IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
CARYN H. NADENBUSH,	)	**Supreme Court #SC93420**
	)	
Respondent.	)	

RESPONDENT'S BRIEF

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STATEMENT OF FACTS

Respondent has reviewed Informant's Statement of Facts, and while she agrees with the majority of what is written, must point out that the recitation of facts is drawn mainly from the Report and Recommendation of the Hearing Board of the Illinois Attorney Registration and Disciplinary Commission. As such, the accounting is one-sided and omits some crucial evidence and testimony that was submitted during the disciplinary hearing. Respondent believes the complete hearing transcript is available for review, although it does not appear the Informant has reviewed same.

With respect to the Blakemore v. Walgreens matter, in addition to the testimony recited in Informant's brief, Mr. Short also testified he did not care that Respondent informed Arbitrator Teague of his $80,000 settlement demand as the communication had no impact on the outcome of the case. Mr. Short confirmed the parties were able to amicably resolve the matter via settlement shortly thereafter with no further involvement from Arbitrator Teague. Mr. Short also confirmed that ex-parte communications similar to those which were the subject of the disciplinary charges against Respondent were prevalent in the worker's compensation system and that the practice was commonplace.[1]

In the summer of 2012, Mr. Short contacted the Respondent to advise he had been asked to speak at a CLE conference on ethics. Mr. Short further stated that he referenced Respondent's disciplinary hearing in Illinois as an example of what can happen when the

[1] Note: These comments are not intended to be mistaken as direct quotes of Mr. Short's (or any witness') testimony.

ARDC has an agenda. Mr. Short's presentation was (at least at one time) available on-line, although Respondent has had any need or desire to search for it.

With respect to the Pound v. Henderson Trucking matter, Ms. Rakers testified that she had reviewed the emails exchanged between Arbitrator Teague and Respondent, describing them as "petty." She further stated that she did not wish to be a part of the disciplinary hearing and was testifying on behalf of the ARDC only after receiving a subpoena to do so. Ms. Rakers confirmed that the Pound matter was ultimately settled between the parties with no involvement from Arbitrator Teague.

With respect to the Croghan v. Walgreens matter, Mr. Levenhagen confirmed during his testimony that the matter was still pending at the time of the disciplinary hearing in December 2011. He further confirmed that he had received similar guidance from Arbitrator Teague in terms of the value of petitioner's injury. Mr. Levenhagen also confirmed that, in Illinois workers' compensation claims, physicians do not speak to the value of an injury.

With respect to the Fisk v. Walgreens matter, Mr. Hassakis was subpoenaed to testify on behalf of Respondent but failed to appear on the date of the disciplinary hearing, citing a last-minute conflict. Prior to the hearing, Mr. Hassakis had provided Respondent's attorney, Don Groshong, with a written statement confirming he had reviewed the emails that were the subject of the disciplinary hearing. Mr. Hassakis further confirmed that, after she had sent the emails to Arbitrator Teague, Respondent made him aware of the email exchange on the Fisk matter and the subjects discussed therein. Mr. Hassakis stated he did not take issue with the email exchange between

Respondent and Arbitrator Teague. Respondent believes Mr. Hassakis' letter was submitted as evidence at the disciplinary hearing.

Finally, Informant, on page 10 of its brief, cites to a letter written by Respondent in the Croghan matter. The two sentences quoted were extracted from a two-page letter. Shortly after that letter was submitted to the ARDC, Respondent retained counsel. Multiple conversations transpired between Ms. Church and Mr. Groshong regarding the contents of this letter. Respondent agreed, and again admitted during her hearing testimony, that the letter was written in haste and unintentionally misleading. The matter was (seemingly) clarified to Ms. Church's satisfaction, as she did not charge Respondent with what Informant has described as "more serious misconduct" in the initial complaint ARDC filed in July 2011.

On October 21, 2011, Respondent was deposed by Ms. Church. During the course of the deposition, Respondent was questioned about a pending EEOC investigation. Just two days prior, October 19, 2011, Respondent and her former employer met with the EEOC in what was purported to be a confidential meeting to discuss settlement of said investigation into Hennessy & Roach's wrongful termination of Respondent (and subsequent reporting to the ARDC for alleged ethical violations). Despite both parties signing a confidentiality agreement to keep the discussions private, Hennessy & Roach violated that agreement by informing Ms. Church and the ARDC of the EEOC's investigation into Respondent's termination, as well as the subsequent ARDC investigation.

