IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
JEFFREY L. BROWN,	)	**Supreme Court #SC85687**
	)	
Respondent.	)	

INFORMANT'S BRIEF

OFFICE OF
CHIEF DISCIPLINARY COUNSEL

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ATTORNEYS FOR INFORMANT

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STATEMENT OF JURISDICTION

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

STATEMENT OF FACTS

Background and Disciplinary Case

Respondent Jeffrey L. Brown was admitted to Missouri's bar in January of 1997. He has no disciplinary history.

In 1999, Ronald Heap filed a complaint against Respondent, which eventually evolved into counts I, II, and III of an information. In 2002, W. K. Jenkins filed a complaint against Respondent, which eventually evolved into counts IV and V of an information. The information, **App. 2-10**, was served on Respondent on March 18, 2003. **App. 11-12.** Hearing was conducted before a disciplinary hearing panel on August 20, 2003. The panel issued its decision on September 18, 2003. **App. 13-26.** The panel made findings of fact upholding the allegations in counts I, II, IV, and V,[1] concluded Respondent violated the Rules of Professional Conduct enumerated in the information under those counts (with the exception of Rule 4-8.4(d) under count V, which is not mentioned under that count in the decision), and recommended disbarment. **App. 23**. The record was thereafter filed with the Court in accordance with Rule 5.19(d).

[1] The panel concluded there was insufficient evidence that Respondent committed the Rule violations alleged in count III (failed to appear for a previously scheduled hearing before the disciplinary committee). Informant is not briefing count III of the information.

Counts I and II

Tarmac Machinery Exchange, Inc. was incorporated in early 1995. **App. 61 (T. 137), 107, 190**.[2] Its board of directors from its inception through April of 1999 was comprised of Ronald Heap, Edgar Banks, and William Fox. **App. 189-90**. William Fox was president of Tarmac Machinery Exchange, Inc. from its incorporation until January 27, 1999. **App. 216-17**. The company, located in Blue Springs, was in the business of brokering used equipment between buyers and sellers. **App. 200-01**.

On January 27, 1999, Mr. Fox was given a letter signed by Mr. Heap and Mr. Banks terminating his employment. **App. 29 (T. 12), 216, 263**. On January 31, 1999, Mr. Fox sent out a fax message stating he was no longer employed by Tarmac and had started working as The Fox Group, Inc. **App. 29-30 (T. 12-13), 264**. On February 2 or 3, 1999, upon being served with a summons in *Tarmac Machinery Exchange, Inc. v. Fox*, Mr. Fox hired Respondent to represent him. **App. 59-60 (T. 130, 133)**. At a meeting of

[2] There are transcripts from four different proceedings in the disciplinary record: 1) the transcript of the DHP hearing conducted on August 20, 2003 **(App. 27-80)**; 2) a partial transcript of hearings conducted on February 9 and 25, April 23, and May 4, 1999, in *Tarmac Machinery Exchange, Inc. v. Fox*, 99-CV-1763 **(App. 81-262)**; 3) the transcript of the trial in *Bank of Jacomo v. Fox*, 99CV206235, taken on March 19 and 21, 2001 **(App. 265-323)**; and 4) a transcript of an informal hearing before the bar committee conducted on October 24, 2002, in this disciplinary case (Ex. V – not included in Appendix, but part of record).

Tarmac's board of directors on February 9, 1999, Mr. Heap and Mr. Banks ratified the discharge of Mr. Fox as president of Tarmac. **App. 39 (T. 50), 61-62 (T. 140-41), 217-18**. Mr. Banks participated in the meeting by telephone, however, and Mr. Fox took the position that it was not Mr. Banks. **App. 62 (T. 141)**. Mr. Fox did no business for Tarmac after January 27, 1999. **App. 131-32**.

