

**IN THE SUPREME COURT**

**STATE OF MISSOURI**

<b>IN RE:</b>	)	
	)	
<b>HAHN, JAMES W. II,</b>	)	<b>Supreme Court # 86940</b>
	)	
<b>Respondent,</b>	)	

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**RESPONDENTS BRIEF**

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**James W. Hahn II # 31728  
Hahn Law Firm  
2858 Professional Court  
Cape Girardeau, MO 63701  
573-651-0200**

**RESPONDENT**

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## **STATEMENT OF FACTS**

### **RESPONDENTS BACKGROUND**

Respondent was born March 5, 1951 in Poplar Bluff, Missouri. Respondent is the oldest of four children born to James W. Hahn and Mary Hahn. Respondent's father was employed as a Materials Inspector with the Missouri State Highway Department. The Respondent's family relocated to Sikeston, Missouri where the Respondent lived until the age of fifteen. In 1966 Respondent's father was transferred to Cape Girardeau, Missouri to open up a Material Inspection Laboratory for the construction of I-55. **TR 11-12.**

The Respondent graduated from Cape Girardeau High School in 1969. Respondent attended Southeast Missouri University for two years and transferred to Indiana University in Bloomington, Indiana. Respondent received a substantial scholarship at Indiana University and was placed in the MRC Program, a combination of academic and athletic scholars and special dormitory at Indiana University. Respondent was co founder and editor of the Journal of Undergraduate Research at MRC. **TR 11-12.**

Respondent concentrated on European and East European Political Science and European History with the intent to go into the State Department or into the Central Intelligence Agency. **TR 11-12.**

Respondent graduated in May 1973 with a double major in History and Political Science from Indiana University. Respondent received full fellowship for a year of Doctorate work in faculty of Economic History at Edinburgh University, Edinburgh Scotland. **TR 11-12.**

Respondent studied at Edinburgh University under Doctor Keith Hampton.

Hampton, was then a political advisor and speechwriter for the then Prime Minister Ted Heath. Hampton was the Conservative Party candidate in Ripon, Yorkshire. Respondent ran Doctor Hampton's successful Parliamentary campaign in March, 1974. Hampton was elected to Parliament but the Labor Party won the election. Respondent returned to Edinburgh University. **TR 11-12.**

In 1974 Respondent married an English/Scottish girlfriend, Elizabeth Rison, and obtained British residency. Through Respondents wife's family, Respondent met the Attorney General of Scotland. He offered Respondent a position as a Precognition Officer at the Procurator Fiscals Office in Glasgow, Scotland. **TR 11-12.**

From 1974 to 1975, Respondent interviewed and prepared witnesses in fifty to one hundred cases, including interviewing all of the witnesses in the case styled In Re Alexander Ross McCaughey, and six others, a trial involving a series of bank robberies in Glasgow. The seven Defendants had connections to the Ulster Defense Army, a protestant terrorist organization in Ulster. The proceeds of the bank robberies went to fund the purchase of explosives and automatic weapons in the United States. Respondent assisted the two crown advocates in a course of a three and a half day trial, which Respondent understands was then one of the longest in Scottish history at that time. **TR 11-12.**

Respondent and wife thereafter resided in London for approximately a year. In early 1977 Respondent began a nine-month trip through France. Respondent's great interest in the law was stimulated by the year that Respondent was at the Procurator

Fiscal Office. Respondent took the LSAT in London. In November Respondent and wife returned to the United States and applied at the Washington University Law School. **TR. 11-12.**

Respondent was accepted at Washington University Law School in 1978. Respondent was awarded a Juris Doctorate Degree in May 1981. **TR. 12.**

While studying for the bar examine, Respondent was offered a position as Assistant Prosecutor in the Cape Girardeau County Prosecuting Attorney's Office. Respondent accepted that position and began a seven and a half career as a full time Assistant Prosecutor in Cape Girardeau. **TR. 12.**

During the course of that seven and a half years Respondent served under Stephen Limbaugh, Larry Ferrell, and H. Morely Swingle. During the course of that term, Respondent participated in fifty-six jury trials, and hundreds of bench trials, and seven homicide cases, Respondent had the responsibility of putting on the evidence for forensic evidence and psychiatric testimony. **TR. 12.**

During the course of the first two years in Cape Girardeau, Respondent also taught evening courses for graduating Criminal Justice Majors at Southeast Missouri University. Respondent also taught a new Political Science Introductory Course for freshman students in 1997. Respondent regularly lectured at the Southeast Missouri Police Academy. In 1997 the regional ATF Office contacted Respondent and asked Respondent to attend the ATF Arson for Prosecutors School at Glencoe, Georgia. After Respondent completed the ten day arson and bomb course, and Respondent was "on call" Prosecutor

to handle the suspected arson cases throughout Southeast Missouri. Respondent and Morely Swingle co-authored a Missouri Bar Journal article in 1982.

In 1996, Morely Swingle, Judge Dolan and Respondent applied for a Federal Grant to start the first Drug Task Force for Southeast Missouri. The first meeting was held in Respondents living room with two Cape Girardeau Police Officers, a Bollinger County Deputy by the name of John Jordan, currently the Sheriff of Cape Girardeau County, and Corporal James Keithley with the Missouri State Highway Patrol. He is currently Major Keithley in charge of the Highway Patrol Drug and Crime Division. After a two-year investigation, raids resulting in the arresting of thirty-six individuals in six or seven Counties in Southeast Missouri resulted. The investigation resulted in the Missouri Highway Patrol taking over the task force, and it became the model for the rural task forces across the State.

In 1981 or 1982, Respondent participated in a task force of the Prosecutors and the Attorney's General's Office in revising the driving while intoxicated statutes of Missouri. The proposed provision eliminating the Doctor/Patient privilege under Chapter 491 for drunk drivers, suggested by Respondent, was thereafter adapted by the Legislature. In 1987 Respondent was asked to testify before Senator Sharp's Committee on Domestic Violence. Revising the Adult Abuse Statutes. Respondent recommended enhanced punishment for multiple offenders and that particular provision was thereafter adopted.

In 1990, after Respondent had left the Prosecuting Attorney's Office, Respondent was asked by Cape Girardeau County Prosecuting Attorney, Morely Swingle, to appear and testify on Governor Wilson's commission on crime. Lt. Governor Wilson thereafter

requested Respondent to draft legislation for new crime victim compensation statute. Respondent testified before Senator John Dennis committee, and the legislation was thereafter signed into law by Governor Mel Carnahan. It was thereafter repealed.

In 1987, Respondent joined the Cape Girardeau Law Firm of Thomas Dickerson, Gilbert and Cook, an established personal injury and insurance defense firm in Cape Girardeau, Missouri. Respondent participated in personal injury, product liability, gas explosions cases and in insurance defense work. **TR. 12.** Respondent was retained by major mutual insurance companies to investigate arson and fraud cases in the area. Respondent maintained that practice until 1996 in his own practice thereafter.

