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## STATEMENT OF JURISDICTION

Respondent does not dispute Informant's statement of jurisdiction.

## **STATEMENT OF FACTS**

### **BACKGROUND**

Mr. Madison is a graduate of the University of Michigan Law School in 1995 and a graduate of the University of Kansas in 1992 with honors and a degree in philosophy. Prior to entering college, Mr. Madison spent three years in the United States Army.

### **DISCIPLINARY HISTORY**

Mr. Madison received a public reprimand in this Court for pleading guilty to aggravate assault in 1999 in Johnson County, Kansas. The events arose from a confrontation with a man who had been recently rejected by Mr. Madison's ex-wife for the purpose of reconciling with Mr. Madison. Mr. Madison successfully completed two years probation June 8, 2001, several anger control classes, and obtained an expungement of the conviction on May 18, 2006. Mr. Madison accepted an admonition in a parallel case to the present one for communicating with a client through a third party. Mr. Madison denies receiving any other discipline. In the Course of the hearing an unsigned admonition was presented as being issued to Mr. Madison, though Mr. Madison denies that he received such an admonition. Mr. Madison pointed out in the hearing that the purported admonition presented was not ever signed.

## **RELEVANT FACTUAL BASIS OF CASE**

The present disciplinary case against Attorney Madison arises from difficulties with two judges of the Sixteenth Judicial Circuit Court, Judge Gregory B. Gillis and Judge Justine Del Muro. **Informant's App. 143.** The difficulty with Judge Gregory B. Gillis arises from events of a March 16, 2005 landlord/tenant hearing in which Judge Gregory B. Gillis did not allow Mr. Madison to cross-examine or directly examine the only witness (the defendant), nor participate in any meaningful way prior to entering judgment. **Respondent's App. 1 (Audio Tr. 10:22:25 – 10:31: 30).** Nor was Mr. Madison allowed to make any motion or comment after judgment was entered. **Respondent's App. 1 (Audio Tr. 10:22:25 – 10:31:30); Informant's App. 16-18.**

The difficulty with Justine Del Muro arose from Judge Del Muro's failure to appear on August 15, 2005 for a special number one set closed head injury trial nearly four years old. **Informant's App. 155-165** Mr. Madison's client had not been able to work since the trauma and she extremely fearful that Judge Del Muro's absence was intentional and the result of impropriety at least gave the appearance of impropriety to the Plaintiff. **Informant's App. 123 (Tr. 489-492)**

Mr. Madison made inquiries of Judge Del Muro by letter in an attempt to get an explanation for her absence on August 15, 2005 from the specially set

number one trial. **Informant's App. 155-165.** It was Attorney Madison's intent to get an answer from Judge Del Muro to assure his client that Judge Del Muro had a reason for being absent other than being bribed or some other impropriety.

**Informant's App. 111 (Tr. 441).**

In her personal written statement, Judge Del Muro explained that she had a personal-family related matter that prevented her from presiding over the specially set August 15, 2005 trial, of which she had been aware prior to the August 15, 2005 special setting. **Informant's App. 152.** The parties were not notified of Judge Del Muro's personal, family related matter that would prevent her from coming to the August 15, 2005 special setting; In fact, Judge Del Muro agreed that "it would be false if someone said that [she] or someone from [her] division informed [Mr. Madison] that [she] would be absent due to a personal family related matter." **Informant's App. 77 (Tr. 306).**

According to Judge Del Muro's testimony, she **did not** experience a family **crisis** that prevented her from presiding over the August 15, 2005 special setting trial. **Informant's App. (Tr. 256).** Whatever the personal, family related matter that kept Judge Del Muro from presiding over the August 15, 2005 specially set trial, she was not required or inclined to divulge. **Informant's App. 72 (Tr. 288).** Whatever the reason, Judge Del Muro did not believe that she did anything wrong by not showing up to preside over the specially set August 15, 2005 trial and

believes that there was no reason to apologize. **Informant's App.61 (Tr. 244).**

She believes that she did everything that she could do to make sure “that Mr. Madison’s case was tried” but she never answered the questions posed in the letters or even called a scheduling conference. **Informant's App.61 (Tr. 244).**

However, she did not schedule a trial conference with the parties upon missing the August 15, 2005 special setting. **Informant's App.79 (Tr. 313-314).**

Judge Del Muro read the first two paragraphs of the August 23, 2005 letter and then “sort of stopped because she could not believe the tone of the letter.” **Informant's App. (Tr. 207).** Judge Del Muro found the August 29, 2005 letter from Respondent was very hostile in tone and she “wasn’t really able to sit down and read it word for word, and [she] just scanned it and set it aside. **Informant's App. (Tr. 207).**

The audio transcript demonstrates that Mr. Madison’s words and tone during the March 16, 2005 hearing were polite and cordial. **Informant's App. (Tr. 46-47, 49-50, 54-55, 57-66); App. 1 (Audio Tr. 9:20:00, 9:24:50, 9:25:26, 10:22:32).** Judge Gillis found Mr. Madison’s voice neither condescending in tone nor rude during the first bench conference. **Informant's App. (Tr. 47-48).**

However, in his personal letter, Judge Gillis stated that Mr. Madison was “was very condescending and contentious during the initial bench conference for the *Houston Enterprises v. Jacqueline Blancart* landlord tenant case on March 16,

2005.” **Informant’s App. 167.** Judge Gillis testified that even though Mr. Madison was using polite words and phrases like “thank you sir”, it was Mr. Madison’s face and body language that conveyed anger to him. **Informant’s App. 25 (Tr. 94).**