Mr. Fox and Respondent came up with the idea that Mr. Fox was still the legitimate president of Tarmac Machinery Exchange, Inc. **App. 36 (T. 37-38)**. Respondent advised Mr. Fox that he was still the president. **App. 64 (T. 151)**. He further advised Fox that the company's articles of incorporation provided for indemnification of corporate officers and directors, so that would be a way to pay for Respondent's legal services in defending the suit brought by Tarmac against Fox. **App. 64 (T. 149-50)**. Respondent took the position that the suit had not been authorized properly, so was actually an action brought by Heap and Banks individually, or in partnership, against Mr. Fox, the duly appointed president of the corporation. **App. 64 (T. 150)**.

Respondent learned from Mr. Fox that as president of Tarmac, Fox had had signature authority over Tarmac's Bank of Jacomo corporate checking account. **App. 62 (T. 142)**. Two signatures were required on any check written on the account for more than $1,750.00. **App. 30 (T. 14-15)**. Respondent is not sure who thought of it first, but he advised Mr. Fox that Mr. Fox still had authority to write checks out of Tarmac's corporate account. **App. 62 (T. 143), 64 (T. 151-52)**. Respondent thought "it would be perfectly fine for him to do this." **App. 64 (T. 152)**.

Respondent knew there was software programming available that could print checks from a computer on an as needed basis. **App. 66 (T. 159)**. Some years before, Respondent had suggested to a staff person working in his brother's California accounting firm that she acquire such software to assist her in writing checks for her customers' various businesses. **App. 63 (T. 147-48)**. Respondent explained to Mr. Fox that checks could be obtained off the computer in this manner. **App. 64 (T. 149)**.

In early March of 1999, Respondent received a package containing Tarmac Machinery Exchange, Inc. checks in an envelope mailed from his brother's California accounting firm. **App. 64 (T. 149)**. Respondent testified that he did not know why his brother's California accounting firm sent him the checks imprinted with Tarmac Machinery Exchange, Inc.'s account information. **App. 64 (T. 149)**. Respondent took the checks to Mr. Fox, who knew they were different than the ones he used before January 27, 1999. **App. 64 (T. 149), 65 (T. 154), 121, 297 (T. 132)**. Between March 16, 1999, and April 1, 1999, Mr. Fox wrote about 30 checks on the check forms provided to him by Respondent. **App. 30 (T. 13-14)**. None of the checks was written for an amount greater than $1,750.00. **App. 324-53**. Most of the checks were written to either Respondent or Mr. Fox. **App. 130**. Several were written to Respondent's son for "consulting." **App. 124**. The checks to Respondent were for legal services that Respondent said he was performing for Tarmac Machinery Exchange, Inc. **App. 123, 354**. Respondent endorsed many of the checks written to him over to Rhonda Allison, who performed delivery services for him and to whom he owed some money. **App. 76 (T. 200), 79 (T. 210)**. The total paid to Respondent through the "fake" checks exceeded

$16,000.00. **App. 77 (T. 202-03)**. Respondent believes he was underpaid for the amount of work he was doing. **App. 65 (T. 154)**.

In June of 1999, Respondent filed, with Fox as the named plaintiff, a four count petition in state court against "Tarmac & Tec Companies," the Bank of Jacomo, and others. **App. 419-35**. The petition alleged tortious interference with business opportunities, breach of contract, defamation, and civil conspiracy. On September 29, 1999, sanctions were imposed by the state court against Respondent and Fox for violating Rule 55.03 by filing the lawsuit. **App. 436-37**. Also in September of 1999, Respondent was added as a defendant to *Bank of Jacomo v. Fox*, 99CV206235, a case the bank had filed previously against Fox alleging fraud and conversion so the bank could recover the monies paid out of Tarmac's account in accordance with checks negotiated by Fox after his termination. **App. 28-29 (T. 6-9), 355-65**. The bank added Respondent as a defendant in the case after Mr. Fox testified at a hearing that the checks were provided to him by Mr. Brown. **App. 355-65**.

