

STATEMENT OF FACTS

Respondent adopts the first three paragraphs of Informants statement of facts, although was unaware of the second admonition for failure to act with diligence.

From that point forward Respondent disagrees with Informant's slanted version of the facts of the case.

Respondent practiced for 25 years and serviced well over a thousand clients most of them successfully, and apparently without complaint other than the ones in the court's record. All except one of the complaints made here took place before the temporary suspension in December 2004. The panel determined in regard to the Gilbert complaint, that the issue of fees of 200 and 900 were paid by the Gilberts and Respondent acknowledged that fact. The other claims of fees were found in favor of the Respondent. In fact Respondent had paid money to the Gilberts prior to the settlement because they were hurting for money ,and Respondent had known Sharon Gilbert for some time and believed that at some time they would receive some settlement on a work injury suffered by Robert Gilbert.

During the Bankruptcy the petition was dismissed for some failures in the documents. The court granted a reinstatement of the Petition and granted the Gilberts their discharge. Respondent did not modify the schedules to

include the award, but also did not counsel Gilberts to answer falsely. The procedure in Kansas City was that all debtors were sworn in and then the Trustee called each debtor. In the Gilbert's case no creditors appeared and the Trustee abandoned all property.

At a later date the Trustee notified me of the error and of his awareness of the award. I spoke with him about it, but he chose not to open the estate or to seek the money that he could have claimed for unsecured creditors.

The Gilberts received all their award and did not have to turn it over to the Trustee because of the mistake on the schedule.

During this time period I maintained three accounts one in Parkville Missouri where I lived and two in St. Joseph. The disciplinary committee apparently subpoenaed the bank records from St. Joseph, but obtained a set of records just showing one account. After my secretary quit without notice I did use my wife as a part time secretary. But she wasn't on any bank account until we moved to Branson. I had an ATM card for the general account, but not one for the escrow account. I presumed my secretary had signature power on all those accounts, since she wrote most all the checks. On occasion she would give me checks to sign. A quick look at the records rather than the informant's counsel chart she made will clearly show that

someone else was signing those checks. When the secretary quit she had overdrawn the Parkville account and had quit paying the bills and apparently destroying the late notices, causing my utilities to be shut off a few days later. Her explanation was that she had two daughters, limited money and needed those things paid, that others would have to wait or I would need to figure out a way to borrow more money.

Count III regarding Richard Ward was a matter filed to Nodaway County. After moving to Branson, I suggested that Richard obtain other counsel but he did not want to. Although the numbers presented as values were very close to accurate, the court struck Richard's pleadings and proceeded with the case on her counter petition. They took his testimony under an offer of proof then rejected it and a few weeks later gave an opinion. We were not satisfied with the opinion. I handled the appeal without any fees for my work, because I believe that her admissions in her testimony regarding tax returns were sufficient to warrant a different distribution. I made the appeal, and filed my appellant brief. Before the due date of my reply brief I was suspended. I attempted to obtain other counsel for Richard and Richard thought he had obtained other counsel to finish and argue the appeal. That counsel changed his mind so the case was submitted on briefs without argument since I could not appear due to the suspension

Count V relates to the unauthorized practice. After suspension I made two contacts with Jeff Brown and arranged for other counsel to contact him and to get remaining releases and discovery answers to him. The two contacts I made related to discovery requests that had been long outstanding , one by phone reminding him they had promised to provide it and sending a copy of an earlier golden rule letter. Both took place while I was seeking replacement counsel for Goddards. The other contact I arranged was through Barney Naoitti so he could review all the materials in the case. I had not spoken to Scott Logan since he first assigned the case to Jeff Brown. Count IV relates to complaints by the Baileys.

My first contacts with the Baileys was after they received a demand to move for failing to exercise an option to purchase. The Baileys insisted they had an agreement for the owner to continue financing the house. They had paid him \$10,000.00 in cash and \$1200.00 per month. I did not seem like a reasonable agreement for an option on a house and the Baileys denied ever signing these option documents. When we received copies of the documents they assumed they had been forged which is why they weren't originals. Shortly before the trial the originals were provided, but the Baileys said they had a later agreement. They had stayed in the house an extra 2 years and prevailed at the trial. One of the complaints is that I filed an improper

counterclaim. I was arguing that the option contract was unconscionable and the transaction was in fact a contract for deed, and that Plaintiffs should not be rewarded unjust enrichment. The judge disagreed.

