

**IN THE SUPREME COURT  
STATE OF MISSOURI**

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**IN RE:** )  
 )  
**LAWRENCE JOSEPH HESS,** ) **Supreme Court #SC92923**  
 )  
**Respondent.** )

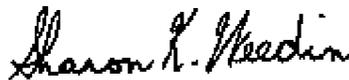
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**INFORMANT'S REPLY BRIEF**

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**POINT RELIED ON**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE THE ILLINOIS SUPREME COURT DISCIPLINED HIS LICENSE FOR VIOLATION OF RULES ANALOGOUS TO MISSOURI RULES 4-3.1 (MERITORIOUS CLAIMS AND CONTENTIONS) AND 4-8.4 (d) (ENGAGE IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE) IN THAT HE KNOWINGLY AND DELIBERATELY PARTICIPATED IN BRINGING MERITLESS AND FRIVOLOUS CASES AND LIENS THEREBY WASTING THE TIME AND RESOURCES OF THE COURTS, THE PARTIES, AND HIS FORMER CLIENTS AND HARMING THE INTEGRITY OF THE PROFESSION.**

*In re Veach*, 287 S.W. 2d 753 (Mo. banc 1956).

ABA Model Rules for Lawyer Disciplinary Enforcement, Rule 22

Supreme Court Rule 4-8.5

## ARGUMENT

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE THE ILLINOIS SUPREME COURT DISCIPLINED HIS LICENSE FOR VIOLATION OF RULES ANALOGOUS TO MISSOURI RULES 4-3.1 (MERITORIOUS CLAIMS AND CONTENTIONS) AND 4-8.4 (d) (ENGAGE IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE) IN THAT HE KNOWINGLY AND DELIBERATELY PARTICIPATED IN BRINGING MERITLESS AND FRIVOLOUS CASES AND LIENS THEREBY WASTING THE TIME AND RESOURCES OF THE COURTS, THE PARTIES, AND HIS FORMER CLIENTS AND HARMING THE INTEGRITY OF THE PROFESSION.**

In a reciprocal discipline case filed under Supreme Court Rule 5.20, disciplinary counsel seeks discipline against a Missouri-licensed attorney where the attorney has been “adjudged guilty of professional misconduct in another jurisdiction.” The basis for the disciplinary case is the adjudication in another jurisdiction that Respondent violated that jurisdiction’s rules of professional conduct. *See* Rule 5.20. The Comment to Missouri Supreme Court Rule 4-8.5 states, “[r]eciprocal enforcement of a jurisdiction’s disciplinary findings and sanctions will further advance the purposes of this Rule 4.” And, as this Court has said:

If one has been guilty of conduct inconsistent with the standard expected of lawyers as officers of the court, it should make no difference whether the acts were committed on this

side or the other side of a theoretical fence. There are no territorial boundaries in cases of such misconduct. The wrong and the guilt is within the person himself, and he carries it with him; he cannot be mentally and professionally pure in Missouri and impure in Illinois. To hold otherwise would make a mockery of disciplinary proceedings where an attorney has practiced back and forth across state lines.

*In re Veach*, 287 S.W. 2d 753, 759 (Mo. banc 1956).

It is Missouri disciplinary counsel's practice in Rule 5.20 cases to cite to the Missouri Rules of Professional Conduct analogous to the originating jurisdiction's rules, so the Court knows that the conduct violates Missouri professional standards. If the conduct that was sanctioned in the originating state does not violate a Missouri rule, then it is disciplinary counsel's practice not to seek reciprocal discipline for the rule infraction from this Court.

The fact that the Illinois Supreme Court ordered Respondent's license suspended for six months for violating professional rules of conduct, which rules are analogous to Missouri rules, is dispositive. Respondent's brief is a thinly disguised effort to relitigate his Illinois disciplinary case before this Court. Regardless of whether the Illinois Supreme Court "approved and confirmed" the Hearing Board's decision, and regardless of what an old Illinois Review Board case may have said, the unassailable fact is that the Illinois Supreme Court ordered Mr. Hess disciplined for violation of professional rules.

Missouri has virtually identical rules. The Missouri Supreme Court should reciprocally discipline Respondent. “A judicial determination of misconduct . . . by the Respondent in another jurisdiction is conclusive, and not subject to relitigation in the forum state.” *See* Comment, ABA Model Rules for Lawyer Disciplinary Enforcement, Rule 22 - - Reciprocal Discipline and Reciprocal Disability Inactive Status.

Respondent Hess is accountable for bringing frivolous litigation under Rule 4-3.1 for all the reasons explained at pages 27 through 32 of Informant’s brief. There is no basis, either in a literal reading of the rule or in policy, for acceding to Respondent’s plea to exempt him from it because he was a client in the objectionable litigation. The Court did not carry over from the Model Code to the current rule the clause limiting its application to lawyers representing clients. Respondent’s active involvement in the decision to file the frivolous litigation subjects him to disciplinary consequences.

It is noted that even if the Rule 4-3.1 violation is taken out of the case, the Rule 4-8.4 (d) violation is a sufficient basis for reciprocal discipline.

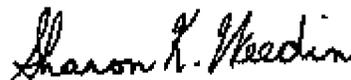
Respondent Hess has not taken issue with the level of sanction recommended by disciplinary counsel in its Rule 5.20 information. As stated in Informant’s brief, actual suspension is amply supported by the findings that Respondent acted knowingly and deliberately in misusing the courts and harming his former clients in an effort to gain advantage in an employment dispute. Respondent’s Missouri license should be indefinitely suspended with no leave to apply for reinstatement for six months.

## CONCLUSION

In accordance with the two purposes of attorney discipline, the focus in this attorney disciplinary proceeding must be on the people and the integrity of the legal profession that Rule 4-3.1 and Rule 4-8.4 (d) are designed to protect - - Respondent's former clients, opposing counsel, the court system, and the integrity of a profession harmed by Hess's frivolous and injurious conduct. Hess is not immune from the consequences of his actions by virtue of the fact that another attorney served as his attorney of record in bringing the litigation. The Illinois record makes clear that Respondent was a knowing and active participant in the misconduct. The Court should suspend Respondent's Missouri license without leave to apply for reinstatement for six months.

Respectfully submitted,

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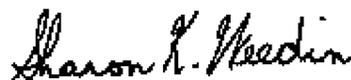
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of April, 2013, the Informant's Reply Brief was sent through the Missouri Supreme Court e-filing system to:

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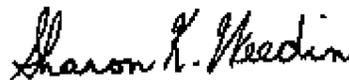
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Sharon K. Weedon

**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 1,368 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



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Sharon K. Weedon