On November 9, 2000, Respondent, as the named plaintiff, filed case no. 00-1136-CV in the U. S. District Court for the Western District of Missouri against many of the same entities he had been sanctioned in September of 1999 for filing suit against. The federal complaint alleged breach of contract, fraud, RICO violations, and civil conspiracy claims against the defendants. **App. 33 (T. 26), 67 (T. 164), 366-83**. After the suit was filed, Respondent met with FBI agents. **App. 68 (T. 165-66)**. Respondent reported to the FBI that he thought Heap and Banks were evading paying income taxes and filing false loan applications with banks. **App. 68-69 (T. 168-69)**. Respondent never heard back

from the FBI. **App. 66 (T. 160)**. Respondent also turned a large quantity of Tarmac documents over to the IRS. **App. 67 (T. 161-62)**. Information regarding Tarmac was also provided by Respondent to the Missouri Secretary of State's office. **App. 67 (T. 163)**.

On March 19-21, 2001, trial was had before Judge Nixon in the Circuit Court of Jackson County in the *Bank of Jacomo v. Fox and Brown* case. **App. 265-323**. Respondent did not respond to pretrial discovery or appear for the trial. **App. 31 (T. 17-18)**. Respondent made a conscious decision not to participate in the case because he thought the presiding judge had a conflict in the case. **App. 70 (T. 174-75), 384-87**. The amended judgment the bank obtained against Fox and Respondent was satisfied after it was affirmed on appeal. **App. 38 (T. 46, 48), 70 (T. 175)**.

Respondent subsequently decided not to pursue the federal case he had filed because, he testified, he did not want to hamper the FBI or IRS investigations. **App. 69 (T. 171-72)**. On April 9, 2001, in response to motions to dismiss filed by the defendants, Judge Fenner dismissed, for failure to prosecute, the federal case Respondent had filed against the Bank of Jacomo and other entities and individuals. **App. 33 (T. 26-27), 388-89**.

All that Respondent will admit regarding his representation of Fox is that he is "smart as hell," and was a good attorney for Fox. **App. 66 (T. 159-60)**.

Counts IV and V

In mid-May of 2001, W. K. Jenkins hired Respondent to represent him in litigation captioned *First State Bank of Kansas City, Kansas v. Buck's Truck Sales II, Inc.*, 01-CV-206702, pending in Jackson County Circuit Court. **App. 40 (T. 53-54), 390-91**. In November of 2001, Mr. Jenkins hired Brown to represent him in a case pending in Wyandotte County, Kansas. **App. 41-42 (T. 60-61)**. Also in late 2001, Mr. Jenkins asked Respondent to look into a federal land conservation issue for him and gave Respondent some files concerning the matter. **App. 40 (T. 54), 73 (T. 185-86)**. These files are referred to by Respondent as the GA-BE-CO-AK joint venture files. **App. 73 (T. 186)**.

In December of 2001, Mr. Jenkins discharged Respondent and asked Respondent to return his files. **App. 40 (T. 54-55)**. One of Mr. Jenkins' sons wrote Respondent a letter dated December 22, 2001, directing Respondent to withdraw from the Wyandotte County case. **App. 42 (T. 61-62), 392**. Respondent did not believe the discharge letter was valid, **App. 75 (T. 194)**, and Respondent was working hard on the case, **App. 75 (T. 196)**, so Respondent appeared for a deposition on behalf of the Jenkinses in the Wyandotte County case on January 4, 2002. **App. 75 (T. 196)**. Those present agreed to take the dispute over whether Respondent represented the Jenkinses to Judge Lampson to resolve, and Judge Lampson ordered Respondent off the case. **App. 42 (T. 62-63), 53 (T. 105), 75 (T. 196)**.

Although Mr. Jenkins and his son had attempted to discharge Respondent on December 22, 2001, and before, Respondent submitted a "Final Statement" for the

December 21 through January 4, 2002, time frame. **App. 42 (T. 63)**. The statement included charges for the time spent getting a judge to order Respondent off the case and for work a private investigator performed on December 31, 2001, and January 1 and 2, 2002. **App. 393-94**. Respondent had directed the private investigator to stake out a man named Dean's house on New Year's Eve and New Year's Day. **App. 80 (T. 213)**. Mr. Jenkins never authorized Respondent to retain a private investigator. **App. 42 (T. 63-64)**.

