 (T. 156).** The judge offered several future dates for resetting the matter for trial, but for each date offered Respondent stated he was unavailable and hoping to "handle the return today." **App. 14 (T. 49).** Judge Gillis asked Respondent whether he had a witness present, and Mr. Madison replied that he did not need a witness and that he could cross examine the tenant in two minutes. **App. 14 (T. 50).** Judge Gillis eventually indicated that he would come back to the parties after further clearing his docket.

Judge Gillis perceived that Respondent was becoming increasingly agitated. The judge anticipated that Respondent believed he could satisfy the landlord's burden of proof through questions Respondent would ask the tenant. In the judge's view, such questioning would not overcome the weight of the tenant's anticipated testimony that part of the rent had been excused (by an absent witness). **App. 6 (T. 18-19); 27 (T. 101-102)**. Judge Gillis was trying subtly to alert Respondent that he was more likely to obtain full relief for his client if the case were continued, and Respondent subsequently produced the witness who could refute the tenant's claim. **App. 5 (T. 14-15); 9 (T. 29-30)**.

After calling the case for the third time, Judge Gillis put the tenant under oath and questioned her himself, as he generally does in cases involving pro se parties. **App. 6 (T. 18)**. The tenant acknowledged the lease and the ledger showing she owed more than \$1,000.00 in rent, but testified that the landlord's agent had excused all but the March rent because the property was infested with mice and roaches. **App. 17 (T. 61-62)**. The tenant's admission that she owed some rent gave her credibility in Judge Gillis' judgment. **App. 6 (T. 20)**. At one point in the tenant's testimony, Respondent interposed the landlord's agent's last name. **App. 17 (T. 62)**. Judge Gillis did not expressly invite Mr. Madison to cross examine the tenant, nor did Mr. Madison ask to cross examine the tenant. **App. 18-19 (T. 67-69)**.

Given Mr. Madison's contentious and agitated demeanor, after questioning the tenant Judge Gillis proceeded to announce his judgment. He granted possession of the property to the landlord and entered judgment for \$350.00 plus costs. **App. 6 (T. 19-20); 17 (T. 64)**. Respondent thereupon said "Your honor, I am sorry, but I would like to bring

to the court's attention" Judge Gillis advised Respondent that it was not his intention to argue with Respondent about the judgment, whereupon the following exchange occurred.

MR. MADISON: Judge, I just -- I object. There's no basis in the law for you to excuse her rent, and --

JUDGE GILLIS: Sir, I'm not making any comment in regard to the evidence. You're out of line in regard to arguing with me in regard to the judgment. It has been rendered already. Now, as an attorney, you know that there are appropriate manners within which you can present any claims or arguments that you have with the court. And what I'm doing at this time, as stated before, is entering a judgment in favor of plaintiff for the possession of the property and \$350 for the rent plus costs. And that is the judgment. That's it. That's it. Okay.

MR. MADISON: There's no basis in law. No basis in law.

JUDGE GILLIS: Mr. Madison, this is a question of fact, not law.

MR. MADISON: She admitted that she didn't --

JUDGE GILLIS: Mr. Madison, we had an issue. You have the means by which to take it up. Don't argue with me.

MR. MADISON: I'm not arguing. I'm just telling you the law, Judge. No way around it --

JUDGE GILLIS: We can go back to --

MR. MADISON: -- Judge Sawyer at the appellate court, whatever.

JUDGE GILLIS: Mr. Madison.

MR. MADISON: Judge --

JUDGE GILLIS: Get out of this courtroom. Okay. That's it. I'm through talking to you.

MR. MADISON: No basis in law for that.

App. 18 (T. 65-66).

After this exchange, Respondent slowly backed out of the courtroom, all the while angrily glaring at the judge. **App. 7 (T. 22-23)**. Mr. Madison appeared “arrogant” and had an “attitude.” **App. 46 (T. 178)**. Respondent’s behavior was disruptive. **App. 9 (T. 30)**. The people remaining in the courtroom were visibly shocked. **App. 9 (T. 30); 47 (T. 181)**. A lawyer present at the time remembers thinking to himself that he would never talk to a judge “like that.” **App. 35 (T. 135-136)**. Respondent’s voice was loud, disrespectful, condescending, and demanding. **App. 31 (T. 120); 36 (T. 137); 49 (T. 190)**.

Later that same day, Respondent faxed a letter to Judge Gillis. Excerpts from the letter follow:

Today, Judge Gillis, you were not faithful to the law. In fact, your honor, you showed contempt for the law and for this lawyer, who plaintively told you that you were not being faithful to the law.

You would not hear me on these issues of law, all of which I am sure you already are aware. Rather, in your ruthless abuse of power and contempt for the rule of law, you silenced me and ordered me out of your court. Rule 2.03(B)(7), Canon 3B(7) mandates that “A judge shall accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law.” You refused to hear me and, thereby, denied my client a right to be heard.

We will not appeal judge because it will not be economical for my client. And you know that it would be inefficient and uneconomical for my client to appeal your decision. However, your decision was unfair and blatantly without legal basis. An appeal would find that you abused discretion and violated the Code of Judicial Conduct. “A judge shall dispose of all judicial matters promptly, efficiently and fairly.” Rule 2.03(B)(8), Canon 3B(8).

The consequence of your unethical conduct is the loss of money to my client. The rightful judgment based upon the evidence is \$1,355.00. You entered a verdict and judgment today for \$350.00. So, you wrongfully took from my client \$1,005.00 today and gave it to the defendant.

I don’t think it is right that the rule of law in which we all have hope is no more than a trifle, a nod and a wink, a tongue in cheek. By the standards of the subject proceedings, there is no rule of law; just a pretense, a diversion, justifying power. There is no honor in that.

