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IN THE SUPREME COURT OF THE STATE OF MISSOURI

IN RE:	)	
	)	No. SC91656
William Daniel, # 24707,	)	
	)	DHP-10-012
Respondent.	)	

RESPONDENT'S REPLY BRIEF

COMES NOW Respondent, William Stanley Daniel, MBE#24707 [Inactive Status] and as and for his Reply Brief herewith states and respectfully submits unto the Supreme Court of Missouri all the following point and authorities of law in reply to OCDC's Informant's Brief:

I. RESPONDENT SHOULD NOT BE DISCIPLINED

BECAUSE OCDC IS ATTEMPTING TO HAVE A *DE NOVO*

TRIAL INSTEAD OF APPLYING THE PROPER *DE NOVO*

STANDARD OF REVIEW.

Although the standard of review, for the Disciplinary Hearing Panel's

December 21, 2010, unanimous, 3-0, advisory recommendation of dismissal

of the Information, is *de novo*, there is uncertainty in the law as to just what

that means, leaving the law bereft of that level of certainty that is required in

order to be imposed and for the public and bar to have their requisite level of
confidence in it.

"De novo determination" on a recommendation involves considering

the record made below upon which the reviewing court makes it

own

determination on the basis of *that* record; differing from the "clearly

erroneous" standard of review. ***Sims v. Wyrick***, 552 F.Supp. 748 (W.D. Mo.

1982).

A "de novo review" case in the Supreme Court of Missouri takes the

record made below with the Court forming its own opinions as to the facts

found, while paying due deference to the findings reached below, not

ordinarily refusing to follow them unless clearly contrary to the weight of the

evidence adduced below. ***Niehaus v. Madden***, 155 S.W.3d 141, 348 Mo.

770 (Mo. 1941), which affirmed the findings reached below in that

case.

"In a disciplinary hearing, the master's findings of fact, conclusions of

law, and recommendation are advisory." ***In re Caranchini***, 956 S.W.2d 910

(Mo. en banc 1997). On review, the Supreme Court of Missouri considers the

evidence and law *de novo*. ***In re Cupples***, 952 S.W.2d 226 (Mo en banc

1997). Yet, what is actually involved in an appropriate *de novo* review?

OCDC's Informant's Brief is silent on this under the Standard of Review.

A "de novo review" is upon the record made below to review

questions of fact and law. ***In re Trickett***, 8 P.3d 18, 27 Kan.App.2d 651

(Kan.App. 2000).

A “de novo review on the record” reappraises the evidence as presented by the record below and reaches independent conclusions thereon.

LaBenz v. LaBenz, 575 N.W.2d 161, 6 Neb.App. 491 (NebApp. 1998).

A “de novo review” is a review of the identical proceedings had below. ***Domingue v. Hartford Ins. Co.***, 560 So.2d 87; 568 So.2d 221 (La.App. 1990).

In 1993 and 1994, the Oklahoma Courts endeavored to bring some kind of definition as to just what constitutes “de novo review”, in fairness to the Members of the Oklahoma Bar: ***State ex rel. Oklahoma Bar Ass'n v.***

Carpenter, 863 P.2d 1123, 1993 OK 53 (Okla. 1993); ***Application of***

Sanger, 865 P.2d 338, 1993 OK 158 (Okla. 1993); ***State ex rel. Oklahoma***

Bar Ass'n v. Livshee, 870 P.2d 770, 1994 OK 12 (Okla. 1994); and ***State ex***

rel. Oklahoma Bar Ass'n v. Bolton, 880 P.2d 339, 1994 OK 53(Okla. 1994).

Again, more recently, "de novo review" means no due deference to the

findings below, but not a full rehearing or new fact finding. ***Spielman v.***

Hayes ex rel. Hayes, 3 P.3d 711, 2000 OK Civ.App. 44 (Okla.Civ.App. Div.

4, 2000), holding that "de novo appellate review" requires independent

nondeferential reexamination of the record and findings made in the

lower tribunal. It is not a “trial de novo”, which would be a retrial in another

court. But OCDC apparently seeks for this case to be a “trial de novo” in,

instead of the proper “de novo review” by, the Supreme Court of Missouri.

In an actual “de novo trial”, a rare proceeding not involving any

measure of judicial economy, the higher court hears evidence on the merits,

makes a record, determines the facts and decides whether the agency below’s

decision is unconstitutional, unlawful, unreasonable, arbitrary, capricious, or

otherwise involves an abuse of discretion, as if there was no trial or hearing

below previously rendered. ***THF Chesterfield North Develpment,***

L.L.C. v.