On January 1, 1993, Respondent opened his own practice in Cape Girardeau. In June, 2004, Respondents wife Marcia Mulcahy joined Respondents practice. **TR. 12.** The firm was a general practice firm with about 60% of the cases in family law, about one third criminal cases, and the remaining balance in business law, and some personal injury cases. In 1997, Respondent and wife purchased a building at 2858 Professional Court, in Cape Girardeau and maintained a partnership until 1999, when growing differences caused us to separate our practices. Marcia Mulcahy moved to a separate location for a period of approximately a year. Marcia Mulcahy eventually returned to the building, which was jointly owned, and the building served two separate law practices. Thereafter growing conflicts and problems between Respondent and wife, from 1999 onwards lead to a divorce in 2002, and eventually after bitter subsequent litigations, in 2004, Respondent purchased the building. **TR. 12-18. TR. 288-297.** Respondents



practice essentially remains as it has for a number of years, though the number of cases and staff has been purposely reduced.

Respondent served three years on the Board of Directors at the Gibson Recovery Center, a local in-patient Drug and Alcohol treatment facility in Cape Girardeau, Missouri. For two years ago Respondent accepted Pro Bono referrals for the Safe House in Cape Girardeau for battered women. Respondent presently receives Pro Bono referrals from Project Hope, an organization of approximately thirty church's in Southeast Missouri area, that provide long term counseling and assistance to single women with children.

**Disciplinary Hearing Count III  
(John Gaither complaint)**

In June 1999, Mr. John Gaither hired Respondent to handle personal injury action on Mr. Gaither's behalf. Mr. Gaither was injured in an automobile accident on May 16, 1999. **TR. 190-202.**

Mr. Gaither received chiropractic treatment from a local Cape Girardeau Chiropractor over a course of a number of months thereafter. **TR. 190-202.**

In August 2000, Mr. Gaither's Chiropractor relieved him from further chiropractic treatment. **TR. 190-202.**

During the course of the Respondent's representation, Mr. Gaither was charged with a criminal offense of manufacturing methamphetamine and thereafter entered a plea and was sentenced to the Missouri Department of Corrections for a period of five years. Mr. Gaither remained in the Department of Corrections until he received parole on August 27, 2002. He was placed in Dismiss House, a half way house in St. Louis, where he remained until thereafter moving to a half way house known as the Railton Center, operated by the Salvation Army. Mr. Gaither currently resides at the Railton Center, and is employed by two different employers as a welder. **TR. 190-202.**

Mr. Gaither has not had a cell phone or a private phone of his own at either of the above institutions. He has communicated with the Respondent by a pay telephone at each institution. The Respondent has returned the telephone calls by leaving messages with the desk of each respective institutions. **TR. 190-202.**

Respondent has a number of telephone conferences set by prior arrangement with John Gaither to discuss his medical condition. Mr. Gaither sole Medical Records consisted of a report by Doctor Degan, the Cape Girardeau Chiropractor. Doctor Degan advised Respondent that his X-Rays of John Gaither were “unremarkable” when providing the medical report to the Respondent. Mr. Gaither advised the Respondent in the initial consultation in 1999 that he had two (2) previous back injuries. In phone conversations with John Gaither after his release on parole in late 2002, Respondent had recommended that the radiological films of Doctor Degan should be examined by a physician and new X-Rays be taken prior to submitting a demand.

Respondent and Mr. Gaither did not have further face to face contact with Mr. Gaither though he has made some weekend trips to Cape Girardeau to visit his child.

In January 2004, Respondent received a complaint forwarded by the OCDC; Respondent and Mr. Gaither thereafter had a telephone conversation. Mr. Gaither assured the Respondent that he did not “fire me” but wanted the Respondent to get the “papers filed”. Respondent thereafter attempted to locate the defendant in the civil case through Internet searches without success. A Petition for Personal Injury was filed with the Circuit Court of Scott County on the Defendant with service at a Post Office Box, a common physical location in rural Counties, rather than an office physical post office box, as said Counties do not have “street addresses”. A return of non est was made by the Scott County Sheriff’s Department. The matter is currently pending in Scott County Circuit Court. **TR. 190-202.**

John Gaither testified in the hearing in this matter on February 3, 2005 under subpoena from the office of Chief Disciplinary Counsel. Mr. Gaither advised that the advisory committee that he had located the owner of the vehicle used by the Defendant;

however he was not certain he located the defendant driver; Mr. Gaither and Respondent have continued to try to locate the Defendant by Internet searches and had had regular telephone contact up until September 10, 2005, Mr. Gaither further testified that the Respondent had missed “ two or three phone calls” and that Mr. Gaither had “missed two or three phone calls”. He further advised that he wanted to wind this up so that he could pay his medical bills. **TR. 190-202.**

## COUNT VI

### (Making False Statements of Missouri Supreme Court and to Informant)

On July 17, 2003, Respondent appeared at Informant's office and answered questions posed by the Informants staff.

On August 24, 2003, Respondent entered into a diversion agreement with Informant. With regard to the provisions of said diversion agreement, Respondent made the following actions:

(a) Respondent has attended the Small Firm Solo and Small Firm CLE seminar from Thursday, June 12, 2003 through Saturday, June 14, 2003. Respondent had regularly attended said conference and he had previously focused on office practice and management, time management, and technology seminars; Respondent was accompanied by Respondent's Office Manager, Laura Hulsy and her family. **TR. 18-19.**

(b) After the meeting of July 17, 2003, Respondent retained the services of Tim Mellitz, a consultant and lecturer at the small firm seminar, to provide eight (8) hours of Time Slips training to his staff, Laura Hulsy, and Shelly Ashcroft; Respondent further retained Tim Mellitz to work on simplifying the Time Slips accounts, requiring extensive work by long distance Internet to revise the program, and accounts, and files; Respondent further purchased an Office Management software package, Time Matters, through Tim Mellitz; said software, however, was not installed nor was training provided, as the office file server did not have sufficient capacity to store the program. Mr. Mellitz charged Respondent five thousand dollars (\$5,000.00) for his consultation, and one day of training, and the Time Matters software. **TR. 18-19.**

Respondent consulted with Doctor V. S. Kameth, and received a prescription for Zoloft and consultation on stress management;

Respondent also reviewed with the staff, office procedures on answering the telephone, directing client communications, setting telephone and office appointments;

