

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

JEFFREY L. BROWN

Respondent.

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)
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)

Supreme Court #SC85687

RESPONDENT'S BRIEF

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Pro Se

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STATEMENT OF JURISDICTION

Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMo 2000, establishes jurisdiction over attorney discipline matters.

STATEMENT OF FACTS

Background and Disciplinary Case

Respondent Jeffrey L. Brown (“Brown”) was licensed as an Attorney and Counselor at Law by the Supreme Court of Missouri on January 2, 1997 and became a member of the Missouri Bar in January 1997. He has no disciplinary history.

In July 1999 Ronald E. Heap filed a complaint against Brown. Brown responded in writing to the complaint on October 25, 1999. On March 18, 2003, a period of four years after the alleged wrongdoing, Brown was served with an Information relating to Heap’s complaint. Actions for conversion of an instrument and the like, for breach of warranty, or to enforce other obligations or rights arising under Article 3 must be brought within three years after accrual. **U.C.C. §3-118.**

Ronald E. Heap did not appear at the hearing to testify and there was no opportunity for cross-examination of Mr. Heap by Brown. In April 2002 W.K. Jenkins filed a complaint against Brown that eventually evolved into Counts IV and V of the same Information. A hearing on the Information was conducted before a disciplinary hearing panel on August 20, 2003. No decision of the panel has been issued as of this date in violation of Rule 5.16. The document served upon Brown, a copy of which is at **Informant’s App. 13-24** is not dated, see page A-23, and is not signed by Keith W. Hicklin, Member, see page A-24. No record that included a Disciplinary Hearing Panel Decision that is signed by the three members of the hearing panel,

Messrs. James W. Humphrey, Jr., John P. Corbin, and Keith W. Hicklin, and dated has ever been filed with the Court in accordance with Rule 5.19(d).

Tarmac Machinery Exchange, Inc. filed its Articles of Incorporation and Certificate of Incorporation was issued by the Missouri Secretary of State on January 25, 1995. The board of directors was made up of Ronald E. Heap (“Heap”), Edgar N. Banks (“Banks”), and William K. Fox (“Fox”). **Exhibit 5.** Fox was president of Tarmac Machinery Exchange, Inc. The corporation had its offices in Lee’s Summit, Missouri.

On January 27, 1999 Fox was given a memorandum signed by Heap and Banks which stated that Fox’s employment with Tarmac Machinery Exchange, Inc. was terminated. **Exhibit D.** There had not been a meeting of the board of directors at which a resolution to terminate Fox as president had been voted upon by the directors. On February 2, 1999, upon being served with a summons in *Tarmac Machinery Exchange, Inc. v. Fox*, Fox hired Brown to represent him. At a meeting of Tarmac’s board of directors on February 9, 1999, Heap and Fox were in attendance. There were no resolutions of the board of directors passed during this meeting. Fox continued to serve as president of Tarmac Machinery Exchange, Inc. until the Fall of 1999 when the parties settled. *Tarmac Machinery Exchange, Inc. v. Fox*, Case No. 99-CV-1763 was voluntarily dismissed prior to a trial on the merits. **Exhibit 26.**

Brown advised Fox that he had not been fired as president of Tarmac Machinery Exchange, Inc. Brown advised Fox that the corporation's Articles of Incorporation, specifically Article X, provided for indemnification of corporate officers and directors. **Exhibit 5.** Brown advised Fox that the action entitled *Tarmac Machinery Exchange, Inc. v. Fox*, Case No. 99-CV-1763, was actually an action brought by Heap and Banks individually or a partnership of them, against Fox. **Informant's App. 64 (T. 150).**

The total paid to Brown by Tarmac Machinery Exchange, Inc. for legal services was \$16,930.00. A draft is three-party commercial paper. It is a written and signed instruction by one person (the "drawer") to another person (the "drawee") demanding that the drawee pay money to still a third person (the "payee" or bearer). [U.C.C. §3-104(e)]. A "check" is a specific type of draft, namely one drawn on a bank and payable on demand. An instrument will be deemed a check if it meets these requirements. U.C.C. § 3-104(f). The checks at issue in this case are not "fake" checks.