In his October 19, 2005 personal letter, Judge Gillis stated that he asked Mr. Madison to go out into the hall to speak with the defendant to see if an agreement could be reached between the parties. **Informant’s App. 167.** “Mr. Madison glared at me for several seconds and then turned away. Instead of going into the hallway to speak to the defendant, Mr. Madison took a seat in the courtroom near the counsel table where he proceeded to stare at me as I continued to address other cases.” **Informant’s App. 26 (Tr. 97-98); App. 167.** He then testified at the hearing and under oath that he did not know if Mr. Madison went into the hallway or not to speak with the Defendant. **Informant’s App. 26 (Tr. 98).** However, Judge Gillis admits that Mr. Madison was able to give him a report on what the defendant’s position was when the case was again called. **Informant’s App. 26 (Tr. 98).** Mr. Madison testified that he absolutely went into the hall to speak with the defendant when asked to do so by Judge Gillis. **Informant’s App. 103 (Tr. 412).**

Judge Gillis admitted that Mr. Madison was polite during the second bench conference, but also accused Mr. Madison condescending during the second

approach to the bench when Mr. Madison was talking over him and stating that he did not need any witnesses to continue with the trial that day, that there was a verified petition, telling Judge Gillis that he would like to have the matter resolved that day despite the fact that Judge Gillis was trying to suggest it would be more appropriate “to reschedule the matter so as to have all the witnesses present.

**Informant’s App. 14 (Tr. 51-52).** Judge Gillis admitted that Mr. Madison politely informed the court that he was hoping “we could resolve the return today.”

**Informant’s App. 15 (Tr. 53).** The audio transcript reflects Mr. Madison speaking in a polite manner when he informed the Court that he could use the verified petition, and that he did not need any [other] witnesses. App. 1 (Audio Tr. 9:24:56). Though Judge Gillis said that during the second exchange that Mr. Madison was insisting upon having a trial, he admits that the Audio transcript reflects Mr. Madison politely informing the Court that he would be in deposition upon the first continuance date offered and that he would be out of town on the second continuance date offered. **Informant’s App. (Tr. 51-52).** Judge Gillis, also, admitted Mr. Madison politely informed the Court that he was “hoping to resolve” the return that day. **Informant’s App. (Tr. 53).**

Though Mr. Madison was exceedingly polite with his words during the second bench conference, Judge Gillis considered Mr. Madison to be rudely insisting on trial by that same polite behavior. **Informant’s App. 14-15 (Tr. 51-**

**53).** Judge Gillis stated that Mr. Madison appeared to become “more agitated by the fact that it appeared that I was not going to conduct the trial that day.”

**Informant’s App. 14 (Tr. 51).** Judge Gillis stated that “And you continued to insist upon it, and finally, that’s when I just said we are going to set the matter aside.” **Informant’s App. 14 (Tr. 51).** Judge Gillis stated that “Mr. Madison insisted upon having trial that day by communicating his unavailability on the two proffered continuance dates due to the previously scheduled deposition on the first date and due to being out of town on the second date. **Informant’s App. 15 (Tr. 53).** Judge Gillis, also, thought Mr. Madison was “insisting” upon having the trial but not rude for Mr. Madison to state to the Court that he “was hoping to resolve the return that day. **Informant’s App. (Tr. 53).**

Judge Gillis called the parties to the bench for a third time. **Informant’s App. 16 (Tr. 57); (Audio Tr. 10:22:25).** Judge Gillis asked “is there still a dispute in regards to the matter since we last called the case? Is there still a dispute with regards to the circumstances? Mr. Madison responded “Your Honor, Her excuse is that someone told her she did not have to pay rent.” **Informant’s App. 16 (Tr. 57); (Audio Tr. 10:22:25).** Judge Gillis then swore in the defendant. **Informant’s App. 16 (Tr. 57); (Audio Tr. 10:22:25).** Ms. Blancarte agreed that she had a written lease with Houston Enterprises, a copy of which was given to the Court. **Informant’s App. 16 (Tr. 57); App. 1 (Audio Tr. 10:22:25).** The

defendant agreed that the Tenant ledger accurately reflected the amount of rent owed, which was \$1015.00. **Informant's App. 16 (Tr. 60)**. When Judge Gillis asked her excuse for not paying the rent, she stated that she was excused from paying the rent by an employee of Houston Enterprises. **Informant's App. 17 (Tr. 61)**. However, the Defendant agreed that she owed rent for the month of March in the amount of \$350.00. **Informant's App. 17 (Tr. 61)**. Judge Gillis then entered Judgment against the Defendant for the amount of \$350.00.

**Informant's App. 17 (Tr. 61)**.

After Judgment was entered Mr. Madison politely stated "Your Honor, I'm sorry, but I would like to bring to your attention"..., but then he was cut-off by Judge Gillis stating "Mr. Madison, I don't want to get into an argument with you, sir.." **Informant's App. 17 (Tr. 64); App. 1(Audio Tr. 10:22:25)**.