In the office meeting in July 2003, with the Respondent's two staff members, various problems concerning the staff's increasing use of "flex" time for staff's children's sporting activities, educational activities, extra curricular activities, frequent illness's and education conferences was discussed with the staff and it's effect not only on the office work flow but on meeting important deadlines, and having a qualified staff member to answer the phone and to deal with client/office inquiries; Respondent had had significant staff absenteeism during the previous three to four months because of the various activities that the staff members and/or their children were engaged in; upon his return to the office after the conference of July 17, it was discovered that a number of days in August, including heavily scheduled trial days, had been sought for time off by the staff. After the discussion of the issues and the failure to reach a reconciliation, both of the staff members resigned. **TR. 18-19.**

Respondent thereafter contacted Lacey Ullery, a case manager at the Cape Girardeau Safe House and a Counselor there who had previously submitted her Resume and expressed an interest in working in the law office. Respondent hired Ms. Ullery as his principle legal secretary. Respondent thereafter hired a second counselor at the Safe House who also desired to work in the law firm. **TR. 19-20.**

On the following week, the first week of August, 2003, Marcia Mulcahy, Respondent's former wife and former law partner, filed in the Circuit Court of Cape Girardeau County an Order of Protection against the Respondent demanding that he be removed from the law office building that they jointly occupied. The allegations made under oath by Ms. Mulcahy were totally false; Respondent was restricted to the west end of the building under the Ex Parte Order of Protection. Ms. Mulcahy had the east end of the building which included the reception and conference room and the receptionist office where one of Respondent's legal assistants worked. Within the next two days Ms. Mulcahy, while the Respondent was out of the office scheduled for Court, or in the evening, removed large amounts of office fixtures, filing cabinets, furniture, and many items of the Respondent's property, including business records to a location on Forest Avenue in Cape Girardeau. Ms. Mulcahy apparently pre-planned this move with the Ex Parte Order of Protection, as she had a rental house, a sign and her yellow page ad all prepared with the new location. She thereafter filed a lawsuit to foreclose on a small mortgage loan owed to her parents on the building and to take the building over as her own property. **TR. 288-297.**

Ms. Mulcahy changed the locks in her now empty suite, preventing the Respondent from obtaining access to the empty suite and the temperature control for the west end of the building. Through the month of August and the month of September Ms. Mulcahy refused to provide access to the empty suite and would only send her secretary over to adjust the temperature once per day. Temperature variations were as low as 65 degree in September and as high as 90 degrees in August, requiring Respondent to daily contact Mr. Frank Seibert, Ms. Mulcahy's attorney, to request that the thermostat be adjusted. **TR. 288-199.**

Respondent thereafter was responsible for all of the utility bills, lawn care, mortgage payments and a wide variety of bills that had not been previously budgeted for; furthermore, Respondent, after failing to attempt to mediate the issue and facing a law suit which would result in vacating the building, retained the legal services of Christine Kime, an attorney of Piedmont, Missouri, and had additional significant expenses in retaining counsel; **TR. 288-293.**

The above law suit by Ms. Mulcahy, motivated by her desire to foreclose and acquire approximately \$170,000.00 worth of equity in the building, caused severe financial and emotional distress on Respondent and on the staff; the parties finally agreed to submit the matters for mediation for before the Honorable Stanley Grimm on Friday, October 24, 2003; After nine hours of mediation, an agreement was reached for Respondent to purchase the building, conditioned on Respondent receiving a loan guarantee from Wood and Huston Bank by Friday, October 31, 2003 by 12 noon. Considerable financial documentation had to be acquired in the two-week period and numerous documents were submitted to the bank. Approval was finally received by fax one minute before the 12-noon deadline. Thereafter, Respondent had to comply with additional deadlines including removal of approximately three rooms of furniture and contents from the former marital residence within one week, in January 2004. **TR. 288-293.**

From the first week of August 2003, when the above two law suits were filed, Respondent dealt not only with his full load of cases but also trained the two new, inexperienced staff members as legal assistants. **TR. 19; TR. 288; TR. 295.**

Throughout the course of August through January 2004 the new staff members entered all expenses, client payments into the Time Slips billing program. Respondent had retained



Shelly Ashcroft, who had received the Time Slips training with Tim Mellitz, to provide training for approximately three hours to both staff members on September 13, 2003. Ashcroft had very limited experience with the Time Slips program and was only able to explain to the two staff members very basic slip entry and did not have the recollection or knowledge to explain the production of a review bill, correction of a bill, or the finalization of a bill.

In the first week of January 2004, the principal legal assistant, Lacy Ullery, advised Respondent that she had decided that she wanted to return to counseling with children and that she had secured a counseling position in Indianapolis, Indiana that “was the dream of her life” at a substantial salary above the salary above the \$28,000.00 that she was receiving from the Respondent. She gave Respondent seven days of notice; Respondent’s other legal assistant, a friend and former colleague of Ms. Ullery, advised that she as well wanted to seek a position in the counseling area and gave two weeks of notice; **TR. 19.**

In January 2004, a client of the Respondent’s, Shannon Blagg, who was the Plaintiff in a divorce case that Respondent was representing Mrs. Blagg on, came into the office and inquired about possible employment. She advised that she desired to be a paralegal and wanted to take a paralegal course; she advised that she had had some college and had studied criminal justice. She was hired as a probationary employee and began work as the receptionist. **TR. 20.**

Respondent thereafter placed a classified ad in the Cape Girardeau newspaper advertising for a legal assistant position. Respondent received approximately 200 responses to said advertisement over a two-week period and scheduled five appointments on the weekend of February 14, 2004. Of those five individuals that were interviewed, only one, Chris Leonard, had indicated any prior law office experience; **TR. 20-21.**

On February 14, 2004 Respondent interviewed Chris Leonard. She advised Respondent that she had been separated for two and a half years from her husband, Gary Leonard and resided here in Cape Girardeau to be near to her daughter and grandchild. She was employed at Southeast Hospital in the Women's Care Department and was being paid \$6.50 per hour doing pap tests. She advised Respondent that she was thoroughly familiar with the Time Slips Billing program and had been employed for four (4) years as a Legal Assistant. Based on those representations Respondent offered Chris Leonard a position that weekend at a wage substantially higher than the normal legal assistant would receive, \$28,000.00/year. Mrs. Leonard was to start employment with Respondent on March 1, 2004. **TR. 298-299; TR. 211.**

Chris Leonard was provided with a Time Slips Manual and the Time Slips program tutorial on the computer. She began employment on March 1, 2004 and entered in the office expenses as well as the payments for legal fees and trust account funds. These entries had been continuously made prior to the employment of Mrs. Leonard.