App. 104 (T. 416); 219-221. Mr. Madison wrote the letter to Judge Gillis because he wanted to tell the judge that what he did was wrong. **App. 106 (T. 421).**

Count II

Judge Justine Del Muro

Circuit Judge Justine Del Muro sits in Division 4 of the 16th Judicial Circuit. She has been a judge since 1993. **App. 51 (T. 197).** Judge Del Muro conducted more jury trials in 2005 than any other circuit judge in Jackson County. **App. 52 (T. 204); 222-223.** Judge Del Muro has failed to appear for a scheduled trial date only once – Monday, August 15, 2005. **App. 52 (T. 204); 69 (T. 273).** She was unable to preside over the specially set trial on August 15, 2005, due to a personal, family-related matter. **App. 53 (T. 206).**

Respondent Madison represented the plaintiff in the case specially set to be heard in Division 4 the morning of August 15, 2005. The case had been filed in September of 2002. Respondent Madison's client had suffered a closed head injury in February of 2002. In Respondent's judgment, his client was highly paranoid about the integrity of the justice system and was made more so by Judge Del Muro's failure to appear for her trial. **App. 109 (T. 434); 111 (T. 443); 224.**

When Judge Del Muro realized she would not be available to preside August 15, she called her staff, who alerted the presiding judge. **App. 53 (T. 205).** She knew Respondent's case was old, so she emphasized to her staff the importance of trying to find another judge who could hear the case. When she called back later, she was told no other judges had been available, so the case had been continued. **App. 53 (T. 205-206).**

Judge Del Muro specifically instructs her staff not to discuss the judge's personal life among themselves or other courthouse staff. She is protective of her personal life. **App. 61 (T. 241)**. The specific reason why Judge Del Muro could not appear on August 15 is very personal to her, and she will not divulge the particulars. **App. 65 (T. 258)**. Following the judge's instructions, Judge Del Muro's staff would have told the parties who appeared for trial on the morning of August 15 that the judge was not available, without providing any further details. **App. 61 (T. 244); 77 (T. 305)**.

On the morning of August 15, 2005, Respondent asked Judge Del Muro's law clerk if she was sick. The clerk said she was not sick and denied that she had a family emergency, but refused to provide any further explanation. **App. 107 (T. 426)**. Mr. Madison felt that he needed to get an explanation and an apology for Judge Del Muro's absence. **App. 106 (T. 423-424)**. He believes he has a right to demand an explanation and an apology from a circuit judge. **App. 112 (T. 446-447)**. When Judge Del Muro failed to appear that Monday morning, his client concluded that the defendants in the case had obtained undue influence over the judge or had bribed her. **App. 106 (T. 423-424)**. So Mr. Madison wrote Judge Del Muro a letter to try to calm his client and prevent her from settling her case for a "paltry sum." **App. 106 (T. 424)**. The August 23, 2005, letter was faxed to Judge Del Muro and appears at Appendix, p. 155-157. Parts of the letter are reproduced below.

I am extremely disappointed with your conduct. You arbitrarily failed to show for this extremely important trial without excuse or apology. Since your unexplained failure to appear on August 15, 2005 for this

special number 1 setting case, you have yet to offer either apology or explanation. Apparently, you think that you are the most important person in this process and are beyond such apology and explanation.

Judge, I feel very saddened by the tone of this letter. However, it is a irreverent remonstrance in response to your piteous pittance of regard towards my client's life crisis. I strongly object. My client is a very sick lady. She was involved in an automobile accident February 27, 2002 that has rendered her physically and mentally disabled. She has not been able to work since the accident. My client is diagnosed with Chronic Major Depressive Disorder with Psychotic features and Chronic Posttraumatic Stress Disorder caused by the automobile accident. She is under psychiatric care and medicated. She has attempted suicide, been hospitalized in K.U.'s psychiatric hospital, suffered rapid deterioration of economic and social life, and most of all she has very little hope for her future. Mrs. Williams-Jefferson is the mother of two teenage children, the oldest being 15 years old, and one five year old son. She is with very little means; her husband has abandoned her and her children.

Do you have any suggestions as to how we can get this case tried before March 20, 2005, preferably within the next thirty days? Do you think that Mrs. Williams-Jefferson deserves practical as well as theoretical access to the courts? Can you give me an account of your whereabouts on August 15, 2005 when you should have been in Court? Can you tell me

why we could not begin the trial on Tuesday, August 16, 2005 if you could not be there on Monday, August 15, 2005? Can you check the record and see how this case was continued twice by Judge O'Malley from number one settings and then languished on his docket for about a year and a half? (I am stating these things from memory, but I think it accurate). Can you see that it is a severe hardship upon Mrs. Jefferson to have to wait until March 20, 2005 before her case is heard by the court? Just a helpful hint: she has been unable to work since February 27, 2002. We are now three and one half years from the date of the accident. March 20, 2006 will put her four years and one month from the date of the accident. Does that make since to you?

Why did your law clerk, Bob, call my office several times on Friday, August 12, 2005 asking that we contact the court if the case settles over the weekend? I know that you did not forget about the case within a span of a weekend. Your whole staff was shocked that you were not there. They all denied that you were ill and denied that you had a family emergency. They seemed to indicate that you were simply choosing not to appear. No one, from the judges to lawyers to expert witnesses has ever heard of a Judge deciding simply not to appear for a trial, especially a trial involving a million dollar plus claim. You simply chose not to show. The entire community deserves an explanation from you.

App. 155-156. In the final paragraph of the letter, Respondent asked Judge Del Muro to recuse herself from the case.

Respondent very intentionally sent Judge Del Muro the letter. He needed to be able to explain to his client why her world had just collapsed. **App. 106 (T. 423).**

When Judge Del Muro received Respondent's August 23 letter, she read the first two paragraphs, then skipped to the last page. She could not read the entire letter because she found it very troubling and hostile. **App. 72 (T. 285).** She decided that Respondent's letter left her little choice but to recuse, so she recused herself from the case. The judge wrote Respondent a letter advising him that she had recused herself. **App. 78 (T. 310-311); 237.**

Then, on August 29, 2005, Respondent faxed a second letter to Judge Del Muro. The letter appears at **App. 161-163.** Parts of the letter are reproduced below.

I acknowledge receipt of your letter dated August 24, 2005. You have no right to insinuate that I am either irrational or unreasonable. You have no right to imply that I am not amenable to correction. On the contrary, I thirst after an explanation from you that could satisfy me as to the reasonableness of your failure to appear at trial on August 15, 2005 and perform your solemn duty to preside fairly and impartially over my client's prayer for relief. I beg of you, offer true justification that your reason for not executing your public duty as judge trumps my client's right to access to the courts. Please convince us that you are truly a "firm believer in our system of justice ..." as you state in your letter. From what I know of you,

your system of justice allows you on the one hand to berate and unjustly file a bar complaint against an African-American attorney, James Daniels, Esq. for being late to an un-noticed hearing and on the other hand nonchalantly failing to appear to preside over a very serious case in which a person, who was seriously handicapped negligence alleged in the petition, has their very life “hanging in the balance.” Mrs. Williams-Jefferson labors under grave psychological and physical disabilities for which she remains uncompensated three and one-half years after the alleged act of negligence. Please explain your sense of justice. Your indulgence in *Argumentum ad Hominem* towards me is not justice. It is a denial of justice.