Judge Gillis went on to state, *inter alia*, that he was to enter judgment for possession of the property, \$350.00 plus costs. **Informant's App. 17 (Tr. 64)**; "And that is the judgment. That's it. Okay?" **Informant's App. 18 (Tr. 65)**. Mr. Madison replied "There's no basis in law. No basis in law." Judge Gillis replied "Mr. Madison, this is a question of fact, not law." **Informant's App. 18 (Tr. 65)**. Mr. Madison replied "She admitted that she didn't..." but he was immediately cut-off by Judge Gillis. **Informant's App. 18 (Tr. 65)**. Judge Gillis stated "Mr. Madison, we had an issue. You have the means by which to take it up. Don't

argue with me.” **Informant’s App. 18 (Tr. 65-66)**. Mr. Madison immediately replied “ I am not arguing. I’m just telling you the law, Judge. No way around it...” **Informant’s App. 18 (Tr. 66)**. As Mr. Madison was trying to finish his thoughts, Judge Gillis talked over him. **Informant’s App. 17-18 (Tr. 64-65)**. At this point, Judge Gillis states “Mr. Madison” and Mr. Madison replies “Judge” and then Judge Gillis states “Get out of this courtroom. Okay. That’s it. I’m through talking to you.” **Informant’s App. 18 (Tr. 66)**. Mr. Madison leaves stating “No basis in law for that.” **Informant’s App. 18 (Tr. 66)**.

Mr. Madison was in Court in the capacity of an attorney representing a client, Houston Enterprises. **Informant’s App. 20 (Tr. 74)**. Mr. Madison did not conduct either direct examination or cross examination of the sole witness, the defendant. **Informant’s App. 16-18 (Tr. 57-66)**. Judge Gillis did not open up the witness to Mr. Madison for either direct or cross-examination. **Informant’s App. 18 (Tr. 65)**. Though Judge Gillis believes that “there were a number of occasions where [Mr. Madison] could have asked for that opportunity” to cross examine the witness. **Informant’s App. 19 (Tr. 69)**. Judge Gillis denies that he cut Mr. Madison off after judgment was pronounced but admits that he stated “I don’t want to get into an argument. I have already pronounced judgment.” **Informant’s App. 19 (Tr. 70)**. After judgment, when Mr. Madison stated “Excuse Me, Your Honor, I would like to bring to the Court’s attention” that he did not know what Mr.

Madison wanted to bring to the Court's attention. **Informant's App. 19 (Tr. 70)**. He anticipated that Mr. Madison wanted to argue. **Informant's App. 19 (Tr. 70)**. Judge Gillis also wrote in his personal letter that he gave Mr. Madison an opportunity to cross-examine the witness. **App. 167; Informant's App. 29 (Tr. 110)**. Judge Gillis testified at hearing that he didn't mean he asked Mr. Madison if he wanted to cross examine the witness; he meant that Mr. Madison had an opportunity to do so somehow. **Informant's App. 29 (Tr. 110)**.

Judge Gillis anticipated that Mr. Madison would not be able to prove his case because Mr. Madison did not bring in any witnesses. **Informant's App. 20-23 (Tr. 76-78)**. In fact, Judge Gillis states that he did not believe that Mr. Madison was under circumstances in which he had a legal basis to ask for what he was seeking. **Informant's App. 8 (Tr. 26)**.

The defendant admitted the lease presented by to her by the Court was the one she signed. **Informant's App. 16 (Tr. 60)**. The lease contains a clause that it can be modified in writing only. **App. 2-3**. The petition prayed for attorney fees and the lease had a clause for attorney's fees in the event of litigation. **App. 4-5; Informant's App. 22-23 (Tr. 84-85)**. The defendant did not have a writing as required under the lease to amend the lease. **Informant's App. 16-18 (Tr. 57-66); App. 4-5**. No attorney fees were awarded by Judge Gillis. **App. 23 (Tr. 85)**. The lease also called for late fees which were not awarded by Judge Gillis. **App. 23**

(Tr. 85). Judge Gillis's position was that none of that mattered because there would be no one there to contradict the defendant's testimony. **Informant's App. 20 (Tr. 75).**

Judge Gillis said he does not take issue with Mr. Madison stating that Judge Gillis had no basis in law for doing what he did on March 16, 2005. Informant's App. (Tr. 106). Judge Gillis states that it is not improper for attorneys to send letters to judges and that he receives them frequently. **Informant's App. 28 (Tr. 108).** The letter from Mr. Madison caused no disruption of the Court. **Informant's App. 38. (Tr. 148).** Judge Gillis admits that it is not inappropriate to make an oral motion to the Court and that he has himself made such an oral motion. **Informant's App. 29-30 (Tr. 112-113).**

Judge Gillis wrote in his October 19, 2005 personal letter that Mr. Madison "yelled" at him. **Informant's App. 47 (Tr. 182-183).** He writes in his October 19, 2005 personal letter the following:

"Mr. Madison immediately took issue with the judgment. He yelled at me in the course thereof accused me of failing to follow the "law." Mr. Madison was generally disorderly and completely disrespectful in his behavior and refused to leave the courtroom. I finally had to order him to leave the courtroom. Even then Mr. Madison

continued to yell disrespectful comments to me. All of this was digitally recorded and is available on compact disk if desired.”

**Informant’s App. 19 (Tr. 70).** At hearing, Judge Gillis testified under oath that Mr. Madison was “yelling” from 10 to 15 feet away from the microphone.