In relation to the tax lien issue, the Baileys wanted me to amend and send another offer in compromise, and not include substantial equity they had in a house in Oklahoma. That information had come to light when they had an agent contact me. I refused to send in the false document and tried to remedy the matter by phone with agents in several jurisdictions. Within a matter of months most of the liens would expire because they had not been enforced and were approaching the 10 year statute. As a result of these facts, the panel did not find any violation.

Finally the informant's counsel wanted to bring in the use of alcohol. The panel refused it especially a charge in 2003. If the Baileys ever thought I had been drinking, it would have been at night when they would show up at my home without any appointment to bring information or discuss numerous matters. They would also call late at night or at 6:00 a.m. Although the panel found no mitigating factors, they were aware from the file of a condition which allows an overgrowth of mold and yeast in the gut. The informant's counsel has been made aware of that matter both during this matter and the earlier matter tried in this court which was ruled on in 2004.

That Candida condition which allows for a build up of ammonia in the brain and the production of an alcohol like substance in the blood stream could not be attacked until I went back on dialysis in January 2005. After about 5 months on the dialysis I was able to take strong enough medications to attack the bacteria. It apparently has worked. See Klinghardt deposition in Respondent's appendix.

POINTS RELIED ON

I

**THE SUPREME COURT SHOULD NOT DISCIPLINE
RESPONDENT BECAUSE HE DID NOT FAIL TO PROTECT AND
PAY MONEYS OWED TO GILBERTS AND OBTAIN THEIR
DISCHARGE IN BANKRUPTCY**

POINTS RELIED ON

II

**THE SUPREME COURT SHOULD NOT DISCIPLINE
RESPONDENT FOR HIS FAILURE TO INCLUDE THE WORKERS
COMPENSATION AWARD ON INITIAL SCHEDULES. WHEN
NOTIFIED ABOUT THE ERROR, THE REPENDENT DEALT
WITH THE TRUSTEE AND UPON KNOWING THE EXTENT OF
THE AWARD CHOSE NOT TO DISRUPT THE DISCHARGE OR
REQUIRE PAYMENT OF THE AWARD. THEREFORE THE
GILBERTS RECEIVED ALL THOSE FUNDS**

POINTS RELIED ON

III

**THE SUPREME COURT SHOULD NOT DISCIPLINE
RESPONDENT BECAUSE HE DID NOT ENGAGE IN THE
UNAUTHORIZED PRACTICE OF LAW BECAUSE HE WAS
OBTAINING INFORMATION TO AID HIS CLIENTS IN
OBTAINING OTHER COUNSEL**

POINTS RELIED ON

IV

**THE SUPREME COURT SHOULD NOT DISCIPLINE
RESPONDENT BECAUSE HE DID NOT MISLEAD COUNSEL FOR
DEFENDANT AND EVEN ARRANGED TO HAVE SUBSEQUENT
COUNSEL CONTACT THEM WHILE HE WAS PRESENT AND
ALSO ATTEMPTING TO OBTAIN THE SAME DISCOVERY
INFORMATION FOR THE CLIENTS**

POINTS RELIED ON

VI

**THE SUPREME COURT SHOULD NOT DISCIPLINE
RESPONDENT BECAUSE HE CONTINUED TO PROVIDE
SERVICES TO CLIENTS AND DID INFORM THEM AS TO THE
STATUS OF THEIR MATTERS UP UNTIL THE TIME OF
SUSPENSION**

POINTS RELIED ON

VII

**THE SUPREME COURT SHOULD NOT DISCIPLINE
RESPONDENT BECAUSE RESPONDENT DID DILLIGENTLY
PURSUE THE REMOVAL OF IRS LIENS UP TO THE POINT OF
REFUSING TO FILE FRAUDULANT DOCUMENTS IN BEHALF OF
BAILEYS JUST BECAUSE THAT IS WHAT THEY WANTED ME
TO DO. THEIR FEES FOR MY WORK WERE NOT EXCESSIVE
AND WOULD HAVE BEEN TWO OR THREE TIMES THAT IF
THAT HAD NOT WORKED WITH MY WIFE.**

