

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:)
)
LARRY D. COLEMAN,) **Supreme Court #SC89044**
)
Respondent.)

INFORMANT'S REPLY BRIEF

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POINTS RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE RESPONDENT VIOLATED RULES OF PROFESSIONAL CONDUCT 4-1.3, 4-1.5 AND 4-8.4(d) IN THAT RESPONDENT FAILED TO DILIGENTLY WORK TOWARDS FILING MS. MAXWELL'S PETITION AND RETAINED AN UNREASONABLE RETAINER AND FEE FOR THE AMOUNT OF WORK PERFORMED.

In re Mirabile, 975 S.W.2d 936 (Mo. banc 1998)

Matter of Struthers, 877 P.2d 789 (Az. 1994)

Matter of Moore, 494 S.E.2d 804 (S.C. 1997)

In re Kellogg, 50 P.3d 57 (Kan. 2002)

POINTS RELIED ON

II.

THE SUPREME COURT SHOULD ISSUE RESPONDENT A REPRIMAND BECAUSE A REPRIMAND IS APPROPRIATE WHEN A LAWYER IS NEGLIGENT IN ACTING WITH REASONABLE DILIGENCE AND NEGLIGENTLY FAILS TO PROVIDE A CLIENT COMPLETE INFORMATION.

Standards for Imposing Lawyer Sanctions, American Bar Association, 1991

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE RESPONDENT VIOLATED RULES OF PROFESSIONAL CONDUCT 4-1.3, 4-1.5 AND 4-8.4(d) IN THAT RESPONDENT FAILED TO DILIGENTLY WORK TOWARDS FILING MS. MAXWELL'S PETITION AND RETAINED AN UNREASONABLE RETAINER AND FEE FOR THE AMOUNT OF WORK PERFORMED.

Respondent's Brief is replete with attacks on everyone from counsel for the Informant, who Respondent accuses of lying to this Court, to the volunteers on the Disciplinary Hearing Panel, who Respondent maintains lack the requisite skills and qualifications necessary to sit in judgment of his misconduct. Though Respondent has clearly expended a considerable amount of time critiquing many of the individuals involved in this matter, the one person whose conduct he has failed to appropriately examine is his own.

Lack of Diligence

Respondent maintains that because he "conferred a benefit" on Ms. Maxwell, Respondent did not violate the Rules of Professional Conduct. There are several flaws in Respondent's assertion. First, Respondent put Ms. Maxwell through considerable grief by failing to follow her directives. Ms. Maxwell repeatedly asked that Respondent file her action as soon as possible and not wait until the last days permissible to file her

petition. Ms. Maxwell made such a request because she continued to work in an environment that she felt was hostile and because the stress of not knowing the status of the lawsuit was particularly troublesome to her, given her anxiety disorder. Attorneys generally must follow their clients' instructions. *In re Mirabile*, 975 S.W.2d 936, 939 (Mo. banc 1998) (citing *Jarnagin v. Terry*, 807 S.W.2d 190 (Mo.App. W.D.1991)). A lawyer should assume responsibility for technical and tactical issues, but should defer to the client regarding other decisions, such as the amount of expenses to be incurred. *Comment Rule 4-1.2*. In the present action, Respondent admitted that his delay in filing was because he had other pressing matters to work on for other clients. Respondent was not delaying his filing to gain any strategic or tactical advantage and as such, Respondent was obligated to follow Ms. Maxwell's request that he file prior to the last week permissible during the 90-day period, and the conference of any benefit does not negate the fact that Respondent violated Rule 4-1.3.

Secondly, the "benefit" Respondent maintains that he conferred on Ms. Maxwell was not the timely and complete filing of Ms. Maxwell's lawsuit, as contemplated by their attorney-client agreement. Respondent has asserted in his Brief that Informant has failed to prove that the timely filing of a federal lawsuit amounts to a violation of the Rule regarding diligence. The problem with Respondent's assertion is that he did not timely file a federal lawsuit on behalf of Ms. Maxwell. With only a few business days remaining in which to file Ms. Maxwell's lawsuit, Respondent terminated his relationship with Ms. Maxwell after learning that she had filed a complaint with the Office of Chief Disciplinary Counsel. At the same time, Respondent attached a copy of a six page

petition titled “Briscoe-Maxwell’s Complaint for Retaliation, Racial Discrimination, and Disparate Impact Against Defendant Doan” and suggested that Ms. Maxwell file the petition *pro se*. See **App. 75-79**. Had Ms. Maxwell been unable to obtain the filing fee or had she been incapable of navigating the court system in order to file her petition, the petition may not have been filed at all.