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The following week, Ms. Church amended the disciplinary complaint against Respondent to include the charge of making a false statement. Respondent does not believe the timing of the decision to file the additional, more serious charge, was mere coincidence. At the conclusion of the EEOC's investigation, Respondent did receive a "Right to Sue" letter from the EEOC, as well as the Missouri Commission on Human Rights. Respondent made the decision not to proceed with the lawsuit as she wanted nothing more to do with the firm and opted instead to focus on moving forward with her life.

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ARGUMENT

(In response to Point I raised in Informant's brief)

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE THE ILLINOIS SUPREME COURT DISCIPLINED HER LICENSE FOR VIOLATION OF RULES ANALOGOUS TO MISSOURI RULES 4-3.5(b), 4.8-1.(a), 4-8.4(c), AND 4-8.4(d) IN THAT SHE KNOWINGLY COMMUNICATED EX PARTE WITH A JUDGE ABOUT THE MERITS OF PENDING CASES AND DISPARAGED OPPOSING COUNSEL AND MADE A FALSE STATEMENT OF MATERIAL FACT DURING THE DISCIPLINARY INVESTIGATION.

As noted in Informant's brief, the Illinois Supreme Court, in reliance on the Hearing Board's Report and Recommendation, suspended Respondent from practicing law in Illinois for a period of 90 days. The term of this suspension ended on May 9, 2013. Additionally, Respondent was required to complete the Illinois Attorney Registration and Disciplinary Commission's Professionalism Seminar and was assessed court fees of $1,000.00. These conditions were satisfied in March 2013.

Informant argues that Respondent does not assert her conduct did not violate the rules. That is true. In fact, Respondent was the one who reported her conduct to her former employer, who then subsequently reported her to the ARDC. Nowhere in the Hearing Board's Report does it mention that it was Respondent who initially came forward to report not only her conduct, but the similar conduct of former colleagues, including Respondent's former managing partner (who was never charged with ethical

violations). Thus, it would seem counterintuitive for Respondent to admit to conduct and then later deny that it occurred.

Informant challenges Respondent's credibility with respect to her recitation of statements made by ARDC counsel, Denise Church, in April 2011. First, Respondent put the remarks in quotations, not because they were lifted from a transcription, but because Respondent was reciting a direct quote. Second, since Informant seems to insinuate the Respondent is lying about this exchange, Respondent has attached an Affidavit from Elizabeth Barringer who was witness to the conversation.

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Presumably, most everyone is familiar with the corruption that abounds in the State of Illinois. Two of its past Governors landed in prison as a result of their conduct. It is not a secret that Illinois is run by those who hold the power and the purse strings. Thus, it is unclear why Informant finds it so incredulous that this disciplinary proceeding was, in large part, politically motivated. If there is any doubt, one need simply Google Arbitrator Teague's name.

That notwithstanding, Respondent was still engaged in conduct that was unethical and attempted to take responsibility for her actions by reporting the conduct to her employer and then fully cooperating with the ARDC investigation. Despite the fact that ex parte communications are an everyday occurrence in the Illinois worker's compensation system, Respondent, as an experienced attorney, should have known better than to get caught up in it. In fact, Respondent did know better, as there was no evidence

as these types of exchanges took place between Respondent and any other Judge or Arbitrator.

Respondent asserts here, like she has previously, that her judgment was blurred due to her longstanding friendship with Arbitrator Teague and has subsequently taken steps (outside of the disciplinary process) to reach out and apologize for her conduct. Respondent particularly reached out to Ms. Rakers to apologize for the remarks that Respondent made about Ms. Rakers' abilities as an attorney. Respondent testified at the disciplinary hearing that she believes Ms. Rakers is a good and competent attorney, as well as a very nice person, and expressed remorse for the negative remarks that had been made.

Informant notes, correctly, that the email exchanges took place over a period of 17 months. However, the emails charged were extracted from more than 200 pages of emails that were turned over to the ARDC. So the errant conduct was not as rampant as the Informant might suggest.

Informant goes on to argue that, absent reciprocal discipline, a lawyer's misconduct in another jurisdiction would go unreported to Missouri citizens and the legal profession. Respondent does not disagree. However, where Respondent takes issue is with the level of discipline being recommended by the Informant. Respondent asserts that, since she is no longer engaged in the practice of law, and has not been since February 2011, that the Court could (and should) impose a lesser sanction. In the unlikely event the Respondent opted to return to the practice of law, the discipline would be part of her record. Informant gives no reason as to why a lesser level of discipline such as an

admonition would not be acceptable. Per Rule 5.31(b), admonitions are public documents and would remain a permanent part of Respondent's record.