POINTS RELIED ON

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**THE SUPREME COURT SHOULD NOT DISBAR THE
RESPONDENT BECAUSE HE DID NOT CONVERT THE CLIENTS
PROPERTY AND PAID THEM IN FULL DID NOT PURPOSELY
DECIEVE THE COURT AND DISCUSSED IT WITH THE TRUSTEE
WHEN IT WAS BROUGHT TO HIS ATTENTION AND
CERTAINLY HAS NOT ENGAGED IN A PATTERN OF NEGLECT
FOR THE 25 YEARS OF HIS PRACTICE AND DOES
UNDERSTAND THE FUNDAMENTAL LEGAL DOCTRINES AND
PROCEDURES MUCH BETTER THAN MOST AND CERTAINLY
MORE THAN COUNSEL FOR THE INFORMANT WHO HAS NOT
PRACTICED LAW IN EITHER A FIRM OR SOLO.**

ARGUMENT

I

POINTS RELIED ON

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**THE SUPREME COURT SHOULD NOT DISCIPLINE
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As explained in detail, in the statement of fact the Gilbert's funds were protected and returned to them. They kept a running total of the amounts paid to them. It is clear from the checks themselves see appendix exhibit 1 that almost all the signatures on those checks were made by my secretary. You can see the difference simply by looking at them. I did not expect my secretary to steal money. There was no reason to have her prosecuted, and suing her for the money would not have mattered. When this happened I advised Sharon Gilbert. She continued to make requests and they were honored. Whether they ever paid me back the advance that I had given them I can't tell unless it is mentioned in their tally sheet (an entry referring to \$1,000.00) See Informants appendix.

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GILBERTS RECEIVED ALL THOSE FUNDS**

The Respondent admits to the error on the schedules. At some point in time I became aware of that and did not take action to go back after the discharge and correct it. When contacted by the Trustee I provided the information although by then I believe he had all of it except the opposing lawyer. I also notified the Gilberts and warned them that the Trustee could require that they return the funds already paid to them and the remainder from me. Fortunately for them the Trustee chose not to do that. I had told the Gilberts that they should hold up the bankruptcy until the time period had run on the worker's compensation matter, but they were continually

getting threats including a threat to foreclose their house. Consequently we proceeded. The outcome was a detriment to Mastercard and Visa but a benefit to the Gilberts.

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Respondent explained in detail the contacts and the arrangements he was attempting to make with other counsel. The court was notified of the December 2004 decision as was the client. I assumed a copy was sent to Brown or Logan's office.

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THAT HAD NOT WORKED WITH MY WIFE.**

The Bailey's misinformation as well as there intent to have me help them deceive the IRS should not result in any discipline. The finding by this court should be in favor of the Respondent as determined by the panel. The extent of fees charged for these matters was if anything, low. One matter in

addition is that the Bailey's wanted to obtain the title to a deceased mother's car. Bailey had already signed her name to it and wanted to get it back dated or claim a lost title. The mother had died in another area more than two years before.

CONCLUSION

Respondent that court add no additional sanction to that which already exists. In December of this year I will have been suspended for 2 years. Unless somehow miraculously I move up the transplant list faster than expected I will still be on dialysis for 16 hours a week every week, which effectively keeps from practicing law all of at least three days a week not counting other times in re hab for my knee replacement and other doctor requirements. After a matter of months on dialysis I was able to take strong enough medication to destroy the mold and candida fungus in my body and with medication for another year or so hopefully will have it destroyed. Since counsel for the Informant continues to insist on trying to drag in my driving record, I have enclosed the deposition of Dietrich Klinghardt a specialist in Seattle Washington who has been treating me since 2003. Wherefore I ask the court to dismiss the requests for discipline here.

Respectfully submitted,

J.C. Hambrick Jr.

This brief includes 17 pages not counting the Table of contents and 2606 words. And placed on CD format. Typed in New Times Roman in 14 pt.

A copy of this brief was sent to Shannon Briesacher staff counsel for cdc 3335 American Avenue, Jefferson City MO 65109 as well as 1 original plus 10 copies to the Clerk of the Supreme Court.