Bank of Jacomo amended its Petition in *Bank of Jacomo v. Fox*, 99CV206235, in September 1999 to include Brown after receiving a transcript of a hearing on a preliminary injunction in *Tarmac Machinery Exchange, Inc. v. Fox*, Case No. 99-CV-1763, from the law firm of Lathrop & Gage. **Informant's App. 28 (T. 8).**

At a pre-trial conference with the litigants in May 2000, Judge W. Stephen Nixon, presiding in Case No. 99-CV-206235, revealed that he had a checking account and a loan at Bank of Jacomo, plaintiff in the case, and that pursuant to Canon 3E(1)(c) of the Code of Judicial Conduct, was recusing himself from the case. There is no agreement that Judge Nixon should not be disqualified signed by the parties and lawyers incorporated in the record of the proceeding. **Informant's App. 34 (T. 31-32).**

Judge Nixon, having recused himself from serving as adjudicator in the case and there being no agreement by the parties and the lawyers to remit said recusal, in violation of Rule 51.07 of the Missouri Rules of Civil Procedure ("MRCP"), did not promptly transfer the case to the presiding judge of the circuit court for reassignment in accordance with the procedures of Rule 51.05(e) MRCP.

Brown waited for notice from the presiding judge of the 16th Circuit Court regarding the reassignment of the case to another judge.

Judge Nixon, having recused himself from serving as adjudicator in the case, subsequently entered numerous Orders that are incorporated in the record of the proceedings, including but not limited to an Order of Default Judgment against Brown. **Informant's App. 28-33 (T. 8-25).**

On May 17, 2001 a general partnership called Green Acres Farms retained the law firm of Brown & Boushahla, to represent it in litigation involving Buck's Truck

Sales II, Inc. **Exhibit 23, Informant's App. 52 (T.101-104), 71-75 (T. 177-193), 390-92.** On Wednesday, November 28, 2001, Green Acres Land & Cattle Company, Inc. retained Brown to represent the corporation in litigation involving Michael Dean and Andrew and Francesca Beard pending in Wyandotte County, Kansas. **Exhibit M.** In October 2001 W.K. Jenkins gave a box of documents to Brown and told him to hold onto them. Brown refers to these documents as the GA-BE-CO-AK Joint Venture documents. **Informant's App. 73 (T. 185-186).**

On January 4, 2002 Robert E. Jenkins, president of Green Acres Land & Cattle Company, Inc. discharged Brown. **Informant's App. 52 (T. 101-104).** Brown did not listen to W.K. Jenkins when it came to representation of Green Acres Land & Cattle Company, Inc., nor did he believe a letter purportedly signed by Karl Jenkins. **Informant's App. 75-76(T. 193-199).**

Brown submitted a "Final Statement" for the 12/21/2001 to 1/4/2002 time frame. **Exhibit M.** Brown was not taking orders from W.K. Jenkins, but was in communication with Robert E. Jenkins on 12/21/01, 1/02/02, and 1/04/02. **Exhibit M.**

After having been discharged as the attorney for Green Acres Land & Cattle Company, Inc., Brown filed a Motion to withdraw as the attorney for Green Acres Farms in the Buck's Trucks case on 1/4/02. **Informant's App. 76 (T. 197).** Judge Williamson granted the Motion on March 7, 2002. Christina Miller and Gregory V.

Blume entered an appearance on behalf of Green Acres Farms. Brown turned over to Christina Miller his files in the Buck's Trucks case on March 29, 2002. **Informant's App. 76 (T. 198).** Brown did attempt to subpoena bank records in order to find the creditors of Buck's Truck Sales II, Inc. This information would be valuable not only for Brown's clients he still represented in the case, but also to Green Acres Farms. **Informant's App. 76 (T. 197-198).**

Brown adopts the statement of facts of the Informant beginning with the last paragraph on page 13 to end with the exception of the last quote. The quote should read "when they found no drug nexus."

POINTS RELIED ON

I.