City of Chesterfield, 106 S.W.3d 13 (Mo.App. E.D. 2003).

Against that weight of authority in Missouri and her surrounding sister-states, OCDC clearly is seeking a “do over” and a whole new trial here in the Supreme Court of Missouri by its voluminous “record dump” of documents that were not introduced and received in evidence in the Disciplinary Hearing Panel’s proceedings below. OCDC is belatedly and untimely attempting to relitigate its lost cause here in the Supreme Court of Missouri, decidedly having not prevailed below, where the DHP rendered a thoughtful and scholarly 8-page, single-spaced, unanimous decision 3-0 in favor of

Respondent, recommending dismissal of the Information [A361-A367].

OCDC is acting like the losing party seeking further trial proceedings after

the Jury Verdict already has been rendered and published. This unseemly,

griping, unprofessional, vengeful, “sour grapes” approach by OCDC should

not be countenanced by the Supreme Court of Missouri. The unanimous 3-0

December 21, 2010 DHP decision/recommendation in favor of Respondent

should be approved with the June 21, 2010 Information dismissed.

Although entitled to due deference under older cases, ***Niehaus v.***

Madden, 155 S.W.2d 141, 348 Mo. 770 (Mo. 1941), and entitled to no

particular deference under newer cases, ***Spielman v. Hayes ex rel. Hayes***,

3 P.3d 711, 2000 OK Civ.App. 44 (Okla.Civ.App. Div. 4, 2000), the DHP

decision below merits some consideration. It was unanimous, 3-0 in favor of

Respondent. There was no dissenting opinion. There was no concurring

opinion with the same result on different grounds. It was rendered by (1) a

senior counselor, Thomas J. Casey, serving as the Presiding Officer, a mid-
level experienced trial attorney, Cynthia H. Stevens, and (3) a very senior

Lay Member, George Stephans, representing the Missouri public. They all

agreed with each other after giving lengthy and due consideration to the

record made before it. Even though this DHP met several times over

several months, at no time did Counsel for Informant ever introduce into

evidence before this DHP facts or documents that were essential elements of

the Information as charged. Thus, Informant Charles Riske, who had the

burden of proof, failed in sustaining that burden of proof.

Respondent understands this proceeding in the Supreme Court of

Missouri to be a "*de novo* review", not a "*de novo* trial". Thus, the only

record, the DHP Record, is before the Court; not OCDC's "record dump" of

96 pages of voluminous documents that were never introduced and received

into evidence by the DHP. As the DHP decision states at the top of its Page 5

[A365], “The document itself is not in evidence.”

Although it places a mere asterisk [*] at the end of certain documents,

OCDC has smuggled into its Brief ‘s Appendix 96 pages of additional new

documents that were not introduced into evidence before the DHP.

Especially noteworthy are OCDC’s Exhibits 4 and 5 , the October 7, 2008
letter and the February 2, 2009 Clerk of the Supreme Court letter that were

and are the foundation and fountainhead (the wellspring from which all else

flows) of OCDC's flawed case, which Exhibits were never introduced and

received into evidence before the DHP. OCDC does not even place an

asterisk by these documents, which were not made part of the DHP Record

below. Accordingly, the Supreme Court should disregard such unadmitted

evidence, despite a clerical allowance of OCDC's supplementing the record,

which was yet another denial of due process inflicted upon Respondent. On

March **31**, 2011, by an unsigned letter by a Deputy Clerk for the Court en

Banc, OCDC's March **29**, 2011 Motion to Supplement the Record was

“sustained with the complete record ordered filed on this date”, which was

only two (2) days next day after it was filed, which deprived this Respondent

of his Constitutional Due Process opportunity to object in any timely

fashion, since the March **29**, 2011 Motion to Supplement the Record already

had been apparently “sustained” on March **31**, 2011. Do these

unconstitutional procedures never abate? Not even in the Supreme Court?

There are voluminous additional, “supplemental”, belated, untimely,

non-evidentiary documents, cryptically noted with a mere asterisk, but attempted to be made part of the record herein. The DHP’s decision was

dated December 21, **2010**, yet these additional “record dump”

documents are

not dated until March of **2011**, 3 months later; untimely**.**

II. RESPONDENT SHOULD NOT BE DISCIPLINED BECAUSE MDOR, SUPREME COURT CLERKS AND OCDC VIOLATED HIS CONSTITUTIONAL DUE PROCESS RIGHTS.