After discharging Respondent, Mr. Jenkins hired Christina Miller to represent his interests. **App. 40 (T. 55)**. When Respondent failed to return Mr. Jenkins' files as Mr. Jenkins had requested, Ms. Miller wrote Respondent demanding return of the files. **App. 40 (T. 55), 395**. Ms. Miller eventually obtained a court order directing Respondent to deliver all documents concerning W. K. Jenkins and Green Acres Farms to Ms. Miller at her Blue Springs office by March 29, 2002. **App. 40 (T. 56), 397**. Respondent returned part of Mr. Jenkins' files on March 29. **App. 73 (T. 187)**. After Ms. Miller began representing Mr. Jenkins, he learned that Respondent, who was still in the Buck's Truck case representing other parties (Ron Semler), had served subpoenas on several of Mr. Jenkins' financial institutions seeking to obtain information about his former client's finances on the theory that it would assist his defense of clients he still represented in the case. **App. 41 (T. 59-60), 56 (T. 120), 76 (T. 197-98), 399-403.**

By March of 2002, Respondent was talking to the DEA. Respondent felt threatened by a man named Michael Dean, who he suspected of bilking the Jenkinses out of millions of dollars in either a "Ponzi scheme" or a drug deal. **App. 73 (T. 186-87), 78 (T. 205)**. Respondent went to the DEA, but they could not protect Respondent. **App. 73**

(T. 187) Respondent testified that the DEA warned Respondent not to keep a regular schedule and to copy license plate numbers and take down descriptions of cars parked around him. Respondent has yellow pads full of license plate numbers. **App. 74 (T. 192)**.

Respondent took what he called the GA-BE-CO-AK joint venture files to Blue Springs on March 29 to return them. He found that the office where Mr. Jenkins had given him the files the previous fall was empty. Respondent wrote Mr. Jenkins about his efforts, **App. 415**, and Mr. Jenkins responded. **App. 416**. Respondent then wrote a letter to Mr. Jenkins dated April 4, 2002, warning him or anyone on his behalf, from appearing at Respondent's office. The letter advised Jenkins that he still owed Respondent money. "It is indeed unfortunate for you and the entire Jenkins family that you chose me as the attorney for Green Acres Farms and Green Acres Land and Cattle Co., Inc. and then chose not to pay me. You chose one of the smartest and most ruthless lawyers in this state and then you don't pay him. My theory is that you have a mental defect that is perhaps drug induced." **App. 417-18**.

Respondent testified that he called his undercover contact at the DEA to ask whether "they smelled that something was up and that they had gone to ground." **App. 73 (T. 187-88)**. Respondent testified that his DEA contact told him that an assistant U. S. Attorney wanted Respondent to study the GA-BE-CO-AK joint venture files and ascertain what was in them. **App. 73 (T. 188)**. Upon review of the files, Respondent came to the conclusion that Mr. Jenkins was masterminding a scheme to defraud the Department of Agriculture. **App. 74 (T. 189)**. Mr. Jenkins made an appointment to meet

with Respondent at a Blue Springs office, but Respondent did not keep the appointment. Respondent feared that W. K. Jenkins was setting him up for an ambush. Respondent sent a guy out ahead of him to the office, and Respondent decided not to attend the meeting when the guy reported the presence of a "dark blue 2000 Chevy 2500 HD King Cab Four-by-Four" in front of the office. **App. 74-75 (T. 192-93)**. Respondent believed the truck belonged to the man named Dean who had bilked the Jenkinses out of a lot of money, and who had threatened, Respondent testified, to kill Respondent. **App. 49 (T. 90-92), 73 (T. 186)**.