At issue is Respondent’s *delay* in preparing and filing the lawsuit. An attorney violates the Rules regarding diligence when he delays in preparing and filing paperwork. *Matter of Struthers*, 877 P.2d 789, 797 (Az. 1994). The fact that Ms. Maxwell was ultimately able to file the lawsuit does nothing to absolve Respondent. In *Matter of Moore*, the South Carolina Supreme Court concluded that an attorney was guilty of violating Rule 1.3 when he delayed in serving the complaint on an opposing party, thereby placing his client in imminent danger of dismissal. *Matter of Moore*, 494 S.E.2d 804, 809 (S.C. 1997). It is not necessary to demonstrate that Respondent missed a filing deadline. The fact that Respondent disregarded his client’s repeated directives and failed to file the suit with only a few days remaining to do so, is sufficient to establish that Respondent violated Rule 4-1.3.

Finally, Respondent has maintained that the federal petition, itself, is proof that he did not violate the Rules regarding diligence. Such is not the case. Respondent’s communications to and from Ms. Maxwell make clear that had Ms. Maxwell not filed a complaint with the Office of Chief Disciplinary Counsel, no petition may ever have been drafted. Though Respondent had three months within which to draft a petition, and though Ms. Maxwell repeatedly requested that Respondent file the petition as soon as

possible, Respondent did not produce a petition until three weeks after Ms. Maxwell filed her complaint with the Office of Chief Disciplinary Counsel and six days before the petition was due to be filed in court. Though Ms. Maxwell may have benefited by Respondent's drafting of the petition, Respondent's lack of diligence cost Ms. Maxwell her piece of mind, as well as \$4500.

Unreasonable Fee

Respondent maintains in his Brief that \$4500 is not an unreasonable fee and that the issue is more appropriately characterized as a fee dispute. However, when Respondent appeared at his disciplinary hearing with Ms. Maxwell's whole file and was asked to show the panel any memorandums, document drafts or evidence of work performed by him or his law clerks, Respondent could only produce a four page outline of the Equal Employment Opportunity complaint, written by his law clerk(s). See **App. 153-156**. Further, Respondent's own billing statement evidences that he personally worked on Ms. Maxwell's complaint for approximately one hour. In the case of *In re Kellogg*, the Kansas Supreme Court determined that an attorney's fee was unreasonable where there is no credible evidence to support or establish the fee. *In re Kellogg*, 50 P.3d 57, 63 (Kan. 2002) (noting a recent Supreme Court case, *Davis v. Miller*, 7 P.3d 1223 (2000), wherein the Court stated that fees not supported by meticulous, contemporaneous time records should not be allowed.) In the present action, neither Respondent's own billing records nor the work product establishes that the \$4500 fee assessed to Ms. Maxwell was reasonable.

ARGUMENT

II.

THE SUPREME COURT SHOULD ISSUE RESPONDENT A REPRIMAND BECAUSE A REPRIMAND IS APPROPRIATE WHEN A LAWYER IS NEGLIGENT IN ACTING WITH REASONABLE DILIGENCE AND NEGLIGENTLY FAILS TO PROVIDE A CLIENT COMPLETE INFORMATION.

Respondent contends that this action was not brought in good faith because the Complainant did not appear at the hearing, whereas if Respondent had not appeared at the hearing, it would have resulted in a default judgment. While Respondent's assertion bares no relation to whether he violated the Rules of Professional Conduct or whether a reprimand is the appropriate sanction, it may be worth noting that the Complainant did not appear at the hearing, but sufficient evidence was adduced to establish, in the minds of the Disciplinary Hearing Panel, that Respondent had violated the Rules of Professional Conduct. When counsel for the Informant moved to enter Complainant's complaint letter into evidence, Respondent was asked whether he objected to the admittance of the letter and Respondent replied, "no." **See App. 5.**

The ABA Standards for Imposing Lawyer Sanctions states that the standards assume that the most important ethical duties are those owed to the client. *Theoretical Framework*, Standards for Imposing Lawyer Sanctions, American Bar Association, 1991. Respondent contends that Ms. Maxwell was not harmed, however her numerous e-mails to Respondent make clear that Respondent's delay in filing caused her a great amount of

stress. Further, Ms. Maxwell was so afraid that Respondent would fail to file her suit in a timely manner, she submitted a complaint with the Office of Chief Disciplinary Counsel. As such, and as fully set forth in Informant's Brief, a public reprimand is the appropriate sanction for Respondent's violation of Rules 4-1.3, 4-1.5 and 4-8.4(d) and the harm that he caused Ms. Maxwell.

CONCLUSION

For the reasons set forth above and the reasons set forth in Informant’s Brief, the Chief Disciplinary Counsel respectfully requests this Court:

- (a) find that Respondent violated Rules 4-1.3, 4-1.5 and 4-8.4(d);
- (b) reprimand Respondent’s license to practice law; and
- (c) tax all costs in this matter to Respondent, including the \$750.00 fee for reprimand, pursuant to Rule 5.19(h).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of March, 2008, two copies of Informant's Reply Brief and a diskette containing the brief in Microsoft Word format have been sent via First Class mail to:

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Shannon L. Briesacher

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 1,849 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.

Shannon L. Briesacher