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Informant argues that Respondent still maintains an active license in Missouri and has not yet elected inactive status. Respondent advised Informant in writing of her intention to elect inactive status for the 2014 year. She has previously elected inactive status in Illinois beginning in 2013, so there is no valid reason why Informant would doubt Respondent's intentions, nor has Informant produced any evidence to suggest Respondent would not follow through with this election. There are two months remaining in 2013. One could argue it is possible that Respondent could find a client to represent within that time, but given that the Respondent has not represented any clients in any state in the last 2 ½ years makes that possibility very slim. In all likelihood, the Respondent will be on inactive status by the time the Court enters its ruling in this matter.

With respect to the charge levied against the Respondent for making a false statement during the ARDC investigation, Respondent can only reiterate that the Hearing Board's Report does not paint a complete picture with respect to this issue. Further, Respondent was truthful throughout the entire process, and indeed, when the ARDC questioned the letter that was written in June 2011, Respondent both directly, and through her counsel, worked with Ms. Church to answer any questions and concerns that she had. It is important for this Court to note that Respondent's story has never changed and to recall that this charge was added to the ARDC's complaint only after Respondent's former employer notified the ARDC (in breach of a confidentiality agreement) of a

pending EEOC investigation into the Respondent's termination of employment and the subsequent ARDC investigation. Although Respondent cannot now change the outcome of the Decision, these circumstances should give one pause as to the validity of this allegation.

Informant has, and will likely again, argue that Respondent had the opportunity to raise these issues and could have appealed the Hearing Board's findings. Yes, Respondent could have filed an appeal, but did not have the financial means to do so. By the time the Hearing Board's Decision was published in July 2012, Respondent had been unemployed for 17 months, with said unemployment being a direct result of this disciplinary action. After spending thousands of dollars on counsel for the original defense, Respondent did not have the means to hire another attorney and could not find an attorney willing to take the matter on a pro se basis. Even filing the appeal *pro se* would have cost more than Respondent could afford.

Despite Informant's assertions to the contrary, Respondent does recognize the seriousness of her actions. This is why she initially came forward to report her conduct back in 2011. Informant remarks that Respondent "has no appreciation for the fact that she has been found to have committed serious professional misconduct" and that Respondent, unless properly disciplined, will repeat her conduct and further damage the integrity of the profession. Respondent has never had occasion to speak with Ms. Weedin, and to her knowledge, has never previously met Ms. Weedin personally. Thus, Ms. Weedin is not really in a position to judge Respondent's mindset or future intentions.

Respondent has never been given an opportunity to redeem herself and prove she will not commit the same transgressions. Thus, these types of callous, off-handed remarks like those made by Ms. Weedin, which are unsupported by facts or evidence, do as much to harm the integrity of the legal profession as the charges levied against Respondent. Because of the Illinois disciplinary proceedings, and the media attention due to Arbitrator Teague's association with it, Respondent has essentially being blackballed by the legal community in both Missouri and Illinois. After reading through numerous prior disciplinary cases, Respondent notes that many attorneys who have committed far more egregious transgressions, have been given second, and even third, opportunities by this Court.

There are multiple mitigating factors in this case which should be taken into account per the ABA *Standards for Imposing Lawyer Sanctions* §9.32. Respondent was licensed for 14 years in Illinois with no prior disciplinary history, and has been licensed in Missouri for 8 years with no prior disciplinary history. There was no dishonest or selfish motive involved, Respondent has shown remorse for her conduct and has taken steps to apologize for her actions. Additionally, Respondent has suffered significant personal and professional hardships as a result of this disciplinary action and the negative impact on her reputation will remain long after any disciplinary proceedings have ended, and will extend across the boundaries of the legal profession.

CONCLUSION

Respondent has suffered significant hardships as a result of the Illinois disciplinary proceeding. These hardships were communicated to the Court not to dissuade reciprocal discipline as the Informant would suggest, but to request that the Court show a little compassion when making its ruling. Attorney discipline protects the public and the integrity of the profession. Both tasks can be accomplished with an admonition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of November, 2013, the Respondent's Brief was sent through the Missouri Supreme Court e-filing system to:

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/s/ Caryn H. Haddix
Caryn H. Haddix

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 2,600 words, according to Microsoft Word, which is the word processing system used to prepare this brief.

/s/ Caryn H. Haddix
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