Respondent had his runner return the GA-BE-CO-AK joint venture files to Mr. Jenkins sometime in May of 2002. **App. 55 (T. 115-16), 75 (T. 193-94), 78 (T. 207)**. Before doing so, however, Respondent copied approximately 35 of the documents he felt most "pertinent" and turned them over to his DEA contact. **App. 74 (T. 190), 77 (T. 203-04)**. Respondent provided the DEA and the Department of Justice with documents from Mr. Jenkins' files on the theory that Mr. Jenkins had committed crimes. **App. 56-57 (T. 120-21)**. The DEA, Respondent testified, then turned the files over to the Secret Service "when they found no drug mixes" in any of it. **App. 74 (T. 191)**.

POINTS RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE VIOLATED NUMEROUS RULES OF PROFESSIONAL CONDUCT IN THE COURSE OF HIS REPRESENTATION OF MR. FOX IN THAT HE PURPORTED TO BE REPRESENTING TARMAC MACHINERY EXCHANGE, INC., YET REPRESENTED ITS EX-PRESIDENT CONTRARY TO ITS INTERESTS (4-1.7), FILED FRIVILOUS LAWSUITS IN STATE AND FEDERAL COURTS (4-3.1) FOR NO SUBSTANTIAL PURPOSE OTHER THAN TO BURDEN AND DELAY (4-4.4), AND ENGAGED IN A FRAUDULENT CHECK WRITING SCHEME (4-8.4(c)(d)).

Rule 4-8.4(c)(d)

Rule 4-1.7

Rule 4-3.1

Rule 4-4.4

Rule 4-1.13

POINTS RELIED ON

II.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE VIOLATED MULTIPLE RULES OF PROFESSIONAL CONDUCT IN THE COURSE OF HIS DEALINGS WITH W. K. JENKINS IN THAT HE BILLED MR. JENKINS FOR UNAUTHORIZED SERVICES (4-1.5), HE PROVIDED PARTS OF MR. JENKINS' FILES TO GOVERNMENT AUTHORITIES WITHOUT JENKINS' KNOWLEDGE OR CONSENT (4-1.6), HE SOUGHT TO USE INFORMATION ABOUT MR. JENKINS TO HIS FORMER CLIENT'S DISADVANTAGE AND SOUGHT TO GAIN ADVANTAGE FOR CLIENTS TO THE MATERIAL DETRIMENT OF MR. JENKINS IN THE BUCK'S TRUCK CASE BY ISSUING SUBPOENAS TO MR. JENKINS' FINANCIAL INSTITUTIONS (4-1.8(b), 4-1.9(a)), HE REFUSED TO COMPLY PROMPTLY AND VOLUNTARILY WITH MR. JENKINS' REQUEST FOR THE RETURN OF HIS FILES (4-1.15(b)), HE REFUSED TO WITHDRAW AFTER BEING DISCHARGED (4-1.16(a)(3)), AND HIS CONDUCT WAS PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE (4-8.4(d)).

Rule 4-1.5

Rule 4-1.6

Rule 4-1.8(b)

Rule 4-1.9(a)

Rule 4-1.15(b)

Rule 4-1.16(a)

Rule 4-8.4(d)

In re Carey and Danis, 89 S.W.3d 477 (Mo. banc 2002)

POINTS RELIED ON

III.

THE SUPREME COURT SHOULD DISBAR RESPONDENT BECAUSE HE KNOWINGLY VIOLATED DUTIES TO CLIENTS AND THE PUBLIC IN THAT HE PROVIDED MR. FOX WITH CHECK FORMS WITH WHICH TO MAKE UNAUTHORIZED WITHDRAWALS FROM A BANK ACCOUNT AND WAS THE RECIPIENT OF MORE THAN $16,000.00 IN UNAUTHORIZED WITHDRAWALS FROM THE ACCOUNT.

