

IN THE MISSOURI SUPREME COURT
STATE OF MISSOURI

LARRY DELANO COLEMAN)

Respondent,)

) Supreme Court No. SC89044
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RESPONDENT'S BRIEF

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ARGUMENT

I

The Supreme Court should not discipline Respondent's license because Respondent did not violate Rules of Professional Conduct 4-1.3, 4-1.5 and 4-8.4(d) in that Respondent did not fail to diligently work towards filing Ms. Maxwell's petition and did not retain an unreasonable retainer and fee for the amount of work performed.

While the Respondent readily concedes that a disciplinary hearing panel's recommendation is advisory in nature, In Re Crews 159 S.W. 3d 355, 358 (Mo. banc 2005), the Respondent not only has done nothing worthy of discipline, but, in fact, he has conferred a direct benefit upon Cherie Briscoe-Maxwell, his former client.

Specifically, the Respondent has prepared a law suit implicating Title VII of the Civil Rights Act of 1964, setting forth disparate treatment and disparate impact theories of recovery, which has survived since its filing in November 2006. **App. 87-92** That is a substantial benefit, as such pro se lawsuits are usually dismissed out of hand. Secondly, Ms. Briscoe-Maxwell, concedes, herself, that the respondent has benefited her and made "good suggestions" **App. 49** which have culminated in her receipt of disability retirement income. Thus, far from violating the Rules of Professional Conduct, as alleged by attorneys for the Informant, the Office of Chief Disciplinary Counsel, the Respondent has conferred two direct benefits upon his former client. Therefore, there is no basis for discipline. In addition, the evidence does not preponderate in favor of the Informant. Indeed, it preponderates in favor of the Respondent. In Re Wiles, 107 S.W. 3d 228,229

(Mo. 2003)

ALLEGED VIOLATION OF RULE 4-1.3 REGARDING DILIGENCE

The Informant has not cited one case which holds, proves or even suggests that the timely filing of a Federal Civil Rights law suit within 90 days of receipt of a Notice of Right to Sue is per se lack of diligence, even if filed shortly before the expiration of the 90 day period. The point is, the law suit in this case was neither prepared, nor filed, outside of the Statute of Limitations. **App. 14 (Tr. 43)**

The fact is, the law suit in this case is still in Federal Court. The fact is, Cherie Briscoe Maxwell is still pro se in Federal Court resting on the work done on her behalf by the Respondent. The fact is, the Respondent did that which he was retained to do. The contract between the Respondent and Ms. Briscoe-Maxwell, Respondent's former client, did not specify any particular date for the filing of a law suit. **App. 130** Having to wade through thousands of pages of underlying administrative documents, prior to preparing the lawsuit, Respondent was quite diligent. **(Respondent's Appx. 1-21); App. 6-7 (Tr. 11-13)**

MORPHING INTO A FEE DISPUTE

It is conceded that Sherry Briscoe-Maxwell paid the Respondent Forty-Five Hundred dollars (\$4,500.00) for his services. **App. 129-130**

Every cent of that money was earned by Respondent's labors, or that of his staff. Indeed, had Ms. Briscoe-Maxwell been billed for all of the services which the attorney did on her behalf, her bill would be substantially higher. **App. 16 (Tr. 50)**

For example, only three (3) of the e-mails and related communications sent to

Respondent or sent by Respondent to Complainant are reflected on the time sheets; **App. 144-145** Obviously, all had to be read or written and analyzed. Neither was the time needed to draft the law suit reflected on the time sheets. **App. 133-134** Neither was the legal research done to fashion a theory that would be legally viable, and factually faithful, reflected in the time sheets. **App. 15-16 (Tr. 48-49)** Indeed, the time sheets were prepared primarily to reflect the work of the law clerks of the Respondent, which law clerks are all now lawyers, licensed by the State of Missouri, Respondent is pleased to note. **App. 14 (Tr.43-44); (Respondent's App. 1-21)**