Your recusal, though appropriate, does not do justice in this case. We were, in addition, looking for you to remedy the consequences of your failure to appear for trial on August 15, 2005. Your recusal unaccompanied by expedited access to the courts has further injured Mrs. Williams-Jefferson for now her time for trial has been thrown into a deep gulf of uncertainty. She may not now see trial for another year or two. How does a effectively single mother of three children labor under a mental and physical disability and provide adequate sustenance for her children. Well, she goes to food pantries to get groceries, lines up at soup kitchens to get meals, has at least once pan handled for money outside of a grocery store, limps to the bus stop, purchases clothes from the thrift stores, etc. This may not move you and convince you that an injustice has been done.

However, I believe in the dignity of life and the right to work. Mrs. Williams-Jefferson has been effectively denied the right to work. No one would offer it to her. You would have heard about that at trial. You would have heard, also, about her prevailing upon her orthopedist to be released to work. There are many things you would have heard at trial about this honorable, yet, imperfect victim.

Judge, you should know and I will tell you here that I do not take lightly these words I have written to you. But for the gravity of the harm done, I would do what most have done. I would have ignored the tyranny. However, I am afraid judge that this is a situation where a cause higher than myself demands this discomfort I endure with you. I want you to be clean. I passionately desire to show my client that you are not drunk with power, but filled with compassion. I hope to fill the void and assure her that you were prevented by an unexpected and grave twist of fate from presiding over her trial, her life. I want to explain to the world that power has been justly been reposed to you, Justine E. Del Muro, and that our system of justice can be trusted. I admit that I do have profound doubts concerning your fitness to preside fairly over cases. However, I am willing to be persuaded.

I, again, must demand an explanation and an apology for my client. It is not my case as you indicate in your August 24, 2005 letter, it is Marie Williams-Jefferson's case. You should know that. I consider myself a

servant to my client's interests, not my own. That is my role for which I happen to be compensated. I am, nevertheless, a servant. Similarly, I consider you as being no more than a servant to the people, plaintiffs, defendants, and nonlitigants. We need to have trust in you. The integrity of the system demands an apology, an explanation, and an outward demonstration of your compassion. Thus far, you have failed at satisfying any one of the three demands. The injustice here to this litigant, is an injustice and an insult to the people. I wish you could have seen the tears and agony of my client and her children caused by your failure to give them their "day in court." Win, lose, or draw, they deserved their day in court. You owe, and I mean, owe as a debt, this family a face to face apology. You should beg their forgiveness in person.

App. 161-162. Mr. Madison intentionally sent the letter to the judge. He was looking for an explanation to satisfy his client. **App. 111 (T. 442).** Judge Del Muro decided not to respond to the second letter since she had recused herself from the case. **App. 54 (T. 211).**

Presiding Judge Williamson, who had been copied on Respondent's second letter, suggested to Judge Del Muro that she file a complaint against Respondent. She told him she was concerned about doing so because the tone of the letters was hostile and threatening, and she did not want to draw any further attention to herself. **App. 54 (T. 211-212).** She decided to consult with Circuit Judge O'Malley about whether she had an

ethical obligation to report Respondent. She chose Judge O'Malley because he had served on the Judicial Commission. **App. 55 (T. 213).**

Judge O'Malley relayed to Judge Del Muro an incident he had had with Respondent in 2003 involving the same case Del Muro had been scheduled to hear on August 15. **App. 55 (T. 213).** Respondent was upset over a pretrial ruling Judge O'Malley was about to make because his time to respond to the opposing counsel's motion had not yet run. **App. 129 (T. 515-516).** Respondent walked uninvited into Judge O'Malley's office and stood over the seated judge, bellowing at him. **App. 89 (T. 353-354).** The incident "scared the daylights" out of Judge O'Malley. His judicial assistant summoned the sheriff's deputies. **App. 89 (T. 354).** Respondent stepped away from the judge, so Judge O'Malley did not have the deputies remove Respondent. **App. 93 (T. 372).** The judge allowed Respondent to fax his response opposing the motion that afternoon, then entered a ruling against Respondent's client. **App. 130 (T. 517).**

Judge Del Muro also learned about this time that Respondent had written the letter previously discussed in this Statement of Facts to Judge Gillis in March. **App. 55 (T. 215).** The presiding judge asked Judge Del Muro to compile all the information regarding Respondent's conduct from the various sources and send the information to him, as he would report it to the disciplinary office. **App. 55 (T. 215).** Judge Del Muro did some checking and learned about Respondent's guilty plea to aggravated assault. She obtained a copy of the Johnson County, Kansas, file and was disturbed that the crime involved a female victim and a loaded weapon. **App. 58-59 (T. 231-233).**

Respondent was dumbfounded by Judge Del Muro's conduct. He was "asking questions" and discussing the matter with other lawyers. He told an acquaintance about what happened, and the acquaintance said he knew a reporter at a local television station. The acquaintance had the reporter contact Respondent about Judge Del Muro. Respondent told the reporter Judge Del Muro had failed to show up for trial and had given no explanation for her absence. **App. 114 (T. 453-454)**. Respondent does not recall having any other media contact regarding Judge Del Muro, although two different television stations contacted the court questioning Judge Del Muro's work ethic. **App. 83 (T. 330-331); 114 (T. 453-454)**.

In early October of 2005, the presiding judge made Judge Del Muro aware that several television reporters had called the court questioning her work ethic. **App. 55A (T. 219)**. Specifically, the reporters questioned the judge's failure to appear for a trial and alleged that she was biased and had a history of not showing up for work. **App. 56 (T. 221); 83 (T. 331)**. After the court's public information officer provided the reporters with information about Judge Del Muro's work record and advised them to check Respondent's background, they lost interest in the story. **App. 84 (T. 334-335)**.

On October 17, 2005, Respondent faxed a third letter to Judge Del Muro. **App. 59 (T. 236)**. In the period of time between the second letter and the third letter, Mr. Madison had been unsuccessful in dissuading his client from settling her case (for \$80,000.00). **App. 113 (T. 451)**. Respondent attributes his inability to stop his client from settling her case to Judge Del Muro's failure to respond to his letters asking why she had not appeared for the client's trial. **App. 113 (T. 451)**. Respondent felt he needed to

write the third letter because the judge needed to know she had done something that was, in Respondent's opinion, very, very wrong. **App. 113 (T. 451-452)**. The letter appears at **App. 164-165**. Excerpts from the letter are reproduced below.