OCDC is fond of asserting that this Respondent "received all the process he was due", a sad and shabby play on words in the fundamentally important context of Constitutional Due Process. However, other than its cute phrasing, OCDC's Informant's Brief utterly fails to define just what is "due process". Due process, and concomitantly what constitutes denial of

due process, have been defined by Justice Roberts as a “denial of due process

is the failure to observe that fundamental fairness essential to the very

concept of justice.” “In order to declare a denial of it we must find the

absence of that fairness fatally infected the trial; the acts complained of must

be of such quality as necessarily prevent a fair trial.” ***Lisenba v. California***,

314 U.S. 219, 236, 62 S.Ct. 280, 290, 86 L.Ed. 166 (1941).

Constitutional Due Process requires a clear enumeration of the charges

against an attorney and a thorough explanation of the bases for those charges.

In re Fletcher, 424 F.3d 783 (C.A. 8 Mo. 2005). Due Process demands that

an attorney receive notice of the precise charges leveled against him and an opportunity to be heard. ***In re Reeves***, 372 B.R. 525 (2007). Constitutional Due Process requires notice and opportunity to be heard as to mitigating evidence. ***Matter of Caranchini***, 1609 F.3d 420 (C.A. 8 Mo. 1998). An attorney has the due process right to make closing arguments and require the Disciplinary Committee to have proved its case by clear and convincing evidence. ***Committee on the Conduct of Attorneys v. Oliver***, 510 F.3d 1219 (C.A. 10 2007). Respondent was denied his due process rights on November

5, 2010, when he was not allowed to put on evidence in mitigation, explain,

testify at length in his own defense, and make a closing argument to the DHP.
[A187 - DHP Transcript Page 30, Lines 12-20; A190-A191 - DHP Transcript

Page 33, Line 22 - page 34, Line 24; and A197 - DHP Transcript Page 40,

Lines 12-18.]

A grossly insufficient DHP record was made by Counsel for Informant,

which presentation would not have survived a Motion for Directed Verdict in
a civil court trial; a “record dump” in the Supreme Court by OCDC to try to

put before this Court so much that was never introduced and admitted into

evidence before the DHP; denying Respondent his opportunity for explanation [A173; DHP Transcript Page 16, Lines 24-25]; OCDC's "Informant's Motion to Supplement the Record" is one-half inch thick, ambushing Respondent with an overnight-sustained Informant's Motion to Supplement the Record comprised of new Exhibits A - H: [A with 12 new pages of documents, B with another 12 new pages of documents, C with 4 new pages of document, D with 5 new pages of documents, E with 2 new pages of documents, F including the March 28, 2011 Affidavit of OCDC Alan D. Pratzel with 55 new pages of documents, G including the March 28,

2011 Affidavit of Counsel for Informant Maia Brodie with 2 new pages of

documents, H labeled a “Panel Exhibit”, but never introduced and received

into evidence before the evidence was closed in this matter [See Page 35,

Lines 11-12, of the November 5, 2010 Hearing; A192] with its 4 new pages

of documents], thereby depriving Respondent of his Constitutional Due

Process right of his opportunity to object in a timely fashion to the five-page

Informant’s Motion to Supplement the Record with its attached 96 new
pages of additional documents that were not before the DHP; all of these

violated Respondent's right to due process. See ***Jones v. Flowers***, 547 U.S.

220 (2006) and ***Schlereth v. Hardy***, 280 S.W.2d 47 (Mo. 2009). In ***Jones***,

the United States Supreme Court ruled that what is required for due process

is notice to apprise interested parties "and afford them an opportunity to

present their objections." No such constitutionally mandated opportunity, to

object to OCDC's March 29, 2011 Motion to Supplement the Record, was

ever accorded to Respondent, or even attempted or allowed, before the

Thursday, March 31st 2011 sustaining of said Tuesday, March 29th 2010

motion. The Order sustaining that motion was entered before the motion

had even been delivered by regular mail to Respondent in St. Louis County.

As just one example of the startling egregiousness of the errors that

pass for Disciplinary Committee work, the May 28, 2010 letter authored by

Maia Brodie as Division IV of Region X Disciplinary Committee, [A468,

Point 1.] states in error: "You failed to obtain a signed representation

agreement in the personal injury litigation". There was no personal injury

litigation. As the record in File No. 09-981-X undeniably shows, it was a

hail damage to roof property damage claim in which Respondent was defending Defendant Wille in ***Crane Roofing v. Wille***, a civil debt

collection

case over unpaid-for hail damaged roof repairs; not a personal injury case.