It was an honor to mentor such young lawyers during their last semester of law school and to give them “live” work on which to whet their appetite for the practice of law. They were of material assistance to counsel and to Ms. Maxwell, whether she appreciates them or not. **App. 142; App. 15 (Tr. 45-46); App. 16 (Tr. 49-50); App. 53.163**

In his initial Response, Respondent indicated that a fee dispute, if such this was, is not within the province of the Informant or the Office of Chief Disciplinary Counsel. **App. 141-142** The rules provide otherwise for those issues. Rule 5.10 Nevertheless, the Informant has sought to conflate what would ordinarily be deemed to be a fee dispute into a Disciplinary Complaint. There is no evidence to support a Disciplinary Complaint. Likewise, there is even less evidence to support a fee dispute assuming this was the proper forum, which clearly it is not, under our rules.

At no time does Respondent receive any additional payment, for fees, from Ms. Maxwell, **App. 16-17 (Tr. 52-53)** beyond the Forty-Five Hundred dollars (4,500.00) she

paid initially. **A 37, ¶ 12** The evidence bears this out.

Lacking evidence, the Informant engages in fantasy to supply the deficit. The term, “fantasy” is used, because the Informant purports to explore the mental processes of a complainant, who had been diagnosed as both having bipolar and depression **App. 111, ¶ 11** and paranoia by her own physicians. **App. 125** How a woman, with such a state of mind, can be deemed to be more credible than the attorney who has helped her out of two difficult job situations, this one and a prior one, **App.7 (Tr. 13-14)** and who helped her to file the instant lawsuit, is hard to figure.

Ms. Briscoe-Maxwell did not even attend the hearing of September 18, 2007. **App. 6, (Tr. 9-12)** This brings into question, all the more, the propriety of this matter in this court. Rule 5.17, 5.19 (a) Had undersigned counsel not appeared at the hearing, this matter would have been defaulted against him to his professional prejudice. Rule 5.14

Apparently, an attorney’s good name can be besmirched and he can be drawn before the Supreme Court at his professional jeopardy, without good cause, by a woman who is mentally disturbed **App. 111, ¶ 11; App. 125** and by Court officers who capitulate. An innocent lawyer can be made to file a brief, despite no evidence to support his persecution. This proceeding is not in “good faith.” Rule 5.315 (a)

VIOLATION OF RULE 4-1.5 REGARDING REASONABLENESS OF FEES

The Informant has failed to set forth any basis for asserting that the Respondent’s fees were unreasonable. Unable to cite any Missouri cases on this subject, the Informant cites cases from Oregon and Maryland, i.e, In Re Gastineau, 857 P. 2d 136, 140 (Or. 1993); and Attorney Grievance Comm vs. McLaughlin, 813 A. 2d 1145, 1166 (Md.

2002).

The Informant has not shown that Forty-Five Hundred dollars (\$4,500.00) is an unreasonable fee for the preparation of a Federal lawsuit, involving Title VII of the Civil Rights Act of 1964. Even the complainant thought the Forty-Five Hundred dollars (\$4,500.00) fee was reasonable. She stated “I was under the impression when I gave him the \$4,500.00 that it would cover the costs of filing the civil action.” **App. 127** It did. She has no cause to complain.

Indeed, the attorney for the Informant, Mr. Gotschall, admitted that he had never filed a Federal Civil Rights lawsuit, lacking experience in the area. **Appx. 10 (Tr. 25)**

This is one of the problems. Respondent’s solo practice, over the past twenty-one years (21), has substantially been in the area of Civil Rights. That practice has encompassed both State Court and Federal Court at the Trial level and at the Appellate level. There were no peers, i.e. similar Civil Rights attorneys, assigned to evaluate this case at any level. That is an area in which this court could improve upon its disciplinary process: by assigning lawyers with similar experience and backgrounds in the subject matter under consideration to the disciplinary process, so that their recommendation can be both informed and fair, and of value to the court. Especially is this so in the field of civil rights, given its singular history in this Nation and in this State. Such was clearly not the case in this particular matter. Neither Mr. Gotschall nor anyone on the Disciplinary Hearing Panel has ever filed a Federal Civil Rights lawsuit on behalf of any individual. Nor has evidence to that effect been presented by the Informant.