After providing Ms. Leonard with two weeks of training in office procedures, on March 19, 2004, Respondent dictated two bills for Chris Leonard to enter into Time Slips and to bill. These matters, Jenetta Crossby v Crossby and State of Missouri vs. William Colbert. **TR. 297; TR. 215-219.**

Leonard produced a bill in each case and the Respondent reviewed the bills. There were eighteen (18) entries on the Colbert matter and nearly as many on the Crossby matter. Each hour rate was entered incorrectly. The time entry of "15 minutes" would be entered as .15 rather than .25 or quarter of an hour. "20 minutes" would be entered in as .20 rather than .33 or a third of an hour. **TR. 297; TR. 215-219.**

Respondent discussed this with Chris Leonard and she clearly was uncomfortable and clearly did not understand the decimalization entry for Time Slips. She eventually said that the only time entry that she entered for her former employers were in “quarter hour segments”, yet she had made errors on those entries as well in the above two bills. I asked her if she would decimalize the time entry and she attempted to do so but clearly did not understand how to do that. Respondent thereafter sat on the office floor and corrected each of the bills by hand and provided Mrs. Leonard with a decimalized time list. **TR. 215-219; TR. 231-233.**

While Respondent’s knowledge of Time Slip’s is extremely limited, it was readily apparent to Respondent that had Chris Leonard had the four (4) years of experience with the program she had claimed on the interview of February 14, 2004, she would be very familiar with the decimal entry of time. Ms. Leonard’s confused response and deportment clearly indicated to Respondent that she was not knowledgeable of the basic slip entry for the Time Slip billing program. Respondent was further concerned as Respondent had previously had numerous problems with more experienced and trained legal assistants than Ms. Leonard in producing accurate Time Slips review bills and finalizing Time Slips bills. **TR. 22; TR. 217; TR. 297-298; TR. 305; TR. 313-316.**

As the month of March 2004 progressed, Respondent experienced a growing number of conflicts with Ms. Leonard. In mid March, Respondent had scheduled a 45-day review of receptionist Shannon Blagg’s performance. Ms. Leonard, who was supposed to leave the office at 5pm, came into Shannon’s office while the Respondent was beginning that review and advised that she was going to be present “and help you beat up on Shannon”. **TR. 23.** Respondent advised Chris Leonard she was not to be present and Ms. Leonard left the office in an irritated state; **TR.**

23. in March 2004, Ms. Leonard's purportedly estranged husband, Gary Leonard, began coming to Respondent's office at a quarter until 4pm or 4 o'clock pm each Friday and sitting in Ms. Leonard's office until her leaving time at 5:00 pm. This practice continued throughout the course of Ms. Leonard's employment until June 2004, despite the Respondent's request to Ms. Leonard to stop the practice and to focus on office tasks. **TR. 27.**

During the course of the training of Ms. Leonard in the first couple of weeks, Ms. Leonard was advised that she was not to change any of the office forms, as Respondent had had previous problems with staff members changing forms that they did not understand; **TR. 24.** Ms. Leonard was also advised that the high speed cable Internet connection to her computer was not to be utilized for any personal work at any time and that the only website that she was to utilize the Internet for was Case Net to track Respondent's office cases on each Monday, Wednesday, and Friday morning. Ms. Leonard was fully advised by Respondent of the prior computer system crashes in 2002 and in 2003 with massive data losses that were attributed by one consultant as being virus related. Respondent advised Ms. Leonard that under no circumstances was she to use the Internet for sites other than Case Net and the Secretary of State. Ms. Leonard, however, continued to ignore these procedures throughout her employment. **TR. 24; TR. 157-159; TR. 229-230.**

In mid April 2004, Respondent was in Ms. Leonard's office to get forms for a client and discovered a folder in Ms. Leonard's desk. The folder contained her resume with Respondent's notes on it with the initial interview of February 14, 2004 that had been kept with other resumes in a folder in Respondent's desk drawer; also in that folder were photocopies of a bar complaint made by a client which also was kept in a separate folder in Respondent's desk drawer; Ms.

Leonard also had photocopies of various financial matters that were also kept in Respondent's desk drawer; also found was a separate folder where Ms. Leonard had her husband's financial bills and bank account statements as well as her own. **TR. 24.** Respondent examined Ms. Leonard's computer and found that she had installed the US Bank site for online banking and the Internet Explorer history indicated extensive use of the computer by Ms. Leonard for a large number of websites irrelevant to the practice of law. **TR. 24.** A search of the computer system with the Spybot Destroyer software program, indicated more than 200 cookies, 6 virus's, and a number of spy ware software had been installed on the computer through injudicious use of it for non legal purposes. The workstation run extremely slow, and would occasionally "drop off line" on the Respondent's network. I advised Ms. Leonard on Monday once again not to use the computer for her personal business. I had a computer consultant remove many of the viruses and Spyware as possible. The Internet Explorer program was permanently destroyed during this process. **TR. 24.**

Beginning in March of 2004, and regularly thereafter, Respondent discussed with his two employee's, Chris Leonard, and Shannon Blagg, the necessity of daily filing of documents produced by the staff and received into the office; **TR. 25.** Respondent testified that beginning with the employment of Shannon Blagg in mid January 2004, and through February and March the filing of office documents was not regularly attended to by the two legal assistants. **TR. 25.** Respondent has also testified that the staff were trained to contact clients who were making partial payments of minimum legal fee retainers, and that each staff member was responsible for contacting the client on the day the payment was due to ensure payment of the fees. Respondent has testified that despite repeated requests for the staff to contact the clients about the payments

that were put on the office calendar, the staff regularly failed to follow up on collection calls; **TR. 26.** Respondent testified that on April 29, 2004, an office staff meeting was held and Respondent has advised both staff members that Respondent was dissatisfied with the staff member's performance in these two areas and that if significant improvements were not made that they would no longer be employed. **TR. 26.** Respondent also testified that at that meeting he discussed with Shannon Blagg, in the presence of Chris Leonard, that Ms. Blagg needed to improve her professional deportment in dealing with clients and to limit her conversations on the phone and in person with the clients to obtaining information from them, and to stop providing them with legal advice for which she was not qualified; **TR. 26.** Respondent had cautioned Ms. Blagg about the extent of and nature of her conversation with the clients not being appropriate for her capacity as a receptionist; **TR. 26.** Ms. Blagg, had completed an unaccredited fourteen (14) hour Internet "paralegal" certification, through Southeast Missouri University, paid for by Respondent. She increasingly had been advising the client's that she was the Respondent's "paralegal" after receiving the unaccredited certificate, (which had nothing to do with Missouri law) and had been increasingly giving advice and taking on tasks that were outside of her competence and duties.