I have requested in futility that you explain your absence from our August 15, 2005 trial on several occasions. If you had some sort of emergency, please give me a means of verifying that to be the case. On August 15, 2005 and on August 18, 2005 everyone in your office denied that you had an emergency. They said that you simply did not appear and that you would not be in the whole week. It seems to me that you decided to take a week long vacation.

This will be my last humble request for a verifiable explanation from you. My client deserves to know and has the right to know why you did not appear and impartially execute the duties of your office on August 15, 2005. All persons involved would greatly appreciate and welcome your forthright explanation.

Your decision to withhold an honest explanation for your absence has propelled us all into inauspicious entanglements. You have a solemn duty Judge not only to avoid impropriety but also to avoid even the appearance of impropriety. This duty is commensurate with the magnitude and power of your office to shape the lives of those seeking just adjudication of live controversies, and in this case, a profound live controversy. If you had timely explained your absence, Mrs. Jefferson

would not have been cast into dark paranoia about you and the defendants conspiring to deny her justice. That paranoia not only lead Mrs. Jefferson to settle her case for pennies on the dollar, it has lead her and her family to a firm belief that “your” system of justice is corrupt. That belief will permeate the community and people will know you and the 16th Circuit for this act of infamy. Your robe is forever stained because you have failed to avoid impropriety or even the appearance of impropriety.

It is the opinion of attorneys and non-attorneys that you and your “evil” network will seek vengeance upon me for challenging you in this manner. I will tell you and them that I am pursuing this with my very life because I want the 16th Judicial Circuit to be clean ... I even want you to be clean. I am not asking for any special favors for myself. I am not representing myself to be perfect, no person is perfect. I am seeking simply to do what I can, what is within my reach. I am seeking to employ you to protect the reputation of your office, your brethren in the 16th Circuit, the whole of the Supreme Court of Missouri’s judicial system, and the great State of Missouri. Let your forthrightness be a true testament that there is no evil network in our Judiciary, not in our system of justice, not in the great state of Missouri.

App. 164-165.

Upon receiving the third letter, Judge Del Muro feared Respondent’s letters were never going to stop. She was very worried for her own safety. **App. 59-60 (T. 236-237).**

After getting the letters, Judge Del Muro started locking the door between the jury box and her chambers, something she had never done before. She advised her staff and the sheriff's office to let her know if Respondent came into the courthouse. She asked the sheriff's department to watch her each evening when she walked from the courthouse to her car. **App. 60 (T. 237-238).**

Judge Del Muro felt she did not owe Respondent an apology, because she had done nothing wrong. She found the tone of his letters to be quite insulting and offensive. **App. 61 (T. 241); 62 (T. 246-247).** The letters were hostile and suggested a volatility that frightened her. **App. 80 (T. 318).** None of the disparaging remarks Respondent made in the letters about Judge Del Muro is true. **App. 60 (T. 240); 61-62 (T. 244-245); 62 (T. 247-248).**

Respondent never filed a complaint against Judge Del Muro or Gillis with the Judicial Commission. **App. 63 (T. 249); 114 (T. 454).**

Aggravating Factors

In response to Mr. Madison's request to depose both Judges Gillis and Del Muro prior to the disciplinary hearing in this matter, the judges filed a joint motion for protective order. **App. 238-241.** The joint motion followed Respondent's announced intention to delve into the "details concerning the family matter" that prevented Judge Del Muro from attending court on August 15, to depose Judge Del Muro's spouse, and Respondent's refusal to sign an affidavit agreeing not to use the videotaped depositions for any purpose other than the disciplinary case. **App. 120 (T. 479); 238-240.** In a nine page order, presiding officer Dale Youngs granted the motion in part and denied the

motion in part. Presiding officer Youngs ordered, inter alia, that the depositions take place at Mr. Youngs' law office so that he would be available to "hear and resolve any disputes" that arose during the depositions. **App. 247-255.** The judges' depositions were thereafter scheduled to occur January 4 and 10, 2008. **App. 266.**

On January 4, 2008, Judge Gillis, Informant's counsel, Mr. Youngs, and other interested participants were present at Youngs' office for Judge Gillis' deposition. Without any advance notice, Respondent Madison did not appear. Respondent excused his absence by saying he had not "noticed up the deposition," even though everyone else involved understood they were to appear on that date. **App. 121 (T. 483-484).** Respondent testified that it was his tactical decision not to take Judge Gillis' deposition after all, and that he was under the impression that he need not explain that decision to the participants. **App. 122 (T. 485).** In a subsequent telephone conference call, Mr. Youngs advised Respondent that

given the inconvenience and delay occasioned by Respondent's insistence upon deposing the judges, scheduling the depositions, and then failing to appear, any subsequent discovery on his [Respondent's] part would only be allowed after first requesting and obtaining leave. At that point, Respondent began shouting and would not allow the Presiding Officer or anyone else to interject. Ultimately, the telephone conference had to be terminated because Respondent continued to shout and would not allow anyone to talk.

App. 267.

Mr. Madison thereafter filed a motion asking for Mr. Youngs' recusal and disqualification. In the motion, Respondent contended that, among other reasons, Mr. Youngs' position as president of the Missouri Institute for Justice disqualified him from presiding over the disciplinary case. Respondent states in his motion that:

It appears that Presiding Officer Youngs has positioned himself to do the bidding of the Judge Gillis, Judge Del Muro, former Judge J. D. Williamson and their sympathizers; and, thereby, further his own ends. Why else would J. Dale Youngs grant the judges a Protective Order denying Respondent the right to explore the reasons for Judge Del Muro's absences from trial, an issue at center of this controversy, and the right to utilize depositions to consult with family and advisors on the issues. What begs the need for a Protective Order? Respondent is the one who is alleged to have engaged in wrong; right?

Is the Missouri Institute for Justice the Evil network about which Respondent was warned that would do the bidding of Judge Del Muro?

App. 297 (footnote omitted). The panel denied Respondent's motion. **App. 307**.

Respondent acknowledges that he has substantial experience in the practice of law. **App. 102-103 (T. 408-409)**. Respondent denies he has done anything unethical. **App. 122 (T. 487); 123 (T. 490)**.