**Informant’s App. 31 (Tr. 120).** Judge Gillis states that Mr. Madison’s voice was rather “amplified.” **Informant’s App. 31 (Tr. 120).** The recording does not, testifies Judge Gillis, accurately portray the volume of your voice and it does not and cannot in any way, shape, or form portray the facial expressions and overall demeanor that was directed in the courtroom at the time. **Informant’s App. 31 (Tr. 120).** Judge Gillis’s Judicial Assistant, Farzaneh Price, states that she does not recall Mr. Madison raising his voice at any time during the March 16, 2005 hearing in Judge Gillis’s courtroom. **Informant’s App. 41(Tr. 159).** Farzaneh Price stated further that Mr. Madison did not shout at the judge. **Informant’s App. 42 (Tr. 161).** Three years later, Attorney Mandlman cannot say that “Mr. Madison’s voice was louder than it normally is, but has a demanding tone.”

**Informant’s App. 36 (Tr. 137).** Mr. Madison, Plaintiff’s counsel, was quiet and did not interrupt as Judge Gillis took it up on himself to conduct Direct Examination . **Informant’s App. 16-18 (Tr. 57-66).** Judge Gillis found Mr.

Madison's conduct disruptive to his court and to him as a judge. **Informant's App. 9 (Tr. 30).**

The Informant called, also, Ms. Lori Swanson, who is a paralegal to Mr. Steven Mandlman. **Informant's App. 47 (Tr. 183).** Ms. Swanson was in Judge Gillis's courtroom on March 16, 2005 supporting Attorney Mandlman, who was representing a company called TCF Consumer Finances. **Informant's App. 47 (Tr. 183).** TCF cases were called at 9:26 am. App. 423 (Audio Tr. 9:26). Importantly, Ms. Swanson, three years later, does not recall a judgment being entered against the defendant in the *Houston Enterprises v. Jacqueline Blancarte* case. **Informant's App. 48-49 (Tr. 188-189).** Ms. Swanson testified that Mr. Madison "was very disrespectful and shocking." **Informant's App. 47 (Tr. 181).** However, Ms. Swanson is unable to remember one thing Mr. Madison said that was shocking or disrespectful to the judge or in court even. **Informant's App. 50 (Tr. 196).** Ms. Swanson could not refer to any fact at all to support her conclusion that Mr. Madison was "condescending" and she was unable to support her conclusion that Mr. Madison "made a scene." **Informant's App. 49. (Tr. 190-191).** Ms. Swanson believes that Mr. Madison was arrogant "from the time he walked into the courtroom" because people looked at Mr. Madison and because Mr. Madison was not quiet like the other attorneys, he just went right up to the counsel table and sat down his papers. **Informant's App. 50 (Tr. 193-194).**

Attorney Mandlman does not recall Judge Gillis asking Mr. Madison to leave the Courtroom. **Informant's App. 36 (Tr. 138)**. His assistant, Ms. Swanson, testified that Judge Gillis asked Mr. Madison to sit down or leave; then Ms. Swanson testified that Judge Gillis did not ask Mr. Madison to sit down, but to leave. **Informant's App. 50 (Tr. 194)**. Ms. Swanson remembers Mr. Madison sat down "rather than leave right away," then Mr. Madison left and returned. **Informant's App. 50 (Tr. 194)**. Ms. Swanson remembers **nothing** unusual occurring when Judge Gillis asked Mr. Madison to leave. **Informant's App. 50 (Tr. 194)**. Ms. Swanson does not recall seeing the actual trial of the case. **Informant's App. 46 (Tr. 180)**.

Attorney Mandlman cannot remember one specific that Mr. Madison said to the Court. **Informant's App. 35 (Tr. 135)**. When asked did he observe anything unusual on the day of March 15, 2005 in Judge Gillis's courtroom, Attorney Mandlman stated the following:

What I remember was a discourse between the attorney and the judge that kept going back and forth, and I remember some insistence on the part of the attorney to accomplish something and the judge was being patient with that attorney and trying to accommodate but not wanting to – as far as I recall, not wanting to deal with

the particular situation at that precise moment. But that the attorney wanted some, I suppose, some answers or some type of –wanted it more expedited or wanted it done at that moment, is the best I can remember, and it kept going back and forth and I was surprised. I just know that I personally –I was saying to myself wow, I wouldn't talk like that to the judge.

But after there was a recess, I went to the back because I generally want to meet attorneys – I mean, judges that I don't normally come in front of and introduce myself and said, that was rather surprising to me, or something to that effect. And the judge commented, I guess, that's, I guess thing happen like this, or something to that effect, and I said if you ever need anybody – if you ever need to call me, let me know. And that's what I remember.

Q: How would you describe the demeanor of Mr. Madison during this exchange with Judge Gillis?

A: Insistent on getting what he wanted despite what the judge was saying. I mean, if – I'm going to give a

hypothetical. If I were to go to the judge and say, Judge, I would like to have my trial right now. The judge says we'll have to take you in the order you're received, and we'll take you up after the regular recess or whatever. I would say thank you very much and sit down. But it just kept going, and I was like, wow. got guts to talk to the judge that way, and I don't remember the specific words that were said, but I remember insistence and not accepting the judge's initial request or answer right away. Kept going with it. Persistence.

Q. Do you recall anything about the tone of his voice, Mr. Madison's voice during the exchange?

A. Since I don't know his normal tone when he talks to judges, I wouldn't be able to comment whether it was louder than he normally is, but demanding tone, but that could be the way he talks generally. I don't know.

Q. Did you consider the conduct disrespectful to the court?

A. Well, there were a whole bunch of people in the courtroom. Individuals, lawyers, you know. The judge, I

suppose that from the judge's point of view, I mean, he was trying to be polite with him and say, as I recall, we'll get to that person's case as soon as he can, but it was not an acceptable answer and it seemed pushy to me. Would it be disrespectful, I mean, it could be taken that way. Maybe us lawyers ought to just sit down when we're told to sit down or wait when we're told to wait, and to keep going with it could be a sign you are not listening to the judge or hearing what the judge is saying. I wouldn't want to get myself in a bantering back and forth with a judge.