Respondent has testified that beside Ms. Leonard's afternoon visits with her husband, Ms. Leonard had requested and taken off one Friday afternoon and had had two Friday afternoon's of "unexplained" illnesses at lunch and had simply not returned or contacted the Respondent. **TR. 26.** Respondent has testified that on Friday, June 11, 2004, Ms. Leonard asked to talk to Respondent during a course of a week in which they had had very little conversation. She advised that she had gotten "food poisoning" from a "bad taco" the night before at Taco Bell. **TR. 26.** She then went into a curious explanation that she had contacted the manager by phone

that evening to advise him that she had gotten food poisoning but that she just wanted him to know that and she did not want anything “free”. Respondent asked her if she was okay and she said, “it passed this morning”. **TR. 26.** Respondent had a scheduled CLE at 12 noon and Ms. Leonard and Ms. Blagg left for lunch together as usual. Upon Respondent’s return at 2 pm, Respondent was advised by Ms. Blagg that Ms. Leonard had become suddenly ill at lunch. An important pleading had been given to Ms. Leonard at 11 o’clock after the above conversation. It was not prepared. Respondent contacted Ms. Leonard at 2pm. Respondent has testified that Ms. Leonard’s words were slurred and that his opinion she was intoxicated. Respondent testified that Ms. Leonard had on a number of occasions told Respondent upon leaving the office that she had “a date with my boyfriend, Captain Morgan” (a cheap spiced rum) **TR. 26-28.**

Respondent thereafter personally drove to the three Taco Bell’s in the County and talked to the manager’s who were on duty the night before, and learned that no such telephone complaint was made. There was no documentation of a food related illness as required by Taco Bell procedures. The following week, after receiving a typed statement from Shannon Blagg confirming that she was told that there was a phone call made to the manager, Chris Leonard was terminated from employment. **TR. 27-28.**

Respondent testified that from April through June, that Ms. Leonard and Ms. Blagg, increasingly spent more time on their own personal endeavors; the staff had removed two conference chairs from the front conference room and placed one in each of their respective offices; Respondent would frequently return from Court, or enter the office after lunch, and find both of the staff members sitting and carrying on personal conversation; Respondent testified that after the meeting of April 29, 2004, Respondent would inquire with both of the individuals when

these daily events occurred, if they had “done any filing”. The aforesaid employees’ would then quickly return to their offices without any response.



### **Testimony of Shannon Blagg.**

Shannon Blagg testified on behalf of the Informant. A sworn affidavit of Shannon Blagg was provided to the Committee and the Respondent minutes before the hearing in this matter. Ms. Blagg, in her affidavit, and in her subsequent testimony made the following allegations:

(a) Ms. Blagg, under oath, and apparently after careful consideration, stated in her affidavit that “while I was employed by Mr. Hahn, there was never a bill sent to a client, or a bill generated from the office”. Testimony of the Respondent and Chris Leonard was that two or three bills were prepared and sent. Ms. Leonard testified that she prepared two bills within the first two weeks of her employment with Mr. Hahn, that she did not do those bills correctly and that Mr. Hahn made the corrections on the bill and explained to her the decimal entry and provided her with a list of decimal entries. The Respondent and Ms. Blagg testified that Time Slips accounts and expenses were regularly entered by Blagg and Leonard.

(b) Ms. Blagg, testified “ Mr. Hahn had financial problems caused by his failure to bill clients”. Ms. Blagg also testified, however, that she and Ms. Leonard would “forget” to make collection calls for outstanding client payment schedules for which they were responsible. **TR. 70.** Ms. Blagg did not deny that she and Ms. Leonard had failed regularly to make collection calls to clients or that the Respondent had repeatedly addressed this issue with Chris Leonard and Ms. Blagg. **TR. 70; TR. 123-124.** Ms. Blagg did not deny nor is there any other evidence presented to the contrary, as to the witnesses failure to make collection calls contributed to the financial problems nor was there any contrary evidence that this was not regularly addressed between the Respondent and the employee’s, including the office meeting of April 29, 2004. **TR. 70.**

(c) That upon being paid the minimum non-refundable fee in full, that Mr. Hahn ceased working on a client's case. Ms. Blagg did not provide any specific client or case for which Mr. Hahn "ceased working" on after having been paid. She testified that there were "eight clients that requested their file" but she did not provide testimony on those clients or on their cases; nor did Ms. Blagg provide the name of any client to which Respondent refused to return the fees "paid by the client". The information should have been readily available to Ms. Blagg if it is true. This information should be readily available to the Informant by the simple expedient of checking Case Net on those cases filed by Mr. Hahn. The 32<sup>nd</sup> Judicial Circuit in Cape Girardeau County, Bollinger County, and Perry County was the first Circuit to implement the "rocket docket" of computerized scheduling of cases; that the Court Administrator's Office has a regularly awarded the Judges of that Circuit recognition for having the fastest criminal and civil docket in the state; that as the Respondent has testified, cases do not "sit" in the 32<sup>nd</sup> Judicial Circuit, and that a continuance without good cause is seldom granted; neither the informant nor its witnesses identified a single case where Mr. Hahn collected the fee and did no work thereafter or failed to complete the case within a reasonable period of time.

(d) Ms. Blagg claimed that Respondent sat only "three days" for phone conferences and that they were in three thirty minute segments between 4pm to 5:30pm. Ms. Blagg further claimed that Mr. Hahn would "keep two out of nine conferences" and also claimed "it could be several months after a client requested to speak to Mr. Hahn before the client had the opportunity to speak to Mr. Hahn". Ms. Blagg and the Informant were unable to produce a single case or client that met this criteria. Furthermore, the Informant has had in the Informants possession the "meticulous" time sheets maintained by the Respondent; Introduced into evidence by the

Respondent, as Respondent's "Exhibit A", was the desk calendar used by Shannon Blagg to set the telephone conferences; examination of "Exhibit A" during the months of January to the 1<sup>st</sup> of July, 2004, records prepared by Shannon Blagg herself, and an examination of the time sheets that were introduced by the Informant, "Exhibit B", shows that the Respondent regularly returned client telephone calls to client, that telephone conferences were not limited to merely three days per week for one and a half hours; that the Respondent regularly scheduled telephone conferences and office appointments on more than four days per week including Saturday and Sunday, and regularly occasionally 7pm or later. **TR. 112-124**

(e) Ms. Blagg stated that Mr. Hahn would "let mail set for days and sometimes weeks before he would open it. As a result Mr. Hahn would sometimes miss Court appearances or other crucial deadline". On cross examination by the Respondent, Ms. Blagg finally admitted that she could not name one occasion when Mr. Hahn had missed a Court appearance or any other crucial Court deadline. **TR. 150-155.** On cross-examination Ms. Blagg admitted that it was her responsibility to prepare mail list which Mr. Hahn dictated for her on a daily basis. **TR. 149.**

These mail list were accompanied by a memoranda to put Court appearances on the calendar which thereafter be entered into the computer system and matched with Ms. Leonard's calendar by Ms. Leonard. **TR. 149.** It was also established by testimony of the Respondent and the cross examination of Ms. Leonard, that it was Ms. Leonard's responsibility to do a complete seven day Case Net search first thing on each Monday, Wednesday and Friday to ensure that no Court appearance or Court deadline were missed. Ms. Leonard testified that she was not aware of any such missed deadlines. Respondent has testified that Respondent regularly opens his legal mail as it was received, dictated a mail list for his secretaries, to type, and dictates letters and memos

concerning said mail each morning. Respondent does not normally review the office accounts payable, CLE notices, and the large amounts of commercial solicitations that each lawyer receives until the weekend.