Disciplinary Hearing Panel Decision

The panel concluded Respondent was guilty of violating each of the charged Rules with respect to both counts I and II: Rules 4-8.2, 4-3.5(d), and 4-8.4(d). The panel

recommended that Respondent's license be suspended with no leave to apply for reinstatement for 12 months. **App. 273-279.** Informant concurred in the panel's decision; Respondent did not. The record was therefore filed with the Court pursuant to Rule 5.19(d).

POINT RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HIS CONDUCT TOWARD JUDGES GILLIS AND DEL MURO VIOLATED RULES 4-8.2(a), 4-8.4(d), AND 4-3.5(d) IN THAT HE MADE STATEMENTS IMPUGNING THE JUDGES' INTEGRITY WITH RECKLESS DISREGARD FOR THEIR TRUTH OR FALSITY AND HIS CONDUCT INTENTIONALLY DISRUPTED JUDGE GILLIS' COURTROOM.

In re Westfall, 808 S.W.2d 829 (Mo. banc 1991)

In re Coe, 903 S.W.2d 916 (Mo. banc 1995)

Gentile v. State Bar of Nevada, 501 U.S. 1030, 111 S.Ct. 2720, 115 L.Ed.2d 888 (1991)

Rule 4-8.2(a)

Rule 4-8.4(d)

Rule 4-3.5(d)

POINT RELIED ON

II.

THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LICENSE WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR TWELVE MONTHS BECAUSE HE KNOWINGLY COMMUNICATED WITH JUDGES AND IN THE COURSE OF THE DISCIPLINARY PROCEEDING IN SUCH A WAY AS TO INTERFERE WITH THE DUE ADMINISTRATION OF JUSTICE IN THAT HE REPEATEDLY AND RECKLESSLY MADE FALSE, DEMEANING, AND HARRASSING STATEMENTS TO AND ABOUT JUDGES AND THE DISCIPLINARY PROCESS.

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

Notopoulos v. Statewide Grievance Comm., 277 Conn. 218, 890 A.2d 509 (2006)

Comm. on Legal Ethics of the West Virginia State Bar v. Farber, 408 S.E.2d 274, 185 WVa 522 (1991)

Anthony v. Virginia State Bar, 621 S.E.2d 121 (Va. 2005)

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HIS CONDUCT TOWARD JUDGES GILLIS AND DEL MURO VIOLATED RULES 4-8.2(a), 4-8.4(d), AND 4-3.5(d) IN THAT HE MADE STATEMENTS IMPUGNING THE JUDGES' INTEGRITY WITH RECKLESS DISREGARD FOR THEIR TRUTH OR FALSITY AND HIS CONDUCT INTENTIONALLY DISRUPTED JUDGE GILLIS' COURTROOM.

In this Rule 5 original disciplinary proceeding, the Court reviews the evidence de novo. The disciplinary hearing panel's findings of fact, legal conclusions, and sanction recommendation are advisory to the Court. *In re Crews*, 159 S.W.3d 355, 358 (Mo. banc 2005) (per curiam). Rule violations must be proven by a preponderance of the evidence. Supreme Court Rule 5.15(c).

Mr. Madison's intemperate, obstinate, and sanctimonious responses to litigation developments with which he disagreed crossed the line from free expression of opinion in the open market place of ideas into sanctionable conduct. Several of the more offensive and untrue statements impugning Judges Gillis and Del Muro's qualifications and integrity are set forth below.

Judge Gillis

-- "you were not faithful to the law"

-- "you showed contempt for the law and for this lawyer"

-- “in your ruthless abuse of power and contempt for the rule of law, you silenced me”

-- “An appeal would find that you abused discretion and violated the Code of Judicial Conduct.”

-- “you wrongfully took from my client \$1,005.00 today and gave it to the defendant”

Judge Del Muro

-- “You arbitrarily failed to show for this extremely important trial without excuse or apology.”

-- “your system of justice allows you on the one hand to berate and unjustly file a bar complaint against an African American attorney, James Daniels, Esq. for being late to an un-noticed hearing and on the other hand nonchalantly failing to appear to preside over a very serious case”

-- “Your indulgence in Argumentum ad Hominem toward me is not justice. It is a denial of justice.”

-- “But for the gravity of the harm done, I would do what most have done. I would have ignored the tyranny.”

-- “I want you to be clean. I passionately desire to show my client that you are not drunk with power”

-- “I do have profound doubts concerning your fitness to preside fairly over cases”

-- “Your decision to withhold an honest explanation for your absence has propelled us all into inauspicious entanglements.”

-- “That belief will permeate the community and people will know you and the 16th Circuit for this act of infamy. Your robe is forever stained because you have failed to avoid impropriety or even the appearance of impropriety.”

-- “It is the opinion of attorneys and non-attorneys that you and your ‘evil’ network will seek vengeance upon me for challenging you”

The foregoing wide-ranging statements, falsely alleging the judges’ bias, ignorance of the law, intentional debasement of the law, and participation in a conspiracy adverse to Respondent and his clients, violate Rule 4-8.2(a), which reads as follows:

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge.

App. 312. Likewise, Respondent’s statements and conduct were prejudicial to the administration of justice in violation of Rule 4-8.4(d).

Given the near inviolability the First Amendment is generally thought to accord speech, brief review of the legal precedents recognizing valid restrictions on lawyer speech is appropriate. Speech restrictions are permitted when lawyers solicit business in order to advance the state’s interest in protecting vulnerable consumers and maintaining professional standards. *Ohralik v. Ohio State Bar Ass’n*, 436 U.S. 447, 98 S.Ct. 1912, 56 L.Ed.2d 444 (1978). See, e. g., Supreme Court Rule 4-7.3 (Direct Contact with

Prospective Clients). Similarly, commercial speech (lawyer advertising) is subject to reasonable restriction to allow for regulation of the misleading nature of some ads. *Bates v. State Bar of Arizona*, 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977); *In re R. M. J.*, 455 U.S. 191, 102 S.Ct. 929, 71 L.Ed.2d 64 (1982). See, e. g., Supreme Court Rules 4-7.1 (Communications Concerning a Lawyer's Services) and 4-7.2 (Advertising). Lawyer speech that potentially impinges on a party's right to a fair trial may be restricted. *Sheppard v. Maxwell*, 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600 (1966). See, e. g., Supreme Court Rule 4-3.8(f) (Special Responsibilities of a Prosecutor).

In a related vein, five Supreme Court Justices have agreed that the "speech of lawyers representing clients in pending cases may be regulated under a less demanding standard than that established for regulation of the press." *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1074, 111 S.Ct. 2720, 115 L.Ed.2d 888 (1991). Rather than the "clear and present danger" standard that applies to suppression of media speech, a majority of the Supreme Court agreed that states may restrict lawyer speech regarding issues in pending cases on a showing of "substantial likelihood of material prejudice." *Id.* at 1075.

