

IN SUPREME COURT  
STATE OF MISSOURI

IN RE:  
J.C. HAMBRICK JR.

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)  
)

#SC86005

Respondent

RESPONDENT'S REPLY BRIEF

J.C. Hambrick Jr.  
106 Oxford Dr. #10  
Branson MO 65616  
417-335-3273  
RESPONDENT

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RESPONDENT’S REPLY BRIEF

COMES NOW the undersigned Respondent appearing in his own behalf without additional counsel and files the following reply as his brief in the above matter.

STATEMENT OF FACTS

Throughout the brief and argument the CDC counsel Mr. Schaeperkoetter makes numerous allegations, many of which were dismissed and many others were outside the allegations originally filed and many were related to matters by argument and innuendo, not facts presented.

Respondent has been in the practice of law since 1979. At the time of the hearing, Respondent had relocated to Branson, Missouri. As the court can determine, in 1998, Respondent accepted an admonition for failing to have a signed contract with his client. The case was unsuccessful since no physician

would support the claim at trial. The client believed that the Respondent should pay all costs out of his pocket. She hired a lawyer and threatened to make a claim unless all costs were paid by the Respondent. Those costs were paid by the Respondent. Since the agreement sent to her which held her ultimately responsible for out of pocket costs had not been signed and returned, it was the client's position that the Respondent had promised to cover all costs from his monies and that she had no liability for any costs.

According to documents provided by the Informant an admonition was issued in 2001 on a discrimination case, which had not been released for filing in court by the EEOC. The claim was failure to exercise diligence. Respondent disagrees with that finding since the case could not go forward without release from the EEOC.

## CURRENT DISCIPLINARY CASE

Informant misleads the committee and this court in regard to a meeting set for February 11, 2004.

There was a meeting agreed to on February 11, 2004. Respondent had arranged to make said meeting in Jefferson City. However, Mr. Laws office contacted Respondent and informed him that the matter had been re-set to a later date.(March 10, 2004). The informant's counsel argues that Respondent just

failed to show up for the meeting, when he knows as did the committee that Respondent had been contacted and told of an alternative date. It was that call alone which caused the Respondent not to travel to Jefferson City on February 11. At a later time Respondent was chastised by counsel for CDC for not appearing and he indicated that Respondent should have known that the February 11 conference was not cancelled but that a date for March 10 was for hearing. "Mr. Hambrick did not show up at our office. Apparently, there was a phone call with Mr. Laws, but remember ours was a meeting; it was not a hearing. Tr. P. 13 lines 5-7. Maybe Mr. Schaeperkoetter knew the difference, but obviously the Respondent did not nor did the committee.

Upon learning about the date, (March 10) Respondent requested the file and a continuance to obtain counsel and to obtain the file. Ultimately, the file was sent to counsel Jack Norton, who was unavailable to appear on March 10.

Since the continuance was denied, Respondent was finally given hundreds of pages of notes and claims, most of which were not related to the allegations. When the continuance was denied, Respondent requested from the informant what witnesses they intended to call and informant's counsel said he was not required to give Respondent that information and would not give him that information. Tr. P.8 lines 20-22. The list of exhibits was handed to the Respondent only minutes before the hearing. Tr. P. 9 lines 18-20. A similar package was presented to the committee at the same time. Tr. P. 10 lines 5-7.

For the above reasons, the Respondent was placed at a great disadvantage in this hearing. Apparently, that was Informant's counsel's intention in his zeal to sanction the Respondent.

## EVIDENCE AND RULINGS REGARDING ALLEGATIONS

### COUNT I

There was no evidence regarding count I presented by the informant and the allegation was dismissed.

### COUNT IV

Respondent had replaced other counsel that Shell had fired without notice. Part of the allegation was that Respondent was not to contact Shell's father. Shell did not have a phone and the only contact for Respondent was by calling his parents. Tr. P. 155 lines 4-6. That is how the replacement counsel contacted him as well. (Brice Taylor) "My understanding of my contacts with Mr. Shell went directly through his father's house." Tr. P. 60 lines 16-18.

Respondent handled a charge relating to stalking and got it dismissed and also handled a matter in Nebraska on another DWI, which the client did not want to come to the attention of his parents. It was not brought up and the matters were handled by the Respondent.

Mr Shell replaced Respondent as counsel without notice, as he had done with previous counsel. After my replacement, he picked up the file which included the video tape. Tr. P. 154 lines 17-19.