(f) Ms. Blagg also testified under oath in her affidavit and in testimony before the committee that Mr. Hahn “had no filing system or method of organizing files” and that there was “only one filing cabinet in Mr. Hahn’s office and it did not contain any files”. She further stated in her affidavit to the informant and in her testimony that “client files were stored in banker boxes throughout the office but there was no organization of these boxes” and that “most files were strewn about the office”.

(g) Ms. Blagg has made a conscious effort before the Committee to convince the Committee that the boxes of files depicted in Informant’s “Exhibit 17” pages, 9, 10, and 11 were the aforesaid open files of the clients that were in a disorganized state. She testified directly, and unequivocally that this was the “filing room”; the Informant had so labeled their Exhibit on page 9, 10 and 11 as “the filing room”. **TR. 98-100.**

The Respondent testified that the room depicted in those three Exhibits is the former suite occupied by his ex wife and law partner Marcia Mulcahy. That the bulk of the room in question contains the personal items that he removed from the former marital residence in January 2004. That each of the boxes in question contained the alphabetized “closed for final billing cases”. The Respondent testified that after completion of the work on a case, the Respondent dictates a memo to “close for final billing” each of the completed cases and that the case be put in a “closed for final billing box” for subsequent billing purposes. As the evidence has clearly established, there are a large number of these closed but as yet unbilled cases. Shannon Blagg testified that she went

into that room on one occasion prior to the taking of the photographs in question. She testified that she went in there to “find a paper for Mr. Woodard”. In cross examination, Ms. Blagg was extremely evasive when questioned by the Respondent as to where the file room for regular cases in the office was. With great reluctance, she finally admitted that there were three file cabinets in an office directly across from Chris Leonard’s office. She testified that there was “few files” in the three, four drawer, file cabinets.

Ms. Leonard on cross examination by the Respondent left the committee in no doubt that all regular files were kept in the file room directly across from her office on the west end of the building. She furthermore testified that there were three, four drawer filing cabinets and that they were “full” of active files. **TR. 239-240.** She further testified that when she completed work on a case that she personally would file in it the file draw in alphabetical order.

Furthermore, Ms. Blagg asserts that there were “boxes” of client files scattered throughout the office; This is not supported by the Informants photographs that were ostensibly taken throughout the office for “Ms. Leonard’s family”. Why these two employee’s would need photographs for “Ms. Leonard’s family”, as her husband was a regular and frequent visitor to the office, and her daughter lived in Cape Girardeau, and was not an infrequent visitor, is not clear. What is clear is that no “scattered boxes” were depicted throughout the office, though these two former employee’s had the opportunity and certainly the motive to photograph them. One box outside of the “purported filing room” that is photographed “Jim’s office”, page 8 “Exhibit 17”, appears to contain two or so files. The nature of those files, whether active or closed cases, is unknown to the parties and there is no evidence otherwise. It has long been the Respondents procedure to have the files pulled for phone conferences, office appointments and court

appearances two to three days in advance. These cases are taken from the file cabinets, and placed in wire baskets on a credenza immediately outside the former office of Ms. Leonard. Respondent then places the files in a bankers box in alphabetical order for review, dictation, and for court and office appointments. **TR. 93-101.**

That the photograph number one of “Exhibit 7” shows what appears to be a plastic bag with clothing on the floor; that photograph 12 shows the item on the table. Obviously someone moved the item from one position to the other and the purpose for doing so is not clear. That the photograph of the front office, “Exhibit 1705” of Ms. Blagg’s desk. **TR. 101-105.** The desk is carefully organized with two file baskets turned curiously at a 45-degree angle towards the photographer. In the lower left hand corner, is a file basket that on cross-examination by the Respondent of Ms. Blagg, Ms. Blagg admitted is one of the four, eight-inch deep file baskets that was on that side table, which she had failed to file before her final day on July 1, 2004. **TR. 101-105.** The witnesses were careful to photograph the stacks of paper in the conference room, but curiously did not photograph the total of eight, eight-inch deep file baskets and one cardboard box that the Respondent testified were accumulated during the witnesses 4-month employment.

## **POINTS RELIED UPON**

The deportment, resolve, and demeanor of the witness should be considered in these circumstances. Whether the testimony provided by the two former employees, Chris Leonard and Shannon Blagg, was motivated by spite or “professionalism”, as Ms. Blagg repeatedly asserted, can be an issue of debate. What is clear, is that disputes and conflicts quickly arose between the Respondent and Chris Leonard in their professional relationship, and, thereafter, between the Respondent and Ms. Blagg. During the course of these disputes important matters such as filing normally done by legal assistants, were not done. The only explanation provided by either legal assistant, was that Chris Leonard said, “it was to much”.

Ms. Blagg had testified that the Respondent had let her into the storage area to look for paperwork on Mr. Woodard’s file. This is the room that Ms. Blagg purposely mislead the Committee and the Informant to believe was the “file room”. The testimony of both former staff members was that they took photographs of the room, which Chris Leonard knew, had nothing to do with the condition of the files in the filing room across from her office. In the testimony of the Respondent, the three doors to that complex were locked with security locks that had been installed by the Respondent’s former wife and that the only two keys to that complex were on the Respondents key ring and a key in his desk. That the Respondent testified that he had stored in the room depicted as the “filing room” approximately 40 firearms and that the room was kept locked at all times. The Respondent also testified under oath that the he had located documents of a personal nature including the law suit between he and his former wife, a bar complaint, and other financial papers that Chris Leonard had taken and photocopied from personal files in the

Respondent's desk. The Respondent also testified that in April and thereafter he had determined that Chris Leonard was regularly using the high speed Internet connection for personal use thereby exposing his computer network to viruses and other malicious software. The Respondent testified that he had advised Chris Leonard in his initial meeting with her at the office on March 1, 2004, that she was not to use the Internet for any personal use. Furthermore she denied that the Respondent had advised her that the only Internet site that she was to use was the Case Net of the Missouri Judiciary. Considering the well documented unhappy circumstances of the Respondent with regard to previous computer crashes of his system in 2002 and 2003, perhaps caused by viruses, as documented by the Informant through prior statements and sworn testimony of the Respondent, Ms. Leonard's actions, and activities during her employment were questionable and testimony in this regard is questionable. It should be noted that the spare key to the above suite, two (2) disposable cameras, both secretarial telephone pads were found missing after Ms. Blagg's last day.

Ms. Blagg also described "three incidents" in June 2004, which "made me leave Jim Hahn's employment".