The recommendation herein was neither informed nor fair. One possible reason

was that Respondent never had a hearing before the Region 4, Division 3 Regional Disciplinary Committee, before the issuance of the Information by Fritz Riesmeyer, Chairman. **Appx. 24 (Tr. 82), Appx. 23 (Tr. 78-79)** Once Cherie Briscoe-Maxwell started her infamous letter writing to John Dennis and Fritz Riesmeyer, they capitulated. **(Tr. 79,82)**. Her importuning procured the Information, unjustly, against Respondent.

If the Informant is suggesting there is something wrong with a sole practitioner receiving a retainer of Forty-Five hundred dollars (\$4,500.00), then such a contention appears to discriminate against a class of attorney's right to contract. That class being solo practitioners who represent Civil Right's claimants, or, maybe, solo practitioner's period.

It is well known that the starting salaries for first year lawyers, newly admitted to the bar at some of the major firms in Missouri are well in excess of One Hundred Thousand dollars (\$100,000.00) and some in excess of One Hundred-Fifty Thousand dollars (\$150,000.00). Undersigned counsel, has practiced law in this state since 1977. **App. 27** Surely he is entitled to a fair and adequate fee for his services.

The only way that the Informant can make its point is to engage in mendacity and hyperbole. For example on page 19 of its brief, counsel for the Informant states that the Respondent was "unable to show any work product related to the consumption of Ms. Maxwell's Forty-Five Hundred dollar (\$4,500.00) retainer." That is out right falsehood. The lawsuit is evidence of that. Informant even had the nerve to say in the next paragraph on page 19 "in the four (4) months the Respondent represented Ms. Maxwell, he did not produce or file a Petition." That is clearly incorrect. The Petition was

obviously produced as that is the one she filed pro se, and has actively litigated over a year in Federal Court. **App. 80-123** Hyperbole continues in Informant's brief to one effect that the Respondent invested "no time" and "accomplished nothing". (Id.) Such gross distortion of facts and outright misrepresentations before the court challenge the legitimacy of the Informant's brief, and recommendation, even as it undermines its veracity and probity.

In other words, the truth being insufficient, it has resorted to falsehood.

VIOLATION OF 4-8.4(d) REGARDING CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE IS NON-EXISTENT AND UNSUPPORTED

The Informant claims that the Respondent has "frustrated the judicial process." (Informant's Brief page 19) But this bold conclusion is not supported by the record. **App. 42, ¶ 20** The judicial process is and has been ongoing in Federal Court, because of the Respondent's work. Citing the case In Re Caranchini, 956 S.W. 2d 910 (Mo. banc 1997) points out the lack of precedents available to support the Informant's position. Ms. Caranchini had been censured and sanctioned by the Federal Courts in connection with four (4) underlying cases, which served as a predicate for her disbarment by this Court. No such factual predicate exists in this case at all.

Ms. Briscoe-Maxwell has represented to the Federal Court that she was unable to hire the Respondent. **App. 93** Such a misrepresentation in a Federal document is all the more anomalous, because she has filed a bar complaint against the very attorney she said she was unable to hire. **App. 124** His discharge was effected by her filing of the bar complaint when he became aware of it. **App. 74, App. 140-142**

ARGUMENT II

THE SUPREME COURT SHOULD NOT ISSUE RESPONDENT A REPRIMAND BECAUSE THE RESPONDENT DID NOT ACT NEGLEGENTLY AND WITHOUT REASONABLE DILIGENCE AND HE PROVIDED HIS CLIENT WITH APPROPRIATE INFORMATION