Respondent's July 12, 2010 reply letter also stated "I have noticed a

disturbing lack of due process accorded to Missouri lawyers by the Bar." But

the violations of constitutional due process rights continue apace, even within

these proceedings.

In its Index with its March 29, 2011 Motion to Supplement the Record,

OCDC had placed an asterisk [*] next to fifteen [15] new documents that

were not before the DHP at any of its sessions in this matter, DHP-10-012.

None of these 15 new added documents were part of the record made

before the DHP. Yet, in its Appendix Table of Contents, none of the

asterisked items are again asterisked, giving the impression that they were

part of the record before the DHP on *de novo* here. They were not. In

particular, Informant's Exhibit 4, letter from Thomas F. Simon, Clerk of the

Supreme Court, to Respondent, dated October 7, 2008 [A322-A324], and

Informant's Exhibit 5, Order of the Supreme Court of Missouri, dated

February 2, 2009 [A325-A328], were not part of the record below. These

were documents in existence when the DHP was holding its hearings,

but

were never introduced and admitted into evidence during said hearings.

There also are a number of also new additional documents that could not

have been, and so, of course, were not, presented to the DHP, but have been

tendered to the Supreme Court without any opportunity for Respondent's

objections thereto, dated March 15 - 29, **2011**, along with other documents

not before the DHP. These are continuing and mounting violations of

Constitutional Due Process rights belonging to Respondent.

Service of process satisfies the due process provisions of the State of

Missouri and Federal Constitutions. ***Brooks v. National Bank of Topeka***,

251 F.2d 37 (1958). Personal Service of a bar complaint and notice of

hearing are sufficient to satisfy the requirements of due process. Notice, such

as by service of process of CMRRR, are fundamental to due process and so

satisfy due process requirements. ***In re Jafree***, 759 F.2d 604, 607-608 (C.A.

7 1985). Neither service of process nor CMRRR were utilized by MDOR or

the Supreme Court of Missouri Enrollment Clerk, nor OCDC, nor were any

faxes or emails sent with Delivery Confirmation, although all such methods

of confirmed communications always were available. See also

Gershenfeld

v. Justices of the Supreme Court of Pennsylvania, 641 F.Supp 1419 (E.D.

Pa. 1986). Forms of acceptable notice, which pass constitutional muster,
that do meet the minimal standard for due process, include: (1) actual service

by either a Deputy Sheriff or Special Process Server or other duly authorized

and constituted individual, or (2) a $5.59 Certified Mail Return Receipt

Requested [CMRRR] green card signed by the addressee as the thereby

confirmed recipient. In the DHP hearings, Counsel for Informant admittedly

had no such evidence. An acceptable form of implied notice can include:

regular mail to the addressee with a “Proof of Mailing” stamped and dated by

the United States Postal Service. In the DHP hearings, Informant’s Counsel

admittedly had no such evidence. There also was no Fax Confirmation Sheet

nor any Email Delivery Confirmation Request printout. Such other forms of

proving notice are not in evidence in this case either, despite the fact that all

Missouri lawyers annually register their Fax telephone numbers and Email
addresses when they renew their annual bar registration and pay their annual

bar dues. None of these available methods of communication were utilized

by MDOR, Supreme Court Enrollment Clerk or OCDC vis-a-vis Respondent.

The undeniable fact remains not all regular mail is delivered and received. A

law license should not be dependent upon the United States Postal Service.

The key testimony in the November 5, 2010 reconvened Disciplinary

Panel Hearing appears on Pages 8-12 of that transcript [A165-A169]. The

Supreme Court of Missouri never issued any letter or entered any order

subsequent to the October the 7th of 2008 “subject to” letter providing notice

to Respondent of actual suspension beyond being “subject to” a suspension.

There is no rule or statute or authority for the proposition that a person

can be

automatically suspended from the practice of law without further notice.

The annual bar card that Respondent received, as a dues-paid Active Member

in 2008, 2009 and 2010, “had nothing on it that would suggest that he had

been suspended.”

Respondent respectfully submits that this evidence convinced the

DHP that indeed there had been deprivations and denials of Constitutional

Due Process, by Respondent purportedly being “suspended” without any

actual notice of same or opportunity to be heard thereon.