(a) Respondent denied ever telling Ms. Blagg at any time to tell a client not to come back to the office; the client had a scheduled telephone conference at 5pm and came in about 10 minutes before 5pm and the Respondent was with another client. Mr. Woodard had a telephone conference scheduled at 5pm. Respondent advised Mr. Woodard that Respondent would call him upon his return to home as Respondent was running late with the other client; Respondent called Mr. Woodard within 30 minutes and discussed the matter.



(b) Mr. Blagg claimed that there was false information in an unemployment contest letter that Respondent dictated. There was absolutely nothing false concerning the information provided. Ms. Blagg simply did not want the letter to be typed and she either stole the tape or erased it.

(c) Respondent informed each legal assistant when they are hired that it may be necessary to work after the regular scheduled time to complete a task. Respondent had a response to a letter from the OCDC that was due that date and Respondent dictated a response that was comparatively short, to the point, and truthful. At no time did the Respondent go to the outside entrances and lock the door nor did the Respondent advise Ms. Blagg that she could “not leave until I finished the dictation”. At no time by did the Respondent threaten Ms. Blagg. Ms. Blagg at all times had a key to unlock the door and leave if she so chose. She had no absolutely no objection at that time to completing the task which was done before 6pm. This was the only overtime that Ms. Blagg was ever requested to perform.

Chris Leonard testified that she had sent a letter to the Respondent, thanking him for the “generous salary” that she received and learning the “procedures” that Respondent utilized in the office. Ms. Leonard further testified that she has introduced the procedures at her new place of employment.

None of the allegations made by Ms. Blagg address the principal issue in Count VI, whether Mr. Hahn knowingly misrepresented any information to the Informant or to the Supreme Court. On February 18, 2004, Respondent advised the Informant of the work that Tim Mellitz had done for the cost of \$5,000.00 in training staff, and revising the various data bases, and purchasing a calendaring system known as Time Matters. The staff in the office from July of

2003 until January 2004 had been trained in the program by a prior employee and the staff had entered all payment and all expense payments up until February 2004. All of these were necessary to resuming the monthly billing cycle. Shannon Blagg entered payments and expenses until she left. On February 14, 2004 Respondent hired Chris Leonard, who represented that she had four years of experience and was very knowledgeable with the Time Slips billing program. The Respondent's income had improved during the course of the previous months due to the excellent collection procedures utilized by the prior staff. Concurrently, however, the overhead had risen significantly during the same period rising from a \$650.00 mortgage payment per month to \$1,595.00 per month in February 2004, due to the purchase of the building and the refinancing of the building. The other expenses concurrently rose. It would be counter intuitive to believe that the Respondent did not want to bill his outstanding accounts. People seldom want to work for free or for a discount. On February 18, 2004, Respondent believed that the system problems that had existed previously had been resolved in September 2003 and the staff training problems with the Time Slips billing program were resolved with the work of Mr. Mellitz and by the hiring of Chris Leonard, based on her representation of four years of experience with the program. Ms. Leonard's inability to even enter in simple slip data on March 19, 2004, clearly indicated to Respondent that she did not have the experience and training with the program that she had represented at the time of her interview. Ms. Leonard's absence of knowledge of even the most basic entry of data into the individual time slip, even with the manual and the Time Slips tutorial available to her during that first 2 weeks, clearly indicated to Respondent that she was not likely to be able to complete the more difficult procedures of printing review bills, making corrections and printing final bills like some previous legal assistants, who were unable to produce an

accurate bill, make corrections in a bill, and properly finalize a legal services bill. The Respondents surprise and severe disappointment of that day, and increasingly thereafter, grew into a distrust of Ms. Leonard's intentions and commitment to the Respondent.

Respondent asserts that Respondent acted in good faith and truthfully in all representations to the Informant and to the Supreme Court on February 18, 2004; Respondent further asserts, as noted by the Informant, that Respondent had admitted various allegations in the Count and has truthfully provided information on each of those prior complaints.

It is has not been the Respondent's intent to spurn the efforts of the Informant. Respondent was deeply appreciative of the diversion opportunity. Respondent was provided with the name and address of a consultant in Springfield, Missouri who Respondent had in fact heard an excellent presentation from at the Small Firm seminar in June of 2003. Respondent has always been desirous of improving his practice. For that reason he has regularly attended the Small Firm seminar prior to the entering into the diversion program. Were it not for the more than doubling of the office overhead, the expense of approximately \$10,000.00 to retain legal counsel and to pay for Mediation in the law suits that began the first week of August and ended in January 2004 with the closing on the building, Respondent would have happily paid for said consultation.

Respondent did consult with Doctor V.S. Kamath, and followed his recommendation of reducing his practice significantly from 225 cases per year to 125 cases. Because of the representations of two former disgruntled employees, what had been previously viewed as an administrative problems in the office, has now been viewed as a personal attack on Respondent integrity and honesty. Representations made in page 24, the Informant's trial brief, that "after Respondent entered into joint stipulation, he continued to take significant retainers from client's, and then

failed to complete the work for the client's". These allegations are no more true than Ms. Blaggs assertions that the electricity had been cut off. The same former employees made representations that Court appearances were missed and other important deadlines were missed, yet provided absolutely no proof to this Committee that in fact said events occurred. There were no missed court appearances or deadlines. The former employee testified that "Respondent routinely failed to communicate with clients and failed to diligently work on the clients matter". What evidence was provided concerning "routinely failed to communicate with client's and failed to diligently work on the client's matter". Much has been made about the Respondent's procedures for setting telephone conferences. Testimony provided by the Respondent is that a minimum of three afternoons conferences is set aside for telephone conferences during the course of the week. Three phone conferences are normally set in the "block" with 72-business hour notice. If a current client has an "emergency" the staff member answering the phone is to take a brief description of what that emergency is and to have the client immediately put through to the Respondent. An examination of the two and a half years of Time Sheets provided a year ago to the Informant, and "Exhibit A", the calendar for 2004 for the office receptionist, clearly establishes a consistent pattern of frequent and constant communication with the Respondent's clients. These documents clearly establish that the Respondent works long hours consistently putting in 50 hours or more per week working on the client's work. They further consistently show, if they are examined, that the Respondent is available to his client for prearranged telephone conferences and office appointments for longer hours than most general practitioners in the area maintain hours.

The Informant inferred in the brief that upon receipt of a “significant” retainer that simply no work is done beyond that point. Examination of the time sheets, “Exhibit A”, and the review of Case Net will clearly indicate that that is not the “Respondent’s routine”. The purpose of the Respondent’s telephone and office scheduling policy are not to avoid client contact nor to avoid client work, but to ensure each client’s matter is handled at a time when the Respondent has his full attention on that matter, and after an opportunity to review the file. Only then, does an attorney fully address the issues and questions of the client. The telephone conference or office appointment is well prepared in order to address the client’s questions and issues. The Respondent asserts that at no time a client had to wait “weeks” to talk to the Respondent nor has at any time only “two out of nine” phone conferences been kept. A through review of the time sheets, “Exhibit A”, will clearly show that there is no “pattern of misconduct with several clients”.