A reprimand is a prelude to more serious sanctions. Under the facts of this case, the Respondent should not be punished or imperiled by such a contingent possibility, given that a lawsuit was filed, is still in court, and the complainant benefited directly from Respondent's expertise, knowledge, and time. The Informant has failed to show what inaccurate information or incomplete information he gave to his former client. The e-mails overflow with information. And the contract is crystal clear. **App. 130.**

Recognizing the precariousness of its position the Informant goes to the extent of saying "even had Respondent's conduct had not harmed Ms. Maxwell, however, a public reprimand is still an appropriate sanction." (Page 22. Informant's brief)

This utterance brings us to the gravamen. Ms. Maxwell never suffered any harm, but the Informant has chosen to treat this case as though she were harmed. **App. 23 (Tr.77-78)** They have done this even to the extent of cutting off the Respondent's opportunity to present his case before the Regional Disciplinary Hearing Committee. **App. 21-23 (Tr. pg 72-76).** They have done this also by denying the Respondent a hearing, prior to the issuance of the Information. **App. 23 (Tr. 77-80); App. 24 (Tr. 81-83)** They have done this by consistently failing to advise the court that Ms. Briscoe's

lawsuit is in Federal Court, even as late as March 6, 2008, having been filed on or about November 14, 2006. They did this by secretly disguising the fact that Ms. Maxwell purposefully did not appear for the September 18, 2007 hearing, when, according to Mr. Gotschall, she had been at his office the previous week. **App. 6 (Tr. 9-10)** (See Informant's Brief page 9); **App. 171-173** And as such, anything she has said, constitutes inadmissible hearsay, being inadmissible before this court. Church of Scientology v. State Tax Comm., 506 S.W. 2d 837,839 [3] (Mo. banc 1977); Speer v. City of Joplin, 839 S.W. 2d 359,360 (Mo. App. 1992). Alternatively, proceeding against Respondent under such circumstances, denies the Respondent The Fourteenth Amendment Right to Equal Protection and Due Process of law, because had he not appeared, the discipline sought by the Informant would have been, at a minimum, granted by this Court, without more. Rule 5.14

It is for all of these reasons, that the Respondent has asserted that this entire matter was not pursued in good faith. Rule 5.315. Although the obviously diseased mind of Ms. Maxwell **App. A111, ¶ 11** is entitled to some degree of commiseration and understanding, the same cannot be said for the Informant.

The Information was filed in May of 2007. **App. 27-30** The lawsuit was filed in November 2006. **App. 87** Accordingly, it was with the full knowledge of the filing of the lawsuit, and despite the knowledge of the filing of the lawsuit, that the Informant filed this Information, seven (7) months later.

Fortunately, our Supreme Court stands, as ever, as a bulwark against such abuses as these, against solo practitioners and civil rights lawyers who have harmed no one.

Undersigned counsel fully trusts in our Supreme Court to do the right thing in this case, by dismissing the charges and denying any discipline, whatsoever, against him.

WHEREFORE, Respondent prays that the charges be dismissed and that he be allowed to go hence with his costs.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 84.06(b), I certify that the foregoing Brief consists of 2,950 words.

As required by Rule 84.06(g) and Local Rule XXXIII(b), Respondent states that the name and version of the word processing software used to prepare the Brief is Microsoft Word.

The diskette filed with the foregoing Brief, containing a copy of this Brief, has been scanned for viruses and is virus-free.

Larry D. Coleman

CONCLUSION

In conclusion, Respondent urges the court to dismiss the charges against himself, and to ward him his cost because he has done nothing warranting censure or punishment by this court. In Re John E. Mills, 462 S.W. 2d 700 (Mo. banc 1971).

Larry D. Coleman

CERTIFICATE OF MAILING

I hereby certify that two (2) copies of the above and foregoing Brief and one (1) diskette (scanned pursuant to Rule 84.06(g) as virus-free) were mailed to the below named attorney on this _____ day of March, 2008:

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