**THE SUPREME COURT SHOULD DISMISS THE INFORMATION
BECAUSE RESPONDENT HAS NOT VIOLATED ANY RULES OF
PROFESSIONAL CONDUCT IN THE COURSE OF HIS
REPRESENTATION OF WILLIAM K. FOX IN THAT THE TRUTH OF THE
ALLEGATIONS IN THE INFORMATION HAVE NOT BEEN
ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE,
COMPLAINANT RONALD E. HEAP FAILED TO APPEAR AT THE
HEARING AND THE STATUTE OF LIMITATIONS HAD RUN.**

Rule 5.16

***IN re MCBRIDE*, 938 S.W.2D 905, 907 (MO. BANC 1997)**

U.C.C. §3-118

POINTS RELIED ON

II.

**THE SUPREME COURT SHOULD DISMISS THE INFORMATION
BECAUSE RESPONDENT HAS NOT VIOLATED ANY RULES OF
PROFESSIONAL CONDUCT IN THE COURSE OF HIS
REPRESENTATION OF GREEN ACRES FARMS AND GREEN ACRES
LAND & CATTLE COMPANY, INC. OR IN HIS DEALINGS WITH
COMPLAINANT W.K. JENKINS IN THAT THE TRUTH OF THE
ALLEGATIONS IN THE INFORMATION HAVE NOT BEEN
ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE**

***IN re MCBRIDE*, 938 S.W.2D 905, 907 (MO. BANC 1997)**

POINTS RELIED ON

III.

THE SUPREME COURT SHOULD DISMISS THE INFORMATION BECAUSE RESPONDENT HAS NOT VIOLATED ANY DUTIES TO CLIENTS AND THE PUBLIC IN THAT THE TRUTH OF THE ALLEGATIONS IN THE INFORMATION AS TO HIS PROVIDING MR. FOX WITH SO-CALLED CHECK FORMS WITH WHICH RESPONDENT MADE UNAUTHORIZED WITHDRAWALS FROM A BANK ACCOUNT AND WAS THE RECIPIENT OF MORE THAN \$16,000.00 IN SO-CALLED UNAUTHORIZED WITHDRAWALS FROM THE ACCOUNT HAVE NOT BEEN ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE, COMPLAINANT RONALD E. HEAP FAILED TO APPEAR AT THE HEARING AND THE STATUTE OF LIMITATIONS HAD RUN.

IN re MCBRIDE, 938 S.W.2D 905, 907 (MO. BANC 1997)

U.C.C. §3-118

U.C.C. §3-104(e)

U.C.C. § 3-104(f)

ARGUMENT

I.

THE SUPREME COURT SHOULD DISMISS THE INFORMATION BECAUSE RESPONDENT HAS NOT VIOLATED ANY RULES OF PROFESSIONAL CONDUCT IN THE COURSE OF HIS REPRESENTATION OF WILLIAM K. FOX IN THAT THE TRUTH OF THE ALLEGATIONS IN THE INFORMATION HAVE NOT BEEN ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE, COMPLAINANT RONALD E. HEAP FAILED TO APPEAR AT THE HEARING AND THE STATUTE OF LIMITATIONS HAD RUN.

The disciplinary hearing panel did not render a written decision within thirty days of the completion of the hearing as is required under Rule 5.16. A document entitled "Disciplinary Hearing Panel Decision" was hand delivered to Respondent on 9/13/03, however, this document is not dated on page 11 and is not signed by panel member Keith W. Hicklin on page 12. No other document containing the date of the decision and the signatures of the panel members has ever been served upon Respondent.

Ronald E. Heap, complainant, did not appear at the August 20, 2003 hearing for questioning or cross-examination. The only witness to appear on behalf of Informant was an attorney associated with the law firm representing Bank of Jacomo. Said

Bank of Jacomo has not made any complaint against Respondent. No employee of Bank of Jacomo with any personal knowledge of the facts in this case appeared at the hearing for questioning or cross-examination. The only evidence propounded by Informant were exhibits obtained from attorneys for Bank of Jacomo. These exhibits were either taken from the record of a hearing on a motion for temporary restraining order in a case that was never tried on the merits but was instead settled by the litigants, or taken from a case where the judge in the case had recused himself.