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

In re Kirtz, 494 S.W.2d 324 (Mo. banc 1973)

In re Kazanas, 96 S.W.3d 803 (Mo. banc 2003)

In re Cupples, 952 S.W.2d 226 (Mo. banc 1997)

In re Frank, 885 S.W.2d 328 (Mo. banc 1994)

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE VIOLATED NUMEROUS RULES OF PROFESSIONAL CONDUCT IN THE COURSE OF HIS REPRESENTATION OF MR. FOX IN THAT HE PURPORTED TO BE REPRESENTING TARMAC MACHINERY EXCHANGE, INC., YET REPRESENTED ITS EX-PRESIDENT CONTRARY TO ITS INTERESTS (4-1.7), FILED FRIVILOUS LAWSUITS IN STATE AND FEDERAL COURTS (4-3.1) FOR NO SUBSTANTIAL PURPOSE OTHER THAN TO BURDEN AND DELAY (4-4.4), AND ENGAGED IN A FRAUDULENT CHECK WRITING SCHEME (4-8.4(c)(d)).

In sorting out the transgressions Respondent committed in the course of his representation of Mr. Fox, it is useful first to discredit Respondent's purported rationale for his actions. Respondent claims that he represented Tarmac Machinery Exchange, Inc. and its duly appointed corporate president, William Fox, against the renegade actions of Heap and Banks, two of the three corporate directors. Supreme Court Rule 4-1.13 adopts the "entity" approach to corporate representation – the lawyer represents the organization, acting through its duly authorized constituents. We know from the fax Mr. Fox sent out on January 31, 1999, that he believed he had been discharged as president of the

corporation on January 27, 1999, by notice to that effect from two out of three of the company's directors. Any doubt as to the legitimacy of the corporation's actions should have been dispelled by the vote taken at the duly noticed meeting of the board of directors on February 9. It is simply beyond credulity for Respondent to take the position that Fox had the authority in early February of 1999 to hire Respondent to act as attorney for the corporation, Tarmac Machinery Exchange, Inc.

Even if one suspends disbelief long enough to grant Respondent status as Tarmac's corporate counsel, under the circumstances Respondent could not ethically have represented both the corporation and one of its warring "constituents," Fox, because of the obvious conflict of interest. See Rule 4-1.13(d)(e) and the Comment. "A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7" (emphasis added).

> **Clarifying the Lawyer's Role.** There are times when the organization's interests may be or become adverse to those of one or more of its constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the

> lawyer for the organization cannot provide legal representation for that constituent individual, . . .

It is plain that Respondent, who from what we can tell from the record had not represented Tarmac Machinery Exchange, Inc., before the early 1999 upheaval, was retained by an individual, Fox, who only asserted a claim to be president of the corporation.

As Fox's lawyer, Respondent violated Rule 4-1.7(a) by purporting to represent the entity, Tarmac Machinery Exchange, Inc. That Respondent's representation of Fox, who had only a putative claim to the corporation's presidency, was directly adverse to the corporation's interests was shamefully proven by Respondent's provision of computer-generated Tarmac checks to Fox, and his acceptance of over $16,000.00 in checks fraudulently drawn on the corporate bank account by Mr. Fox. Respondent's deceitful and dishonest conduct in this regard violated Rules 4-8.4(c) and (d).

Respondent compounded his misconduct by filing state and federal lawsuits against the Bank of Jacomo, various "Tarmac entities," and the lawyers representing them, alleging civil conspiracy, breach of contract, RICO violations, and other theories. The federal suit, filed after Respondent had already been sanctioned by a Missouri state court under Rule 55.03 for filing a petition alleging similar causes of action against many of the same defendants, is especially egregious. Respondent violated Rules 4-3.1 and 4-4.4 by initiating baseless, frivolous lawsuits.