And finally, a lawyer's free speech rights during a courtroom proceeding are extremely circumscribed. *Sacher v. United States*, 343 U.S. 1, 72 S.Ct. 451, 96 L.Ed.2d 717 (1952). See, e.g., Supreme Court Rule 4-3.5 (Impartiality and Decorum of Tribunal).

As the preceding precedents illustrate, myriad state interests may supersede an individual lawyer's right, in particular settings, to freely express himself. The specific question posed by the instant case is whether Mr. Madison's criticism of Judges Gillis

and Del Muro is sanctionable under the Rules of Professional Conduct. While the United States Supreme Court has not directly enunciated a test to balance a lawyer's First Amendment right to criticize the judiciary against a state's right to enforce professional standards in a disciplinary proceeding, this Court has spoken on the issue.

In *In re Westfall*, 808 S.W.2d 829 (Mo. banc 1991), this Court reprimanded a prosecuting attorney for critical remarks he made against an appellate judge the day an opinion, with which the prosecutor disagreed, was handed down. In concluding that a sanction was not only appropriate but survived Constitutional challenge, this Court articulated the legal analysis that controls consideration of the case at bar.

Preliminarily, this Court declined to scrutinize each of Mr. Westfall's questioned statements for assignation as "fact" or "opinion." Mr. Westfall had argued that only his factual assertions, not his opinions, were reviewable under Rule 4-8.2. The Court stated that such "microscopic" scrutiny would create an artificial dichotomy between opinion and fact. 808 S.W.2d at 833. Instead, and as can be equally, if not more certainly, concluded in the case of Mr. Madison's remarks, the Court found that Mr. Westfall's criticisms "clearly imply an assertion of objective fact regarding ... [the judge's] judicial integrity." *Id.* No reading of Mr. Madison's letters leaves any doubt as to Respondent's intention to excoriate the judicial integrity of Judges Gillis and Del Muro through recitation of objective fact.

The *Westfall* Court then turned to the question of the degree of Constitutional protection afforded lawyer speech in attorney discipline proceedings. The Court identified the state's substantial interest in maintaining public confidence in the

administration of justice. 808 S.W.2d at 836. The Court also recognized the special role that lawyers play in ensuring the public's, as well as individual litigants', confidence in the justness of legal process. As the United States Supreme Court has said:

As an officer of the court, a member of the bar enjoys singular powers that others do not possess; by virtue of admission, members of the bar share a kind of monopoly granted only to lawyers. Admission creates a license not only to advise and counsel clients but to appear in court and try cases; as an officer of the court, a lawyer can cause persons to drop their private affairs and be called as witnesses in court, and for depositions and other pretrial processes that, while subject to the ultimate control of the court, may be conducted outside courtrooms. The license granted by the court requires members of the bar to conduct themselves in a manner compatible with the role of courts in the administration of justice.

In re Snyder, 472 U.S. 634, 644, 105 S.Ct. 2874, 86 L.Ed.2d 504 (1985).

This Court concluded in *Westfall* that an objective standard, one that considers what a reasonable attorney, considered in the light of all his professional functions, would do or say in the same or similar circumstances, was the appropriate standard against which to judge whether a lawyer's judicial criticisms were made with reckless disregard for truth or falsity, and are therefore sanctionable under Rule 4-8.2. *Westfall*, 808 S.W.2d at 836-837. Succinctly put, a sanction against Mr. Madison survives Constitutional scrutiny if Madison's criticisms go beyond what a reasonable attorney would have said or done in the same or similar circumstances.

Against *Westfall's* analytical framework, the record offers substantiation, beyond a preponderance of the evidence, that Mr. Madison acted and wrote recklessly when he falsely impugned the judicial integrity and qualifications of Judges Gillis and Del Muro. Respondent wrote that Judge Gillis ruthlessly abused power and showed contempt for the law; and that Judge Del Muro arbitrarily, even nonchalantly, failed to show up for his client's trial, denied his clients justice, was drunk with power, had "forever stained" her robe by her conduct, and that his client's belief in the judge's tyranny and corrupt system of justice would "permeate the community and people will know you and the 16th Circuit for this act of infamy." He implied that Judge Del Muro treated black lawyers unfairly and that by criticizing her he risked having her "evil network" seek vengeance against him.

Mr. Madison acknowledged intentionally sending the judges the letters at issue. His purpose in writing Judge Gillis, he testified, was to make sure that the judge knew that "what he did was wrong." He wrote Judge Del Muro multiple letters, two after she had recused herself from his client's case, because he wanted an explanation and apology from the judge that would persuade his client not to settle her case for a "paltry sum." Respondent was desperate to stop his client from settling her case after the August continuance for less than he thought it was worth.

Mr. Madison sent copies of several of his letters to opposing counsel and the presiding judge. He testified that he was asking other lawyers questions about Judge Del Muro. He told an acquaintance about the judge's failure to appear for trial, and then,

when the acquaintance contacted a reporter/friend, told the television reporter his version of what had happened.

Mr. Madison wrote and spoke recklessly. He deliberately and repeatedly impugned Judge Del Muro's judicial integrity in letters and in conversation because he desperately wanted to keep his client from taking a settlement offer extended after the August continuance, and he inexplicably believed the letters and the Judge's hoped for response would stop his client from settling. His letters were intimidating, untrue, and frightening, given the multiplicity of Respondent's angry outbursts (including a felony conviction for aggravated assault). Mr. Madison wrote Judge Gillis solely for the purpose (because he had acknowledged that he would not appeal the judge's decision) of making sure that the judge knew that, in Respondent's opinion, Judge Gillis had done wrong.

It is not a stretch to posit that all litigators are fairly regularly met with less than completely favorable results in associate circuit court and disappointed by unexpected trial continuances. Such outcomes are a normal part of a litigator's world. A reasonable lawyer confronted with Mr. Madison's experiences with Judge Gillis and Judge Del Muro would not have said or written what Respondent said and wrote to these judges.