It is Respondents recollection now, as it was when Respondent reviewed the Stipulation on May 28, 2004, that Respondent had given an accurate description of the steps that Respondent has taken in many regular billing programs. Respondent is certain that Respondent mentioned the work with Mr. Melitz and Respondent knows that Respondent mentioned that Respondent hired Chris Leonard four days before and that she was going to starting on March 1, 2004 and that she professed to have expertise with the Time Slips billing program. As well, Respondent advised Informant that Doctor Kamth had prescribed Zoloft, and that Respondent had had some very positive developments in Respondents personal life. Respondent formed a new relationship, exercised, and took more time off. Respondents goal when Respondent returned to his office in July 2003, was meeting with my staff of two years, Laura Hulsy, Shelly Ashcroft. Respondent was very eager to immediantly apply the new skills of the billing program during the course of

this meeting, Respondent and staff discussed the unofficial flex schedule that both staff members had been following, and the problems that the office would have if they took the amount of time off in the month of August for various activities that they had requested on my return.

Laura's departure at the end of July and Shelly's two-weeks later, Respondent hired two new staff members. Shelly Ashcroft provided training on the Time Slips billing program.

One week after this occurred, my wife filed the lawsuit mentioned in the Respondents brief. Respondent spent the next six months in an exhausting and constant attempt to not only meet the requirements of that diversion program but also the requirements of the two law suits which could effectively ended Respondents law practice by taking over the building.

Between the meeting with the Disciplinary Counsel on February 18, 2004, and the receipt of May 28, 2004 of the joint stipulation, were my disappointments in March with Chris Leonard's inability to properly enter the time entries on the first two bills that I gave her. Respondent discussed with Ruth Shrum, a temporary secretary with excellent skills, working in the evenings and on the weekends on the billing process. Ruth Shrum, in late March or early April, she advised me that she had acquired a position at Federal Express at night and would not be available during the day, and not on the weekends due to the changed custody arrangement that she had entered into with her previous husband. I had only two workstations available on the network, Respondent believed that neither Shannon Blagg or Chris Leonard could produce an accurate billing based on my observations.

As far as the two or three hour meeting on February 18, 2004, Respondent had arranged a conversation with Ms. Rippenger on a variety of issues. The meeting was attended by her paralegal, Dori Ann DeCook. Respondents recollection is that Respondent pointed out each of the

actions that Respondent had taken up to the particular time, training in Time Slips and simplifying the Time Slips billing program. The work was done by Mr. Melitz as Respondent had advised Ms. Rippenger. Respondent also advised that the current staff member, most importantly, Respondent advised that Respondent had hired Chris Leonard, a former legal secretary with four years of experience with Time Slips and she was to start on March 1, 2004. Shannon Blagg, had been opening Time Slips files, and entering payments and expenses. Respondent advised that Ms. Shrum, an exceptional typist with considerable knowledge of computer software, would be an asset to the firm in the months to come. Respondent finally believed that he had resolved the problem that had arisen in January 2003, when Respondents ex-wife announced that her secretary would no longer handle Respondents time entries and billing. However, at that meeting Ms. DeCook would write three words on her pad “currently billing clients”, had I known that, I would certainly have asked her to change it to “will resume monthly billing within the next month.” Those three words were not my words, though the Respondent certainly wished it could have been the case.

When Respondent left the meeting, Respondent felt that both Ms. Rippenger was pleased with the efforts that Respondent had made and the anticipated results that would follow. Respondent had a marked increase of income, over the previous months due to the excellent collection efforts and procedures that were adopted by Ms. Ullery and her assistant. The increase in revenues was provided solely by prompt collection efforts on a regular basis on agreed periodic payments on minimum fee retainer. The largest majority of the Respondents cases were settled near or under the minimum fee retainer. In paragraph 24, in the joint stipulation three months after the meeting, Respondent well realized the significant changed circumstances existed at that time,

from those of February 2004. Respondent had a bitter meeting on April 29, 2004 with both Shannon Blagg and Chris Leonard, when Respondent advised them that they would not be with Respondent if they did not change their collection practices, filing, and their general work attitude. Respondent had been making the collection calls himself in early April with success. This kept Respondent working until 7 or 7:30 each evening making calls on the partial payments. The vast majority of Respondents cases are at or near the minimum fee. While Respondent does not now have a specific recollection of the relative importance of the billing provisions with regard to the document as whole, Respondent has always understood that the general intent of our conversations and the agreement was to improve Respondents revenue by collection of fees owed. That I was successfully doing this myself by phone, in lieu of a competent legal assistant.



## Conclusion

The Supreme Court should not discipline Respondent by disbarment.

After consideration of all of the aggravating and mitigating factors, with Respondents cooperation with Disciplinary authorities, and Respondents willingness to accept sanctions, the existence of substantial mitigating factors found by the Committee, indicate that disbarment is not an appropriate discipline.

Respondents alleged conduct is not normally subject to disbarment; there are no allegations in theft of clients assets, nor ex parte communication with Judges, or other attorney's clients, or wonton conduct that has caused injury to client.

However, disbarment is reserved only for cases of severe misconduct where it is clear the attorney is not fit to continue in the profession. *In Re Tacket, Respondent, No. SC 86522(159 S. W.3d 846); Crews, Respondent, SC 86212 (159 S. W.3d 355); In Re Waldron, Respondent, No. 70107(790 S. W.2d 456)*

Respondent respectfully offers to the Court his profound regrets that he has not adhered to the highest standards of the Bar, and suggests to the Court that the appropriate action, after considering all of the mitigating circumstances, is a six month suspension, stayed, and completion of the terms of the original stipulation.

The Respondent respectfully submits that that the evidence in the hearing, after consideration of all of the circumstances at the time in question, does not justify the sanctions recommended by the Informant.

Respectfully Submitted,

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### **CERTIFICATE OF SERVICE**

I do hereby certify that on this 23<sup>rd</sup> day of September, 2005, two copies of Respondents brief and a copy of the diskette containing the brief have been sent in hand delivery:

Nancy L. Ripperger  
Staff Counsel  
3335 American Avenue  
Jefferson City, Missouri 65109

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James W. Hahn II

**CERTIFICATE OF COMPLIANCE WITH RULE 84.06 (C)**

Undersigned counsel hereby certifies that this brief complies with the requirements of Rule 84.06 (b) in that it contains 10,739 words. Disks were prepared using Norton Anti-Virus and were scanned and certified as virus free.

Respectfully Submitted,

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