ARGUMENT

II.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE VIOLATED MULTIPLE RULES OF PROFESSIONAL CONDUCT IN THE COURSE OF HIS DEALINGS WITH W. K. JENKINS IN THAT HE BILLED MR. JENKINS FOR UNAUTHORIZED SERVICE (4-1.5), HE PROVIDED PARTS OF MR. JENKINS' FILES TO GOVERNMENT AUTHORITIES WITHOUT JENKINS' KNOWLEDGE OR CONSENT (4-1.6), HE SOUGHT TO USE INFORMATION ABOUT MR. JENKINS TO HIS FORMER CLIENT'S DISADVANTAGE AND SOUGHT TO GAIN ADVANTAGE FOR CLIENTS TO THE MATERIAL DETRIMENT OF MR. JENKINS IN THE BUCK'S TRUCK CASE BY ISSUING SUBPOENAS TO MR. JENKINS' FINANCIAL INSTITUTIONS (4-1.8(b), 4-1.9(a)), HE REFUSED TO COMPLY PROMPTLY AND VOLUNTARILY WITH MR. JENKINS' REQUEST FOR THE RETURN OF HIS FILES (4-1.15(b)), HE REFUSED TO WITHDRAW AFTER BEING DISCHARGED (4-1.16(a)(3)), AND HIS CONDUCT WAS PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE (4-8.4(d)).

Respondent was even more of a glutton at the buffet line of ethical Rules violated in the course of his representation of and dealings with Mr. Jenkins. And while the representation, at least as seen through Respondent's spyglass, is suggestive of a Tom Clancy novel, the basic rules nonetheless apply: when a lawyer is discharged, he "shall withdraw" (Rule 4-1.16(a)), he shall "promptly deliver" to the client property belonging to the client (Rule 4-1.15(b)), he "shall not reveal information relating to the representation" (Rule 4-1.6(a)), he "shall not use information relating to the representation" to the client's disadvantage (Rule 4-1.8(b)), he shall not represent a client in the same lawsuit if that client's interests are materially adverse to a former client's (Rule 4-1.9(a)), his fee "shall be reasonable" (Rule 4-1.5(a)), and he shall not act in a manner prejudicial to the administration of justice (Rule 4-8.4(d)). There is more than a preponderance of evidence in the record to support the DHP's conclusions that Respondent violated each of these rules.

W. K. Jenkins, as the "client," retained Respondent on May 17, 2001, to represent W. K. in the "Buck's Trucks Sales" matter. W. K. subsequently asked Respondent to represent his interests in a case then pending in Wyandotte County, Kansas, and to review some federal land conservation allocation files for him. By mid-December, or no later than December 22, 2001, however, Mr. Jenkins had discharged Respondent and had asked Respondent to return his files.[3] It nonetheless took a judge's intervention to stop

[3] "The client's files belong to the client, not to the attorney representing the client." *In re Cupples*, 952 S.W.2d 226, 234 (Mo. banc 1997).

Respondent from attempting to represent Jenkins in a deposition, and it took a court order to compel Respondent to return Mr. Jenkins' files. To rub salt in the wound, Respondent billed Jenkins for unauthorized services performed after he had been discharged. The "final statement" included a charge of $62.50 for the confrontation on January 4 wherein Jenkins insisted that Respondent did not represent him at the deposition, as well as $37.50 for the time spent at the courthouse getting a judge to order Respondent off the case. Respondent also billed Jenkins $756.00 for work done by a private investigator on December 31, 2001, January 1 and 2, 2002, for work Jenkins knew nothing about and had not authorized. The final statement was certainly not a reasonable fee, by any measure. Rule 4-1.5.

Before returning the files, Respondent made it his business to alert the Drug Enforcement Agency to his suspicions about his former client. In alarming violation of the lawyer's duty to maintain a client's confidences, a duty that extends to former clients, Respondent testified that he copied and provided the DEA with various documents out of Jenkins' files, without Jenkins' knowledge or consent. It is worth noting that Respondent was not pulling documents from his former client's files in response to a government, or any other party's, subpoena or court order. Rather, Respondent took it upon himself to contact and provide various government agencies with information about his client, based on his own suspicions. It is difficult to conceive a more gross violation of a lawyer's duty to maintain client confidences. Rule 4-1.6.