No other evidence other than discussion by Mr. Schaeperkoetter was produced. The count was dismissed and should not be considered as any part of this matter, even though argued by the Informant's counsel. No other testimony regarding the representation of Mr. Shell was allowed. Otherwise, if it was an issue, the Respondent would have presented a full accounting of the work for Mr. Shell, most of which was not paid for.

## COUNT II

COMES NOW the Respondent and answers to the matters related to Elois Davis.

The only evidence in this matter, is presented by a disgruntled employee who stole money from the business and even from a client's trust account. Her comments in the most part do not constitute absolute perjury, but a non-stop claim that she does not remember. She even claims that she did not remember us filing the claim.

Elois Davis did not have a telephone number. The only way to contact her was to call her boyfriend. Had counsel for the Informant looked, he would have found that there was no telephone listed for Elois Davis. She Ms. Davis, claimed

that a subsequent treating doctor would support her position. That was also not true.

#### Questions to Judy Hunter

Q. Didn't we have to contact her through her boyfriend?

A. I don't recall that.

Q. Did you have discussions with her regarding that, at least at some point, she would have to obtain enough money for the filing fee on the matter?

A. No, I don't recall telling her to come up with the filing fee.

Q. You don't recall filing that case

A. I don't recall filing that case.

The Informant showed that said claim was filed. Even though the client failed to pay the filing fee, Respondent paid the amount to file the claim to meet the statute of limitations. Tr. P. 100-101

Ms. Davis had told us that physician she had would support her theory of malpractice. Upon contact by Judy Hunter and by me, the doctor claimed that he would not support such a theory. After telling Ms. Davis of that response, she notified me that she had other counsel to handle her matter. She never told me of who that would be. As a result I sent her the file. She had other counsel appear for her. What occurred as a result, I am



unaware. Tr. P. 185 lines 17-22 and documents showing filing of the claim.

## COUNT V

In regard to the complaint by Ma'en H. Abu Znaimeh Respondent provides the following information.

Counsel did not want to participate in the matter. But nonetheless, Ms. Daughtery wanted the matter handled by me. Respondent had handled the divorce for the couple. She had provide information for her divorce, but held off the divorce for many months. Q. Mary, the divorce, it looks like, from the the information here, only took a couple of months, but, in fact, you gave me that information quite some time before that? A. Yes Q. And you chose not to go ahead with the divorce? A. Exactly Q. So we would discuss that every once in a while? A. Yes. Tr. P. 81 lines 16-25 . She finally decided to complete the divorce. Respondent was in the hospital at the time she chose to go forward with the divorce. Other counsel took the matter to default.

The bankruptcy took a similar approach. Man (sic) Ma'en did not speak English very well, but Mary spoke fluent Arabic. She would would speak for him

by phone, and after many months decided to complete the bankruptcy. Tr. P. 82 lines 1-22.

When Mary decided to complete the bankruptcy for her then ex-husband, she insisted coming to St. Joseph to pick up the documents. Respondent was suffering from pneumonia. He was unaware of what his problems were, but knew that he could only walk a small distance and would fall asleep. The Respondent was suffering from pneumonia as well as an affliction of Candida. That information was presented to the judge of the Bankruptcy court. As a result the court still required me to repay all fees which were paid.

### COUNT III

In regards to the matter brought by Richard Duganich the Respondent disputes all testimony by the disgruntled employee Judy Hanson, who stole money from the firm as well as from clients.

In regards to the other matters the Respondent states:

The referral came from Greg Copeland of Columbia Missouri. Tr. P. 112. It is that reason that the meeting took place at the Copeland law office Tr. P 113 Like other attorneys, most were unwilling to accept the case, either because of conflict, potential conflict of past conflict. They did not want to sue the state of Missouri or the University Hospital.

The rest of the case became much more complicated.. It turned out that Mr. Duganich had filed a work comp claim and received a settlement of \$48,000.00. That case was brought by Mike Korte, who took that claim, but refused the medical malpractice claim. In addition, the claim became even more complicated, in that Mr. Duganich joined a class action suit. According to Mr. Duganich, he was promised to be one of a few in category one of the class, which would grant him a million dollar recovery. In the end, his share after attorneys' fees and costs was \$34,000.00. Although he does not admit a promise for that amount of money, that is what he told the Respondent. This alone would affect any recovery in a medical malpractice claim. " So, somebody can call you on the phone and say, Hey, you might get a million bucks out of this, but you might be talking to a paralegal or the guy sweeping the floor, for all you know. So nothing was written in blood about what they were going to give me." Tr. P. 40 line 21-25 and P. 41 line 1.