Q. Do you recall the judge asking Mr. Madison to leave the courtroom?

A. That I do not recall.

**Informant's App. 35-36 (Tr. 135 -138).**

In his personal letter, Judge Gillis states that **"Someone is going to get hurt."** **Informant's App. 47 (Tr.182-183).** Judge Gillis testified in hearing that he meant not that Mr. Madison would attack someone, but that Mr. Madison's

“words and face and overall physical posture” might prompt a defendant to attack Mr. Madison. **Informant’s App. 28 (Tr. 106-107).**

Judge Gillis often allows attorneys in the regular course of business to make requests after judgment is entered, according to his Judicial Assistant Farzaneh Price. **Informant’s App. 42 (Tr. 162).** Attorneys usually phrase their questions to Judge Gillis after judgment is entered in the following manner: “Your Honor, may I ask for special process server fees and court costs, please.” **Informant’s App. 42 (Tr. 162).** An attorney may also phrase his post-judgment question in Judge Gillis’s courtroom: Excuse me, I would like to bring something to the court’s attention according to Ms. Price. **Informant’s App. 42 (Tr. 162).** “If you are asking for something, let’s say the man forgot to put it down in the proposed order or judgment. Yes, something like that.” **Informant’s App. 42 (Tr. 162).**

Judge Gillis believes that he was faithful to the law. App. 11(Tr. 27)  
Judge Gillis believed that he did not show contempt for the law. App. 11(Tr. 27).  
However, he gave no support in hearing for these beliefs, but rather offered them as conclusions. **Informant’s App. 8 (Tr. 27).**

## **ARGUMENT**

### **INFORMANT'S POINT RELIED ON**

#### **I.**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HIS CONDUCT TOWARD JUDGES GILLIS AND DEL MURO VIOLATED RULES 4-8.2(a), AND 4-3.5(d) IN THAT HE MADE STATEMENTS IMPUGNING THE JUDGE'S INTEGRITY WITH RECKLESS DISREGARD FOR THEIR TRUTH OR FALSITY AND HIS CONDUCT INTENTIONALLY DISRUPTED JUDGE GILLIS'S COURTROOM.**

#### **Authorities relied on in opposition:**

In re Westfall, 808 S.W.2d 829 (Mo. banc 1991)

In re Coe, 903 S.W.2d 916 (Mo. banc 1995)

Rule 4-8.2(a)

Rule 4-8.4(d)

Rule 4-3.5(d)

Rule 5.11(c)

**RESPONDENT’S ARGUMENT AGAINST**

**INFORMANT’S POINT RELIED ON I.**

A. A FINDING OF MISCONDUCT CANNOT BE MADE UPON ANY SPECIFIC ACT OF MISCONDUCT NOT CHARGED IN THE INFORMATION IN COMPLIANCE WITH RULE 5.11(C) AND ANY SPECIFIC ACT NOT SO CHARGED IN THE INFORMATION SHOULD BE STRICKEN FROM INFORMANT’S BRIEF BEFORE THIS COURT

Disciplinary hearings in Missouri are limited to the four corners of the information. See, Rule 5.15(b). Further, this Court stated that “[a]n Information...shall set forth in brief form the specific acts of misconduct charged, and shall state briefly the grounds upon which the proceedings are based. Any number of acts may be charged in the same information, but each act must be separately stated.” Rule 5.11(c).

The following specific acts were charged in the Informant’s brief but not the Information and are therefore not properly before the Court:

**JUDGE GILLIS**

1. “In your ruthless abuse of power and contempt for the rule of law, you silenced me”
2. “An appeal would find that you abused discretion and violated the Code of Judicial Conduct.”
3. “you wrongfully took from my client \$1,005.00 today and gave it to the defendant”

### **JUDGE DEL MURO**

1. “You arbitrarily failed to show for this extremely important trial without excuse or apology.”
2. “your system of justice allows you on the one hand to berate and unjustly file a bar complaint against an African American attorney, James Daniels, Esq. for being late to an un-noticed hearing and on the other hand nonchalantly failing to appear to preside over a very serious case”
3. “Your indulgence in Argumentum Ad Hominem toward me is not justice. It is a denial of justice.”
4. “But for the gravity of the harm done, I would do what most have done. I would have ignored the tyranny.”
5. “I want you to be clean. I passionately desire to show my client that you are not drunk with power”

6. “I do have profound doubts concerning your fitness to preside fairly over cases”
7. “Your decision to withhold an honest explanation for your absence has propelled us all into inauspicious entanglements.”
8. “That belief will permeate the community and people will know you and the 16<sup>th</sup> Circuit for this act of infamy.

None of the above-referenced specific acts of alleged misconduct are in the Information and therefore cannot be considered as a basis for a finding of misconduct . Cf., Rule 5.11(c) (each specific act of alleged misconduct must be alleged in the information. The Information alleges as follows:

1.Count I, Judge Gregory B. Gillis

A. Paragraph 8.

- a. When the case was called, Respondent approached the bench as counsel for the landlord.
- b. His behavior directed at both the Judge and the defendant was contentious and condescending.
- c. Judge Gillis asked Respondent to step out into the hall to speak with the defendant to see if an agreement could be reached.