By resting his quest to dissuade his client from agreeing to settle her case on his demand for an explanation and apology from Judge Del Muro, Mr. Madison expressly impinged the state's interest in maintaining public, as well as his client's, confidence in the fair administration of justice. Rather than assuring his client that the Judicial Canons required the judge to have a non-arbitrary reason for missing court or advising her of her

right to file a complaint with the Judicial Commission, Mr. Madison recklessly impugned the judge's judicial integrity in an effort to "satisfy" his client and stop her from agreeing to settle her case for "pennies on the dollar." Mr. Madison thereby violated Rule 4-8.2, as well as 4-8.4(d). See Westfall, 808 S.W.2d at 839 ("The charges brought under Rule 8.4 are encompassed within the violation of Rule 8.2(a) in this case and, for purposes of imposition of discipline, cannot be distinguished."). See also Notopoulos v. Statewide Grievance Comm., 277 Conn. 218, 890 A.2d 509, 520-21 (2006) (when attorney makes statements that compromise the integrity of the judiciary, such conduct is prejudicial to the administration of justice).

With respect to Rule 4-3.5(d), the record shows that Mr. Madison insisted loudly and repeatedly, in a demanding and pushy voice in Judge Gillis' open courtroom, that there was "no basis in the law" for the judge's decision. Witnesses present in Judge Gillis' courtroom on the day in question testified that Respondent's conduct was "shocking" and "disruptive." A lawyer present that day testified that he remembered thinking to himself that he would never talk to a judge in that tone and manner. Those present were described as being visibly shocked at Respondent's behavior.

"Once a judge rules, a zealous advocate complies, then challenges the ruling on appeal; the advocate has no free-speech right to reargue the issue, resist the ruling, or insult the judge." *In re Coe*, 903 S.W.2d 916, 917 (Mo. banc 1995). "[I]n the courtroom itself, during a judicial proceeding, whatever right to 'free speech' an attorney has is extremely circumscribed. An attorney may not, by speech or other conduct, resist a ruling of the trial court beyond the point necessary to preserve a claim for appeal."

Gentile v. State Bar of Nevada, 501 U.S. 1030, 1071. Mr. Madison's behavior disrupted Judge Gillis' courtroom in violation of Rule 4-3.5(d).

ARGUMENT

II.

THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LICENSE WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR TWELVE MONTHS BECAUSE HE KNOWINGLY COMMUNICATED WITH JUDGES AND IN THE COURSE OF THE DISCIPLINARY PROCEEDING IN SUCH A WAY AS TO INTERFERE WITH THE DUE ADMINISTRATION OF JUSTICE IN THAT HE REPEATEDLY AND RECKLESSLY MADE FALSE, DEMEANING, AND HARRASSING STATEMENTS TO AND ABOUT JUDGES AND THE DISCIPLINARY PROCESS.

The disciplinary hearing panel recommended that Mr. Madison's license be suspended with no leave to apply for reinstatement for twelve months, a recommendation with which disciplinary counsel concurs. The record strongly suggests that anything less than a significant license suspension will fail to persuade Respondent that there are aspects of his practice that require reformation.

The ABA Standards for Imposing Lawyer Sanctions (1991 ed.) provide, at Standard Rule 7.2, that "Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system." Mr. Madison makes no bones about the intentional nature of his conduct. Nor is there any question but that

lawyers owe a duty to the profession to refrain from recklessly impugning the character of members of the judiciary.

The question of injury or potential injury (defined in the Standards as “harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer’s misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct) is more open to debate. Mr. Madison’s actions undeniably had an adverse impact on Judge Del Muro. His letters frightened her – she began locking the door to her chambers; she asked to be watched as she walked to her car in the evenings. She took time from her normal schedule to check Respondent’s background and seek counsel from other judges. The potential harm that resulted from Mr. Madison’s communications outside the courtroom is difficult to assess. Given the vitriol of Mr. Madison’s written word, it is safe to assume that his criticisms adversely affected many people’s perceptions of the 16th Circuit.

In addition to the fact that Mr. Madison’s conduct falls within the black letter rule for suspension, there are egregious aggravating factors to be considered. Respondent already has one public reprimand and several admonitions. He obstructed the disciplinary process by vehemently insisting on deposing Judges Gillis and Del Muro on his own terms, then failing to appear for the first deposition as previously agreed. The hearing panel’s presiding officer was compelled to terminate a telephone conference because Respondent became loud and uncooperative. He accused Judge Del Muro and the panel’s presiding officer of membership in an evil network of judges out to wreak vengeance on him.

Other aggravating factors found to be present in the case by the hearing panel include Mr. Madison's substantial experience in the practice of law, his refusal to acknowledge that he has done anything wrong, and the multiplicity of his rule violations.

While every case is unique, the sanctions imposed by other state supreme courts in discipline cases involving judicial criticism may be instructive. The Connecticut Supreme Court imposed a reprimand against a lawyer who, as conservator and subsequently co-executor of his mother's estate, wrote a letter to a member of the probate court's staff critical of the probate judge. The Connecticut lawyer sent copies of the letter to his brother and his mother's physician. In the letter, the lawyer accused the probate judge of extorting money from him on behalf of the judge's "crony" (an individual appointed by the judge to investigate his mother's care and financial assets). He also accused the judge of funding a "private Marshall Plan for the support, care and feeding" of another "crony," the individual appointed by the judge as conservator of the mother's person. The letter suggested the judge engaged in Medicare fraud. The lawyer accused the probate judge of recklessly and irresponsibly interfering in his mother's relationship with her doctor, characterized one of the judge's orders as arrogant and contemptuous, and accused the judge of being a financial predator of the incapacitated and dying elderly. *Notopoulos v. Statewide Grievance Comm.*, 277 Conn. 218, 890 A.2d 509, 512, 516-17 (2006). The Connecticut Supreme Court concluded the lawyer violated rules 8.2(a) and 8.4(4), which are analogous to two of the same rules with which Mr. Madison is charged in this case, Rules 4-8.2(a) and 4-8.4(d).

The Supreme Court of Virginia imposed a public reprimand “with terms” against a lawyer who, over the course of several years, wrote multiple letters to the Virginia Supreme Court clerk’s office and filed pleadings in various courts accusing judges on the Virginia Supreme Court, as well as a state trial judge and a federal judge, of conspiracy to refuse to turn over to him a letter that he claimed an anonymous caller had revealed to him was sent to the court, the subsequent destruction of the “letter,” and a conspiracy to place false information in public records. The “terms” imposed with the reprimand required the lawyer to associate with experienced co-counsel before filing anything in any court, and ordered him to abstain from writing any letters to judges in cases in which he was serving as counsel. *Anthony v. Virginia State Bar*, 621 S.E.2d 121 (Va. 2005).