At a pre-trial conference with the litigants in May 2000, Judge W. Stephen Nixon, presiding in Case No. 99-CV-206235, revealed that he had a checking account and a loan at Bank of Jacomo, plaintiff in the case, and that pursuant to Canon 3E(1)(c) of the Code of Judicial Conduct, was recusing himself from the case. There is no agreement that Judge Nixon should not be disqualified signed by the parties and lawyers incorporated in the record of the proceeding. **Informant's App. 34 (T. 31-32).**

Judge Nixon, having recused himself from serving as adjudicator in the case and there being no written agreement by the parties and the lawyers to remit said recusal, in violation of Rule 51.07 of the Missouri Rules of Civil Procedure ("MRCP"), did not promptly transfer the case to the presiding judge of the circuit court for reassignment in accordance with the procedures of Rule 51.05(e) MRCP.

Brown waited for notice from the presiding judge of the 16th Circuit Court regarding the reassignment of the case to another judge.

Judge Nixon, having recused himself from serving as adjudicator in the case, subsequently entered numerous Orders that are incorporated in the record of the proceedings, including but not limited to an Order of Default Judgment against Brown. **Informant's App. 28-33 (T. 8-25).**

Any disciplinary action taken against Respondent based upon a case tried before a judge who had recused himself will be void on its face. Respondent has filed his Motion For Relief From Final Judgment or Order pursuant to Rule 74.06(b)(4) of the Missouri Rules of Civil Procedure in Case No. 99-CV-206235 based upon the actions of Judge Nixon.

William K. Fox was the president, member of the board of directors, and a shareholder in Tarmac Machinery Exchange, Inc. Upon being served with a lawsuit purportedly filed in the name of the corporation against him, Fox retained the services of Brown. Within four days, Brown discovered that Fox was a member of the board of directors, which was news to Fox. Fox requested Brown to do further investigation of the corporation. Fox paid Brown for these legal services from both his own funds and from corporate funds. Brown was not retained by the corporation, but investigated the corporation's operations at the request of one of the members of the board of directors and reported back his findings to that director.

Through all of the chaos of the litigation, one fact stands out. Fox was a member of the board of directors and a shareholder in Tarmac Machinery Exchange, Inc., who also had signature authority on the corporation's checking account at Bank of Jacomo up to at least April 7, 1999. It was Fox's decision to pay part of Brown's legal fees from corporate funds.

The biggest problem in this whole affair is a complete lack of corporate governance at Tarmac Machinery Exchange, Inc. To punish an attorney who attempted to get to the bottom of the whole mess will only encourage such corporate scandals in the future. Enron, World Comm and other more notorious corporate scandals may well have been prevented had attorneys in consultation with members of the board of directors taken action.

Respondent's filing of a lawsuit on behalf of Fox was not baseless or frivolous. While Judge Moran did dismiss out the business entities, Sharon Antonio was not dismissed out. That case, Case No. 99-CV-21238, was settled by the litigants and never went to trial. Brown's federal suit, Case No. 00-1136-CV-W-BC, was never served on the defendants and therefore the U.S. District Court Western District of Missouri never obtained personal jurisdiction over the defendants. Brown elected to hold service of process in abeyance pending possible FBI and IRS investigation of the circumstances involved in the case. Respondent has not violated any Rules by initiating these suits either in the name of Fox or on his own behalf. To discipline

Brown for his actions here would be an action to deny him access to the courts and would be in violation of Brown's constitutional rights.

The allegations brought against Brown in the Information in Counts I and II are barred by the Statute of Limitations. A period of four years after the alleged wrongdoing has elapsed. Actions for conversion of an instrument and the like, for breach of warranty, or to enforce other obligations or rights arising under Article 3 must be brought within three years after accrual. **U.C.C. §3-118**. Ronald E. Heap did not appear at the hearing to testify and there was no opportunity for cross-examination of Mr. Heap by Brown. William K. Fox has moved to Massachusetts and could not be contacted by Brown.

ARGUMENT

II.