Note bene footnote 10 on Page 3 [A363] of the Disciplinary Hearing

Panel Decision, stating that the concept of an “automatic suspension” of an

attorney’s law license “evokes the image of Dean Wormer imposing ‘double

secret probation’ on the Delta house.” Although from a humorous context,
the iconic, still popular, 1978 movie “Animal House”, such reference could

not be more apropos here. “Double secret probation”, the act of putting

someone on probation without their knowing it, without their being advised

of it, without their having a hearing on it, without their being notified of it, is,

of course, egregious violations of Constitutional Due Process. Dean

Vernon

Wormer belatedly notified Members of Delta Tau Chi Fraternity that they

“have been on double secret probation since the beginning of this semester!”

The problem, of course, was that the Fraternity Members did not know that

they already had been on “double secret probation” for months. The clear

parallel here is that, without due notification received by Respondent,

Respondent did not know on February 8, 2010 that his law license ostensibly

“suspended”. Both “double secret probation” and this purported law license

“suspension” are violative of due process of law.

The underlying fountainhead (the well from which all else springs and

flows) of this disciplinary matter is the constitutionally infirm procedure of

the Missouri Department of Revenue that initiated this entire situation, with

one aspect of this situation after another flowing from that earlier MDOR

circumstance. An invalid aspect of one continuous process with several
aspects to it does render all aspects of that entire process invalid and void.

State v. Linder, 412 S.W.2d 412 (Mo. 1967). There is no evidence that

merely "estimated" taxes [$6,375 for 2003 and $6,191 for 2004] asserted by

MDOR as owed really constitute and actual tax liability, without taking

into

account deductions that reduce or even eliminate income taxes actually owed,

not just merely “estimated”. Without an actual, *bona fide*, tax liability due

and owing, then there cannot be any actionable “delinquency”. According to
RSMO 484.053, an attorney has to be actually delinquent; not estimated or

inadequately assumed to be. RSMO 324.010 requires that the law licensee

“is delinquent”, not merely assumed or “estimated” to be delinquent. Both

the MDOR and Informant, in error, have put the cart before the horse.

It is not the Missouri Bar’s duty, role or business to attend to

performing the tax collection duties of the Executive Branch of

Missouri

State Government, its Department of Revenue, Taxation Division, when The

Missouri Bar, and integrated bar, not a separate bar association, is under the

Judicial Branch of Missouri State Government. MDOR, being a part of the

Executive Branch, has no authority to suspend a lawyer from the practice of

law, which authority is vested solely in the Supreme Court. Violation of separation of powers is not to be countenanced.

Similarly, as to actual authority to suspend a lawyer from the practice

of law: Clients have no such authority; Informant has no such authority;

Counsel for Informant has no such authority; OCDC has no such

authority,

especially with no attached copy of a February 2, 2009 unpublished Court

Order, rendering it mere hearsay. Only, solely, and exclusively, does the

Supreme Court of Missouri have authority to impose discipline, when and

where warranted, upon its Officers of the Court, including this Respondent.

On **December 22**, ***2010***, for the first time ever, a copy of the non-

published, non-disseminated, unserved, unmailed, unseen February 2, 2009

Day - to - Day Order by Acting Chief Justice William Ray Price, Jr., finally

was provided to this Respondent. According to the Presiding Officer,

Thomas J. Casey, this February 2, 2009 Order was never sent out to anyone!
This crucial and essential document was never made a part of the record in

this case before Informant had officially rested and concluded presentation,

introduction and admission of the evidence herein [A192; Page 35; Lines 11-

13 and A196; Page 40; Lines 2-3 “I’ve already closed the evidence”.] The

submission of evidence was not re-opened. Although “tacked on” at the
end of Informant’s Brief on Due Process filed with the DHP, as purported

“Panel Exhibit 5", it was not any part of the record in this case, in which

Informant had failed to carry the burden of proof. In passing, Respondent

notes that this missing evidence was the first and only document that changed

Respondent's Bar Enrollment Status *from* "subject to suspension" *to* actually

"are suspended", which document was <u>not</u> ever seen by Respondent until

Wednesday, **December 22**, ***2010***, when a copy of it somehow was obtained

by Disciplinary Hearing Panel Presiding Officer Thomas J. Casey, who

somehow, on his own initiative, unearthed this heretofore unseen Order from

the tombs of the Supreme Court of Missouri in Jefferson City, where it had

sat dormant, unpublished, undisseminated, uncirculated, unserved, unmailed,

unseen, since February 2, **2009** until December of ***2010***, twenty-two (22)

months later. Obviously, a Disciplinary Panel Hearing Presiding Officer

cannot introduce evidence, but only receive it. Counsel for Informant never

introduced this crucial and essential document into evidence in this case.