In addition to engaging in the unauthorized practice of law (because he was on disabled inactive status at the time), a lawyer was given a public censure (reprimand) by the Kansas Supreme Court for arguing with a trial judge in open court, then faxing the judge a letter suggesting he retire from the bench, inasmuch as the judge did not “have what is required.” The letter continued “Your absurdly fastidious insistence on decorum and demeanor mask an underlying incompetence. You act like a robot. Do yourself and Johnson County litigants a great favor and get off the bench now.” *In re Arnold*, 56 P.3d 259, 263 (Kan. 2002). In sanctioning Mr. Arnold, the Kansas Supreme Court noted that

In this case, Arnold’s behavior shows a complete lack of respect toward the judiciary. His style was sarcastic, insulting, and threatening and subjected him to the discipline that was entered. The remedy for a believed

erroneous trial court ruling is appeal, not an intemperate writing faxed to the judge shortly after the ruling was made.

Arnold, 56 P.3d at 268. The Supreme Court of Kansas could easily have been describing Mr. Madison's conduct toward Judge Gillis.

The Supreme Court of Indiana imposed a 30-day suspension on a lawyer for the following conduct. The lawyer represented a couple seeking to adopt a child. Just prior to a recess in a hearing being conducted on the matter, the judge turned off the tape recorder being used to record the evidence. The judge inadvertently failed to turn the recorder back on after the recess and failed to notice he had not done so until after a witness' testimony was complete. The judge offered to recall the witness, but both counsel, including the Respondent, declined the offer.

When his clients were not granted custody of the child, the lawyer filed an appellate brief accusing the trial judge, among other things, of trampling on the rights of his clients by controlling the recording equipment and by delaying the hearing in order to extend the amount of time the child was with the other couple seeking his adoption. Portions of the lawyer's brief made their way into a local newspaper. *In re Becker*, 620 N.E.2d 691 (Ind. 1993) (per curiam). The sanction imposed by the Indiana Supreme Court was the same as the one jointly recommended by the lawyer and Indiana disciplinary counsel, a short term suspension. The court noted that the Indiana lawyer had previously been reprimanded, 620 N.E.2d at 694, as has Mr. Madison in the instant matter.

Finally, in *Comm. on Legal Ethics of the West Virginia State Bar v. Farber*, 408 S.E.2d 274, 185 WVa 522 (1991), the West Virginia Supreme Court reprimanded and suspended a lawyer for deliberately misstating facts in a motion to disqualify one judge, and accused another judge, who had held the lawyer in contempt and jailed him, of conspiracy to obstruct justice and participation in the cover-up of an arson. Despite clear evidence that his allegations were untrue, the West Virginia lawyer refused to retract his reckless statements. The West Virginia court said the following with respect to the lawyer's "practice of lashing out with reckless accusations":

There is courage, and then there is pointless stupidity. No matter what the evidence shows, respondent never admits that he is wrong. Indeed, sincere personal belief will, in the sweet bye and bye, be an absolute defense when we all stand before the pearly gates on that great day of judgment, but it is not a defense here when respondent's deficient sense of reality inflicts untold misery upon particular individuals and damage upon the legal system in general.

408 S.E.2d at 285. In addition to the suspension and reprimand, the court ordered that the West Virginia lawyer not be reinstated until an examining psychiatrist could vouch that he comprehended the nature of his misconduct and had taken steps to remedy any psychological problems that may have contributed to the misconduct. See also *In re Jacobs*, 794 S.W.2d 199 (Mo. banc 1990), where this Court declined to reinstate a suspended lawyer and ordered that any future applications for reinstatement be accompanied by a psychiatrist's report showing that the Respondent had been receiving

regularly supervised therapy. Mr. Jacobs had previously been diagnosed with narcissistic personality disorder.

Disciplinary counsel is not suggesting that Mr. Madison suffers from a psychological disorder. There is no evidence of record that any such condition exists, although the record does reflect that Mr. Madison completed more than one anger control counseling program in the aftermath of his felony aggravated assault conviction. See App. 118 (T. 471); 127 (T. 508); 128 (T. 510). Mr. Madison testified that his anger management therapist told him there was nothing wrong with him. **App. 128 (T. 510)**. If this Court suspends Respondent's license, his fitness to practice law can be thoroughly vetted in the reinstatement process. Rule 5.28(f).

Respondent continues to believe that Judge Del Muro owed him and his client an apology for not doing her duty. **App. 110 (T. 440); 112 (T. 447)**. Mr. Madison believes he was entitled to depose Judge Del Muro's spouse in order to get at something resembling the truth. **App. 120 (T. 480)**. His failure to show up to depose Judge Gillis on January 4 was a "small tactical decision" that was, according to Mr. Madison, his prerogative to make, and a decision he did not need to explain to anyone in advance. **App. 122 (T. 485)**. Respondent continues to believe that Judge Gillis was not true to the law and that he ruthlessly abused power. **App. 105 (T. 417-418)**. But, just as Mr. Madison never filed a complaint against Judge Del Muro with the Judicial Commission, he did not seek relief from Judge Gillis' judgment through legal channels, even though the judge's decision was, in his opinion, "unfair and blatantly without legal basis." **App. 104 (T. 416); 106 (T. 421)**.

Respondent has been through anger management counseling. He has already received one public reprimand. Mr. Madison stands steadfast by his position that his conduct toward Judges Gillis and Del Muro was correct and appropriate. He believes that the judges, indeed “this little judge club,” **App. 116 (T. 462)**, are retaliating against him for calling them out on their misdeeds. Mr. Madison knowingly, unrepentantly, and repeatedly made reckless statements impugning judges with little or no regard for the truth or falsity of the statements or the harm they might cause. The Court should suspend his license with no leave to apply for reinstatement for one year.

CONCLUSION

WHEREAS Respondent Madison recklessly criticized the integrity and qualification of judges and disrupted a courtroom in violation of Rules 4-3.5(d), 4-8.2(a), and 4-8.4(d), and whereas Respondent's conduct undermined the administration of justice by discrediting the profession and by demeaning the dignity of the judiciary, Respondent's license should be suspended with no leave to apply for reinstatement for twelve months.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of November, 2008, two copies of Informant's Brief and a diskette containing the brief in Microsoft Word format have been sent via First

Class mail to:

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Sharon K. Weedon

CERTIFICATION: RULE 84.06(c)

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 11,342 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and
4. That Norton Anti-Virus software was used to scan the disk for viruses and that it is virus free.

Sharon K. Weedon

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