The case complicated further when all manufacturers and many of the doctors were absolutely protected from liability. The main doctor , Gaines was one of those people. Miles could not be found and the others who may have performed the surgery were interns at the time.

The Respondent made an error in not knowing that the saving statute would not protect the additional dismissal. So did the court initially, until brought up by the defendant.

However, the Respondent submits that under all the matters involved in this matter, that the client was not damaged by the actions of the Respondent.

Not knowing that the Informant would claim that no money had been sent on behalf of Duganich or that the secretary who misappropriated funds would forget any such payments, Respondent provided to the committee the copies of payments to ST&T (Strauss and other doctors ) which greatly exceeded the amount paid by Duganich.

The Respondent had already provided the physicians' statements regarding his illness during the Ma'en matter and supplements that with later additional medical information.

All counts which were considered failed to provide supporting evidence which would justify suspension.

Respondent believes that the court could grant either an admonition for failure to know the status of the law regarding the saving statute even though no damage occurred to the client or probation on any suspension for all the reasons stated. Other than the reasons specifically addressed herein, the totality of the complaints is without merit to justify suspension.

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POINTS RELIED ON

1.

THE SUPREME COURT SHOULD NOT SUSPEND THE  
RESPONDENT'S LICENSE TO PRACTICE LAW. THE EVDIENCE IS  
WITHOUT MERIT TO MAKE SUCH A FINDING GIVEN THE HISTORY OF  
THE RESPONDENT'S PRACTICE FOR MORE THAN 25 YEARS AND THE  
MORE THAN 1,000 CLIENTS THAT THE RESPONDENT HAS SERVED.

POINTS RELIED ON

II.

THE PANEL CORRECTLY DISMISSED COUNT IV AND SHOULD HAVE DISMISSED THE REMAINING COUNTS SINCE THE INFORMANT FAILED TO MEET ANY BURDEN OTHER THAN BY ARGUMENT. NO DAMAGE OCCURRED TO ANY CLIENT INVOLVED AND THE ONLY INFERENCE OF NEGLIGENCE WAS BY A DISGRUNTLED AND AN EMPLOYEE WHO MISAPPROPRIATED MONIES BUT COULD NOT EVEN REMEMBER THAT A CASE HAD BEEN FILED. ALL OTHER MATTERS REGARDING RESPONDENT'S HEALTH WERE TAKEN UP BY INFORMATION FROM PHYSICIANS.

## ARGUMENT

In regards to Point 1: The Respondent has been a practicing attorney for more than 25 years and has serviced more than a thousand clients. To claim that his continued practice endangers the profession and or his clients is simply untrue. To suggest that fact shows that Informant's counsel has failed to practice in active practice.

Matters regarding Mary Daugherty were caused by two things, their indecision about whether to proceed further, first in the divorce, and second her finally coming to the realization that her then ex-husband's debts were enormous and although she did not have responsibility for them, that alone might endanger her job. Finally the complicating factor was that I was suffering from pneumonia at the same time they decided to complete the bankruptcy.

Respondent made an error regarding the saving statute in the Duganich case. Given all the facts, it is of serious question whether the client was damaged as a result. Certainly, the Respondent suffered financially from accepting the case.

The remaining matters both those dismissed and those addressed do not show a pattern of neglect on the part of Respondent and the court should refuse any suspension suggested by either the panel or the counsel for the Informant.



In regard to Point II the panel correctly dismissed the claim of Count IV. Had the panel not done so , even disadvantaged by not knowing who the Informant would call or what information they would attempt to bring to the hearing, the Respondent would have provided much evidence relating to that claim. If the court believes that the matter was dismissed without merit, the matter should be heard again in its entirety.

If the court considers any suspension, Respondent requests an opportunity to address all witnesses and information with preparation and for a re-hearing of this matter. Otherwise, the Respondent requests that the court deny any suspension and allow him to continue in his lengthy practice.

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## AUTHORITIES

Standards for Imposing Sanctions

Rule 4-1.16 (d)

Rule 5.15 (c)

Certification Rule 84

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

Included the information required by Rule 55.03

Complies with the limitations contained in Rule 84.06

There are 18 pages, with 12 of those being the brief. In those 12 pages there

Are 253 lines with a total of 2087 words.

The matter is in Microsoft Word and the disk is formatted and kept from

Virus by Norton's systems

The above matters have been served to the court as well as to counsel for the informant.

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J. C. Hambrick Jr.

On this 27<sup>th</sup> day of September, I hand-delivered two copies of Respondent's Reply Brief and one disk to Sharon Weedon counsel for CDC.

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J. C. Hambrick, Jr.