“Tacking onto the back” of Informant’s Brief on Due Process as Exhibit 5

[A4-A7 and A325-A328] does not make it a part of the record, so it was not

in evidence and it is not part of the record in this fatally flawed case in which
Informant has failed to carry and sustain the burden of proof. Necessary

proof was lacking and was found wanting.

DHP's only reachable sound conclusion as a matter of law was that:

"16. The failure of the Supreme Court to notify Respondent of, and afford

Respondent an opportunity to be heard concerning, the February 2, 2009

suspension of his license to practice law violated Respondent's rights to due

process." It necessarily follows that: "17. In the absence of notice and

hearing, the purported license suspension was a nullity, Respondent's

practice of law in Judge Vincent's Court on January 8, 2010 was not

unauthorized." It thus flows logically that: "19. The Panel therefore **FINDS**

AND CONCLUDES Respondent is not guilty of professional

misconduct

under Rule 4-8.4 as charged in the Information." Therefore, **THE**

DISCIPLINARY HEARING PANEL RECOMMENDS THAT: 20. The Information be dismissed**." [A367]** Respondent requests that the

Supreme Court of Missouri dismiss the Information as charged.

III. WITH THE INFORMATION DISMISSED, NO SANCTIONS SHOULD BE IMPOSED, NOR COSTS, NOR "$1,000 FEE FOR SUSPENSION" ASSESSED.

Endeavoring to comply with a purported "suspension", Respondent has

not earned and been paid any Missouri income since February 9, 2010, when

very circuitously he learned by hearsay that his "license was suspended"

without actual notice of same served upon, or delivered to, him. All of

Respondent's Missouri cases and clients have been transferred to other

lawyers. Respondent elected Inactive Status with The Missouri Bar as of

January 1, 2011. That adverse situation of no Missouri income appertains

now for the past 16 months; all while Respondent was never constitutionally

validly suspended from the practice of law in Missouri.

Counsel for Informant has sought to apply a *per se* violation rule for

this Respondent allegedly "practicing law while suspended", in error

assuming that he actually was validly and constitutionally suspended, which

he was not. This OCDC untenable approach would involve the

immediate,

instantaneous, complete, overnight halt and cessation of anything involved

with the practice of law, necessarily thereby leaving clients in the lurch,

unrepresented, in default, facing due dates for Requests to Admit Facts and

Genuineness of Documents et cetera, which must never be the situation into

which a lawyer and clients are put by the Missouri Department of Revenue.

The MDOR procedures, Supreme Court Enrollment Clerk’s procedures, and
OCDC procedures, being constitutionally deficient as they are (but very

easily correctable for the future), are not entitled to serve as any sound legal

basis for discipline in the form of a sanction, especially not so severe as a law

license suspension, costs of proceedings, and a “$1,000 fee for suspension”.

The DHP “Panel raises the question (for which it has no answer) why

the General Assembly has relegated to the Supreme Court the duty to act as

the Department of Revenue’s assistant tax collector.” [A364; fn. 11] Such

relegation violates the separation of powers of branches of government, with

the Executive Branch interfering with the Judicial Branch and its Officers of

the Court. The DHP further noted: “Clearly, however, Respondent stands

here charged, not with being a bad taxpayer, but with being a bad lawyer”

[A364; fn. 15], which is an important distinction not to be lost in these proceedings: exactly what is at issue under the June 21, 2010 Information.

The marked and pronounced deficiencies in the DOR, Supreme Court

of Missouri Enrollment Clerk’s and OCDC’s procedures are very easily

correctable, if there is only the will to do it. Throughout these proceedings,

Respondent has heard and heard again from Counsel for Informant that:

“We don’t have to send CMRRR and we cannot afford it, so we don’t.”

[A305; DHP Transcript Page 18; Lines 4-12 and Page 18, Line 24 - Page 19,

Line 12] Wrong. According to the United States Postal Service, the cost to

Certify is $2.85 while the cost of the green card Return Receipt is $2.30, so

$0.44 + $2.85 + $2.30 = **$5.59.** Thus, the nominal cost of CMRRR for the 72

lawyers on the February 2, 2009 list would be only $0.44 for the letter and

another $5.15 for CMRRR, so merely $402.48 total ($5.59 X 72 = $402.48).
Is 400 dollars too much to ask for due process for all 72 lawyers on the

February 2, 2009 “names attached” list [A366; Par. 8]? Is $5.59 too much

to ask for due process for this one Respondent? What price due process?