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The disciplinary hearing panel did not render a written decision within thirty days of the completion of the hearing as is required under Rule 5.16. A document entitled “Disciplinary Hearing Panel Decision” was hand delivered to Respondent on 9/13/03, however, this document is not dated on page 11 and is not signed by panel member Keith W. Hicklin on page 12. No other document containing the date of the decision and the signatures of the panel members has ever been served upon Respondent.

The preponderance of evidence in the record does not support the allegations made in the Information. Testimony by W.K. Jenkins, Robert E. Jenkins, Rhonda Allison and Respondent only supports the finding that Respondent did a good job as the attorney for Green Acres Farms and Green Acres Land & Cattle Company, Inc. It is through the heroic efforts of Respondent that the Jenkins family, Green Acres Farms, and Green Acres Land & Cattle Company, Inc. might recover the \$3.2 million that W.K. Jenkins gave to Michael Dean.

The interests of Green Acres Farms were not adverse to the interests of Brown’s other clients in the Buck’s Trucks Sales II, Inc. litigation. All of the parties represented by the Brown & Boushahla law firm had equipment on the Buck’s lot on consignment. It was extremely important to the prosecution of the case that the creditors of Buck’s Truck Sales II, Inc. be identified. Brown, through his discussions

with Robert E. Jenkins, surmised that W.K. Jenkins was a creditor of Buck's Trucks, but who was acting under the name of Green Acres Farms.

The corporation has never questioned Brown's billing of Green Acres Land & Cattle Company, Inc. for legal services.

Brown returned the GA-Be-Co-AK Joint Venture documents promptly once he had determined where those documents should go. Those documents, which concerned land conservation grants, had nothing at all to do with the Buck's Trucks Sales II, Inc. litigation.

ARGUMENT

III.

THE SUPREME COURT SHOULD DISMISS THE INFORMATION BECAUSE RESPONDENT HAS NOT VIOLATED ANY DUTIES TO CLIENTS AND THE PUBLIC IN THAT THE TRUTH OF THE ALLEGATIONS IN THE INFORMATION AS TO HIS PROVIDING MR. FOX WITH SO-CALLED CHECK FORMS WITH WHICH RESPONDENT MADE UNAUTHORIZED WITHDRAWALS FROM A BANK ACCOUNT AND WAS THE RECIPIENT OF MORE THAN \$16,000.00 IN SO-CALLED UNAUTHORIZED WITHDRAWALS FROM THE ACCOUNT HAVE NOT BEEN ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE,

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A draft is three-party commercial paper. It is a written and signed instruction by one person (the “drawer”), in this case Tarmac Machinery Exchange, Inc. by William K. Fox, to another person (the “drawee”), in this case Bank of Jacomo,

demanding that the drawee pay money to still a third person (the “payee” or bearer). [U.C.C. §3-104(e)]. A “check” is a specific type of draft, namely one drawn on a bank and payable on demand. An instrument will be deemed a check if it meets these requirements. U.C.C. § 3-104(f). The checks at issue in this case are not “fake” checks. They are not unauthorized checks. Fox could have written and signed his instructions on a napkin and they would still have been just as valid. The uncontroverted facts in this case are that William K. Fox was a member of the board of directors of Tarmac Machinery Exchange, Inc. and he had signature authority over the corporation’s checking account at Bank of Jacomo. Fox’s writing of checks was not fraudulent and when the case is prosecuted in a court of law where the judge does not have an economic interest in a party to the proceeding, this will be proven.

Brown has not engaged in serious criminal conduct. There is nothing in the record as to whether criminal charges were ever filed against Respondent probably because he has not been charged with any criminal acts. The records show that he cooperated fully with an FBI investigation of these circumstances.

CONCLUSION

The Disciplinary Hearing Panel has made no recommendation in this matter and the truth of the allegations in the Information have not been established by a preponderance of the evidence. Ronald E. Heap did not appear for questioning at the hearing and no cross-examination of Mr. Heap was possible. The fraud perpetrated by W.K. Jenkins upon Respondent has been perpetrated successfully against Informant. This Court should dismiss the Information.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that two copies of Respondent's Brief have been sent via First Class mail this 10th day of February 2004, to:

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