- d. Respondent glared at the Judge for several seconds and then turned away.
- e. Instead of going into the hall to speak with the defendant, Respondent remained in the courtroom and proceeded to stare at the Judge while other cases were called.

B. Paragraph 9.

- a. When Respondent's case was called for a second time, Respondent insisted on having a trial despite the fact that neither Respondent's client nor any agent was present to testify.
- b. Seeing no witnesses present, Judge Gillis offered to continue the case, but Respondent refused and insisted on a trial.
- a. Respondent told the Judge in a condescending manner, that he did not need any witnesses because he was proceeding on a verified Petition.

C. Paragraph 10.

- a. A trial of the case was commenced and judgment was entered in favor of the landlord for possession of the property and for \$300.00 in past due rent.
- b. Respondent immediately took issue with the Judgment.

D. Paragraph 11.

- a. Respondent yelled at the Judge and accused him of failing to follow the law.
- b. Respondent was disorderly and disrespectful in his behavior and refused to leave the courtroom.

E. Paragraph 12.

- a. On March 16, 2005, Respondent caused a letter to be sent to Judge Gillis in which he stated:

“Today, Judge Gillis, you were not faithful to the law...you showed contempt for the law and this lawyer”. (sic)

“In your ruthless abuse of power and contempt for the rule of law you silenced me and ordered me out of your court”. (sic)

“Your decision was unfair and blatantly without legal basis”.  
(sic)

“The consequences of your unethical conduct is the loss of money to my client”. (sic)

## 2.Count II, Justine Del Muro

### A. Paragraph 15.

Respondent represented Marie Williams Jefferson in a personal injury case which had been specially set for trial in the Circuit Court of Jackson County, Missouri on August 15, 2005.

### B. Paragraph 16.

The attorneys appeared on Monday, August 15, 2005, for trial and were informed that the trial judge, The Honorable Justine

E. Del Muro, would not be available to try the case due to a personal, family related matter that prevented her from coming to work the entire week.....

C. Paragraph 17.

On August 23, 2005, at 11:39 p.m., Respondent faxed a three page, single spaced letter to Judge Del Muro requesting that she recuse herself from the case. Part of the letter states as follows:

“I am extremely disappointed with your conduct. You arbitrarily failed to show for this extremely important trial without excuse or apology. Since your unexplained failure to appear on August 15, 2005 for this special number 1 setting case, you have yet to offer either apology or explanation. Apparently, you think you are the most important person in this process and are beyond such apology and explanation.”....

“Judge, I feel very saddened by the tone of this letter.

However, it is a irreverent remonstrations in response to your pitieous pittance of regard towards my client’s life crisis.”.....

“You have shown that you cannot be impartial and judicial towards this case.”

“Judge Del Muro, I, respectfully as possible, demand an explanation for your absence from my trial and demand your immediate recusal. I further request that you do not seek in any manner to retaliate against my client for my observations.”

Judge Del Muro was offended by the contents of an the demands made in Respondent’s letter. She immediately recused herself and notified the Respondent.

D. Paragraph 18.

On August 29, 2005, at 4:11 p.m., another two page, single spaced letter was faxed to Judge Del Muro. The context of this

letter was again offensive, demanding and abusive. Part of the letter stated as follows:

“I beg of you, offer true justification that your reason for not executing you public duty as judge trumps my client’s right to the access to the court.”

“I passionately desire to show my client that you are not drunk with power, but filled with compassion.”

“I want to explain to the world that power has been justly reposed to you, Justine E. Del Muro, and that our system of justice can be trusted. I admit that I do have profound doubts concerning your fitness to preside fairly over cases. However, I am willing to be persuaded.”....

“I, again, must demand an explanation and an apology for my client.”

“The integrity of the system demands an apology, an explanation, and an outward demonstration of your compassion.

Thus far, you have failed at satisfying any one of the three demands.”

Because the Respondent’s case had been transferred to another division, Judge Del Muro did not respond to this letter.

E. Paragraph 19:

On October 17, 2005, Judge Del Muro received another letter from Respondent which she found to be offensive and harassing. Part of the letter stated as follows:

“Your robe is forever stained because you have failed to avoid impropriety or even the appearance of impropriety.”...

“It is the opinion of attorneys and non-attorneys that you and your “evil” network will seek vengeance upon me for challenging you in this matter.”

“If you cannot uphold the high ideals of your office, then maybe you should resign from the judiciary.”

F. Paragraph 20:

The aggressive, hostile and demanding tone of the letters from the Respondent caused Judge Del Muro to worry for her safety and the safety of her family.

The specific acts Informant now tries to bring before the Court in its brief and not alleged in the Information are not properly before the Court and should, therefore, be stricken. *Cf. Matter of Westfall, 808 S.W.2d 829 (Mo.banc 1991)*(stating that court will not consider charges not included in the Information).

B. INFORMANT FAILS TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT ANY STATEMENT MADE BY RESPONDENT WAS FALSE OR MADE WITH RECKLESS DISREGARD FOR TRUTH OR FALSITY IN VIOLATION OF RULE 4-8.2(a) and 4-8.4(d).

Rule 4-8.2(a) reads as follows:

“A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard to its truth or falsity concerning the qualifications or integrity of a judge....”