According to Counsel for Informant and OCDC, 5 bucks is too much.

IV. THERE WAS NO UNAUTHORIZED PRACTICE OF LAW BY RESPONDENT ON JANUARY 8, 2010.

Black's Law Dictionary, Seventh Ed. 1999, defines 'unauthorized

practice of law' as 'the practice of law by a person, typically a nonlawyer,

who has not been licensed or admitted to practice law in a given jurisdiction.'
Also as 'a transaction to be handled by a lawyer for a fee'.
Restatement

(Third) of the Law Governing Lawyers, Section 4, Comment c (1998)."

"Charity work for Respondent's Church Minister" was without a fee. [A174;
DHP Transcript Page 17; Lines 7-8.] It was *pro bono publico*. It was the

same Church Minister for whom Respondent had filed the Motion to Vacate

and Set Aside pleading, again without a fee, on January 8, 2010 [A9-A14].

"Definitions delineating unauthorized practice of law have been 'vague

and conclusory, while jurisdictions have differed significantly in describing

what constituted unauthorized practice in particular areas.'
Restatement

(Third) of the Law Governing Lawyers, Section 4, Comment c (1998).

Being vague they deny Due Process and Equal Protection of the Law as

applied to professional licensees." The standard against which one is being

judged and potentially disciplines must be known in advance.

V. NO DISCIPLINE, SANCTIONS OR PUNISHMENT SHOULD BE IMPOSED, BECAUSE THE JUNE 21, 2010 INFORMATION WARRANTS BEING DISMISSED.

At no time after February 9, 2010, has Respondent earned any fee or received payment of any fee or reimbursement of advanced court costs from any client on any Missouri case. This has been a very substantial economic penalty for not having been validly or constitutionally suspended in the first place. No further penalty is required or indicated, despite OCDC's punitive request to "suspend Respondent indefinitely" and tax all costs in this matter

to Respondent, and, pursuant to Rule 5.19(h) assess Respondent "$1,000.00

fee for suspension" when Respondent has never been validly constitutionally

suspended from the practice of law in Missouri in the first place.

The Missouri Supreme Court, of course, *is* inherently authorized to

impose discipline upon its Officers of the Court, i.e., bar exam passed, licensed, CLE-compliant and dues-paying, Missouri attorneys. The OCDC

has no such authority, so a letter from the OCDC cannot suspend a lawyer,

especially one with no attached copy of the February 2, 2009 purported

suspension notice. The Supreme Court of Missouri must abide by, and

clearly provide, Constitutional Due Process in its disciplinary matters.

"There can be no 'limitation upon the powers of the Supreme Court to

govern the conduct of its officers,' so long, of course, as due process has

been accorded." ***In re Connor***, 207 S.W.2d 492 (Mo. banc 1948). Due

Process has <u>not</u> been accorded to this Respondent under the June 21, 2010

Information as charged, fully warranting its dismissal.

Under our **United States Constitution**, the Due Process Clauses of

both the **Fifth** and **Fourteenth** Amendments remain germane to these proceedings. **Fifth** Amendment: "nor be deprived of life, liberty, or property,

without due process of law". It is clear beyond peradventure that Missouri

law license #24707 is valuable property of the Respondent herein, i.e., means

of earning taxable income by providing legal services to paying clients for

fees. The practice of law in Missouri Courts is authorized upon payment of

annual renewal dues and fulfilling CLE requirements, which this Respondent

has done to date each and every year since and including 1976 through 2010,

inclusive. **Fourteenth** Amendment: "nor shall any State deprive any person

of life, liberty, or property, without due process of law; nor deny to any

person within its jurisdiction the equal protection of the laws." In

cases made and provided, the following holdings are germane:

A rule granting power to suspend an attorney from the practice of law
without a full adversarial hearing is unconstitutional on its face. ***Gershenfeld***
v. Justices of the Supreme Court of Pennsylvania, 641 F.Supp. 1419 (E.D.

Pa. 1986). Attorney disciplinary proceedings are adversarial and quasi-

criminal, and so attorneys are entitled to procedural due process which

includes notice and the opportunity to be heard. ***In re Smith***, 123 F.Supp.2d

351 (N.D. Tex. 2000); affirmed 275 F.3d 42 (C.A. 5 2001).