However, “Expressing honest and candid opinions on such matters contributes to improving the administration of justice.” Rule 4-8.2(a). Unlike in *Matter of Westfall*, 808 S.W.2d 829 (Mo.banc 1991), the Informant here has failed to show that (1) Respondent acted in disregard for the truth, (2) engaged in acts without investigation of the facts, (3) engaged in conduct without factual basis for his statements. See, *Id.* ¶ 7. To put it another way, Informant here unlike Informant in *Matter of Westfall*, 808 S.W.2d 829 has failed to show that Respondent was setting forth an “honest” opinion on the subject. *Cf.*, *Id.* ¶16. Certainly, Respondent here researched each and every assertion carefully before

coming to an “honest” opinion about each of them. *See, Informant’s App. 123 (Tr. 487)*. Mr. Madison explained how he arrived at and how he formulated each opinion asserted while under examination by Mr. Gottschall. *See, Informant’s App. 123 (Tr. 487)*. However, he summed up the “Honesty” of his opinion where he states “No, I don’t think I did anything unethical. In fact, I just spoke the truth as I discovered it. I evaluated it, I researched it, I thought about it, and I responded.” *See, Informant’s App. 123 (Tr. 487)*.

Therefore this Court must find that Informant failed to make its case by a preponderance of the evidence and that Respondent asserted “Honest” opinions after making adequate inquiry. Respondent violated neither Rule 4-8.2(a) and 4-8.4(d).

C.INFORMANT FAILS TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT RESPONDENT’S ALLEGED BEHAVIOR IN JUDGE GILLIS’S COURTROOM AMOUNTS TO CONDUCT INTENDED TO DISRUPT A TRIBUNAL IN VIOLATION OF RULE 4-3.5(a).

A violation of Rule 4-3.5(c) requires the Informant to prove by a preponderance of the evidence that Respondent engaged in conduct “intended” to disrupt a tribunal. See, Id. Rule 4-3.5(c) reads as follows:

A lawyer shall not:

.....

(c) engage in conduct **intended** to disrupt a tribunal.

Rule 4-3.5(a) (emphasis added).

“Intent” is not defined under the Rule 4-3.5(a) directly. See, 4-3.5(a) .

There is an advocate’s function set forth in the comments that require the attorney to:

The advocate’s function is to present evidence and argument so that the cause may be decided according to law..... A lawyer may stand firm against abuse by a judge but should avoid reciprocation.

Rule 4-3.5(c) cmt.

Informant has failed to assert or establish by a preponderance of the evidence that Mr. Madison intended to disrupt a tribunal. Informant relies upon *In re Coe*, 903 S.W.2d 916 (Mo.banc 1995) as precedent for a finding of misconduct against Mr. Madison. *In re Coe* involved a lawyer trying a criminal case in U.S. District Court for the Western District of Missouri. *See, In re Coe*, 903 S.W.2d 916. The Respondent in that case was warned numerous times prior to being punished and then punished numerous times after being warned in federal court for engaging in theatrics, belligerence, and generally drawing the jury's attention towards herself and away from the facts. *Id. passim*. Rule 4-3.5(c) focuses on the advocates function and the need for decision according to law. *See, Id.*

The allegations made against Mr. Madison being disruptive in Judge Gillis's courtroom are full of contradiction and vagueness. For instance, Judge Gillis accused Mr. Madison of being condescending to both him and the defendant from the first encounter. Then upon cross-examination he admits that Mr. Madison's words are polite. However, Judge Gillis states that Mr. Madison was condescending because he had a scowl upon his face while speaking with polite words. Mr. Madison asked Judge Gillis to demonstrate how Mr. Madison was scowling and thereby being condescending and disruptive. However, Judge Gillis said that he could not give an example of how Mr. Madison was scowling and

speaking politely. It is not possible to say polite phrases, sound polite, but have a scowl upon one's face. A listen to the Audio Transcript does not communicate a person being belligerent and unreasonably confrontational. It indicates a gentleman.

The *Coe* case states that a lawyer is not free to reargue the issue, resist the ruling, or insult the judge. *In re Coe*, 903 S.W.2d, at 917, citing *Manness v. Meyers*, 419 U.S. 449, 459 (1975). However, this case should not and cannot practically be read to hold that all post-judgment speech is foreclosed as Informant wishes. *Cf.* If that were the case, a violation occurs every day in courts throughout Missouri and in Judge Gillis's courtroom. Judge Gillis's judicial assistant testified that attorneys are regularly allowed by Judge Gillis to make motions or requests affecting a judgment just entered. Furthermore, Judge Gillis did not take issue with Mr. Madison making the statement there is no basis in the law for that.

Furthermore, there are too many contradictions and absurdities from the witnesses who state that Mr. Madison was being disruptive in Judge Gillis's courtroom on March 16, 2005. For instance, Judge Gillis states that Mr. Madison yelled at him in the end of the discussion as Mr. Madison backed up slowly and glared at the Judge. First of all, it is incongruous to glare while backing up slowly and then "yelling" at someone. Glaring and slowly backing up is a low state and focused, while "yelling" is high energy and diffuse. (Maybe it is possible but Mr.

Madison cannot imagine himself doing such a thing). Also, Judge Gillis's Judicial assistant testifies that Mr. Madison did not "yell" in the courtroom at all.

However, Judge Gillis testifies that Mr. Madison yelled at him and kept going on and on after the Judge Gillis asked him to leave. However, when one listens to the Audio Transcript, one hears Mr. Madison not going on and on. The only words one hears after Judge Gillis states he is through talking, get out is Mr. Madison say once that there is no legal basis for this as if to himself.