Courts must afford attorneys due process rights before suspending

them. Due process requires that courts give notice and reasons for its

findings before the decision is final and give the attorney the his opportunity

to fully respond. ***Mattox v. Disciplinary Panel of the U.S. District Court for***

for the District of Colorado, 758 F.2d 1362, appeal after remand 862 F.2d

876 (C.A.10 1985). That right was denied Respondent on November 5, 2010.

> An attorney has the due process right to make closing arguments and

require the Committee to have proved its case by clear and convincing

evidence, under the ruling in the case of ***Committee on the Conduct of***

Attorneys v. Oliver, 510 F.3d 1219 (C.A. 10 2007). In this case,

Respondent

was denied his right to make explanations or closing arguments to the Panel

on November 5, 2010. [A187 - DHP Transcript Page 30, Lines 12-20;

A190-A191 - DHP Transcript Page 33, Line 22 - Page 34, Line 24; and

A197 - DHP Transcript Page 40, Lines 12-18.]

In this case, the deficient record, as incompletely made by Counsel for

Informant, totally fails to include on the record the mandated "clear and

convincing" evidence of unauthorized practice of law on January 8, 2010.

Charges against an attorney Respondent must be proven by clear and

convincing evidence to meet the required standard of proof. ***Matter of***

Jafree, 759 F.2d 604, at 608 (C.A. 7 1985).

Due process requires that an attorney be allowed to testify at length in

his own defense, present evidence to support his version of events, and make

objections to a Disciplinary Hearing Panel's findings and recommendations.

Attorneys are entitled to procedural due process, including fair notice of

charges and full opportunity to show cause why there should not be

discipline imposed. ***In re Cook***, 551 F.3d 542 (C.A. 6 2009). That right was

denied Respondent on November 5, 2010.

"**Missouri Constitution** Article I, Section 10, provides: 'That no

person shall be deprived of life, liberty or property without due process of
law.' " A law license is valuable property. ***Shackelford v. McElhaney***, 145

S.W. 1139 (Mo. 1912). Hence, disciplinary proceedings involving the

valuable property right of a law license require Due Process. Attorneys and

lawyers are entitled to no less protection of their Constitutional Due Process

rights than are their clients and other citizens, members of the public.

Boiling up to the surface in this case are real deficiencies in Due

Process. DHP Presiding Officer Thomas J. Casey's own statements on the

record perhaps summed it up best:

[A192 - DHP Transcript Page 35, Lines 13-19]: “I would like to

hear some discussion legally concerning the issue of the sufficiency of the

supreme court’s suspension of Mr. Daniel and specifically the fact that no

actual entry of an order was entered suspending Mr. Daniel and the fact that

no notice of actual suspension after the fact was ever sent to Mr. Daniel.”

[A194 - DHP Transcript Page 37, Lines 6-14]: “I think it’s something that

can be raised sua sponte by a tribunal...that [due process] issue of notice of

the actual fact of suspension or lack of notice is of concern in our

deliberations. It’s the fountainhead from which everything else

follows,

whether or not that suspension was effective in the first instance. I have my

doubts." So does Respondent, as enunciated in his 26-page November 24,

2010 DHP Brief [A257-A282] and his 16-page January 25, 2011 DHP

Reply Brief [A329-A344].

There is nothing in the DHP's December 21, 2010 unanimous, 3-0

decision and advisory recommendation that the Information be dismissed,
that is unconstitutional, unlawful, unreasonable, arbitrary, capricious, or

otherwise involves an abuse of discretion, and so it merits being approved

and adopted as the ruling of the Supreme Court of Missouri herein.

See ***THF***

Chesterfield North Development, L.L.C. v. City of Chesterfield, 106 S.W.3d

13 (Mo.App. E.D. 2003).

CONCLUSION

WHEREFORE, in view of all the applicable, governing and controlling

Due Process Clauses and Constitutional arguments pertaining to the glaring

infirmities of the Missouri Department of Revenue, Missouri Supreme Court

Clerks, and OCDC procedures, i.e., their lack of Constitutional Due Process

and violation of separation of powers of the Executive and Judicial branches

of state government, Respondent respectfully requests that the subject [A20-
A21] Information as charged against him be dismissed by the Supreme Court

of Missouri.

DATED and timely FILED by Overnight Delivery sent this 2nd day of

June, 2011.

Respectfully submitted,

WILLIAM STANLEY DANIEL

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William S. Daniel, Respondent *pro se*

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