The Informant relies upon the testimony of Attorney Mandlman and his assistant for the proposition that Mr. Madison's shocked onlookers. First, neither of these witnesses remembers one shocking thing Mr. Madison said. Attorney Mandlman only relayed the Mr. Madison was pushy on insisting that his case be heard; and event that testimony is shot down by the Audio Transcript which shows Mr. Madison being abundantly polite in speech and word. From the content of his testimony Mr. Mandlman did not see the trial of the case; so, his observations would be based upon no more than the first two calls of the subject case. A listen to the Audio Tape of the matter certainly conflicts with Mr. Mandlman's testimony. I, humbly, suggest that the Audio Tape is more credible of the two. At least Mr. Mandlman admits that Mr. Madison was did not yell at the judge.

Mr. Mandlman's assistant, Lori Swanson, could not state one thing Mr. Madison either said or did that was disruptive or disorderly. Ms. Swanson's

complaint was that Mr. Madison was arrogant from the very beginning when he walked into the courtroom because people looked at him. Lori Swanson testified that it is not like Mr. Madison flailed his arms and legs or anything like that.

**Informant's App. 49 (Tr. 189).**

The Audio Transcript is the most credible witness in this situation. **App. 1 (Audio Tr. 9:20:00, 9:24:50, 9:25:26)**. One can at least listen and come to the proper conclusion on credibility. Mr. Madison engaged in no conduct which was intended to disrupt a tribunal.

## INFORMANT'S POINT RELIED ON

### II.

**THE SUPREME COURT SHOULD SUSPEND RESONDENT'S LICENSE WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR TWELVE MONTHS BECAUSE HE KNOWINGLY COMMUNICATED WITH JUDGES AND IN THE COURSE OF THE DISCIPLINARY PROCEEDING IN SUCH A WAY AS TO INTERFERE WITH THE DUE ADMINISTRATION OF JUSTICE IN THAT HE REPEATEDLY AND RECKLESSLY MADE FALSE, DEMEANING, AND HARRASSING STATEMENTS TO AND ABOUT JUDGES AND THE DISCIPLINARY PROCESS.**

Informant fails to give a factual predicate to support suspension of Mr. Madison's law license for a year. Mr. Madison has never made a demeaning statement about the disciplinary process. There is no evidence in the record whatsoever to this effect. Mr. Madison did not make reckless statements about anyone. All of the statements Mr. Madison made were a result of investigation and thought. None of Mr. Madison's statement were made recklessly. In so far as the statements are demeaning or harassing, Mr. Madison spoke on "honest" opinions

based upon research and consideration. That is what Missouri law requires and that is what Mr. Madison did as a matter of personal responsibility and integrity.

Furthermore, Mr. Madison has been practicing before the courts during this process with incident. What would suspension accomplish besides punishment. There should be imposed a warning or admonition based upon the mitigating factors that circumstances were sufficiently extreme to warrant some leniency. Judge Gillis took over Mr. Madison case by conducting direct examination when Mr. Madison, Plaintiff's counsel, should have done conducted direct. Judge Gillis did not allow Mr. Madison to cross-exam the witness after Judge Gillis conducted direct examination. The order of proof has always been in Missouri that Plaintiffs must be first be given the opportunity to examine witnesses. Judge Gillis says that he knows that plaintiff could have called defendant on direct. Judge Gillis did not consider the lease provision on amending by writing only, etc. Mr. Madison attempted to inform Judge Gillis in a polite manner of his desire to cross examine the witness, but Judge Gillis immediately cut him off. This is a major insult to the dignity of the Missouri Constitution made by Judge Gillis and unrepentantly so. In Missouri every person is afforded that day in court which includes the right to present evidence, to be heard.

Judge Del Muro seemingly committed a great offense against her duty as a judge by not showing to preside over a trial. It should be recognized that

representing a person who has been impoverished due to an accident that was not their fault is a great emotion burden for attorneys. The attorney must feel compelled to get that person compensation. The attorney deals with a lot of emotional pain not only in the person, but also the person's family. In this case, Mr. Madison had to deal with a single parent of three children who had not worked in nearly four years. Her husband left her because she was suffering from injuries from the accident. When Judge Del Muro did not show for trial, Ms. Williams-Jefferson was totally thrown into panic and bewilderment. Mr. Madison did the best he felt he could under the circumstances. The exigency of the moment should be considered.

### CONCLUSION

Informant expressed honest opinions about the actions of Judge Gillis and Judge Del Muro. Also, the charge that Mr. Madison intended to disrupt the Court of Judge Gillis on March 16, 2005 is not true. Mr. Madison simply attempted to stand firm against the abuse of Judge Gillis and have the judgment made upon law. If it seems that Mr. Madison was being disruptive, it may be due to his attempt to get out a full sentence to explain the nature of the deprivation of rights Judge Gillis was making while being cut-off from speaking at all. Mr. Madison may not have acted perfectly, but he certainly does not deserve the punishment of suspension of 1 year for the allegations made against him in this prosecution.

RESPECTFULLY SUBMITTED,

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RESPONDENT *PRO SE*

## **CERTIFICATE OF SERVICE**

I hereby certify that a two copies of Respondent's Brief and a diskette containing the brie in Microsoft Word format have been sent via First Class Mail this 20<sup>th</sup> Day of January, 2009 to:

Sharon K. Weedin  
Staff Counsel, Chief Disciplinary Counsel  
3335 American Ave.  
Jefferson City, MO 65109

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James T. Madison

### **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 7,831 words, according to Microsoft Word, which is the word processing software used to prepare this brief; and
4. That this disk is virus free.

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James T. Madison