The conflict of interest violations arose out of Respondent's continued representation of several parties in the Buck's Truck litigation after Jenkins discharged

him. Respondent's continued presence in the case was not, ipso facto, a violation. Respondent made it so by issuing subpoenas to Jenkins' financial institutions, supposedly to aid his remaining clients by ferreting out creditors of Buck's Trucks Sales. Clearly this action, ostensibly to aid current clients, was in violation of Respondent's duties to Mr. Jenkins pursuant to Rules 4-1.8(b) and 4-1.9(a). See *In re Carey and Danis*, 89 S.W.3d 477, 492-93 (Mo. banc 2002). The foregoing misconduct is also prejudicial to the administration of justice, a violation of Rule 4-8.4(d).

ARGUMENT

III.

THE SUPREME COURT SHOULD DISBAR RESPONDENT BECAUSE HE KNOWINGLY VIOLATED DUTIES TO CLIENTS AND THE PUBLIC IN THAT HE PROVIDED MR. FOX WITH CHECK FORMS WITH WHICH TO MAKE UNAUTHORIZED WITHDRAWALS FROM A BANK ACCOUNT AND WAS THE RECIPIENT OF MORE THAN $16,000.00 IN UNAUTHORIZED WITHDRAWALS FROM THE ACCOUNT.

The record establishes an abundance of Rule violations. Only the most egregious is addressed specifically under this Point, however, in accordance with the theoretical framework set forth in the Standards for Imposing Lawyer Sanctions, p. 6 (1991 ed.) ("The ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations"). The check writing scheme with Mr. Fox was fraudulent, and the appropriate sanction is therefore disbarment.

> "[I]n cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:
>
> 5.11 Disbarment is generally appropriate when:

> (a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, . . . fraud, . . . misappropriation . . . .

Rule 5.1, ABA Standards for Imposing Lawyer Sanctions (1991 ed.).

The record is silent as to whether criminal charges were ever filed against Respondent as a consequence of his malfeasance with Mr. Fox, but it is well-settled that conviction of a criminal offense based on the fraud is not a condition precedent to this Court's exercise of its disciplinary powers. *In re Kirtz*, 494 S.W.2d 324, 328 (Mo. banc 1973) (per curiam). Although Respondent waffled a bit in his testimony as to whether the check writing scheme was Mr. Fox's brain child or his own, he did concede that he advised his client that he was still the president of the company and could act accordingly, including writing checks on fabricated check forms which, it should be remembered, Respondent provided to his client. Respondent's conduct in the Fox/ Tarmac Machinery Exchange debacle demonstrates a willful and deliberate course of wrongdoing that is antithetical to the character the Court and the public have a right to demand from lawyers. See *In re Kazanas*, 96 S.W.3d 803 (Mo. banc 2003).

Mitigating and aggravating factors are part of the analysis employed by the ABA Standards. The Disciplinary Hearing Panel found no mitigating factors present in the record, and indeed, Respondent's unrepentant posture in the proceedings leaves little room for identifying any. Respondent was relatively new to the practice of law at the time of the conduct at issue, but from remarks he made during the hearing, we know Respondent was not a novice to the business world. Respondent testified that he and Mr.

Fox had given Mr. Heap his first job and that Respondent had known Heap since 1978. **App. 64 (T. 152)**. Respondent also mentioned in his testimony that he knew several people at the IRS from "being involved in the tax practice, even prior to going to law school." **App. 67 (T. 161-62)**.

The stark aggravating factor in this case is the sheer multiplicity of offenses committed during both the Fox and Jenkins representations. Respondent's refusal to acknowledge the wrongful nature of his conduct is also disturbing. Rule 9.22(d)(g), ABA Standards for Imposing Lawyer Sanctions (1991 ed.).

A disciplinary proceeding is "in the nature of an inquiry for the protection of the courts, the public and the profession." *In re Cupples*, 952 S.W.2d 226, 232 (Mo. banc 1997), quoting from In re Pate, 232 Mo. App. 478, 119 S.W.2d 11, 24 (1938). We are a self-regulating profession, and the public and the profession repose in this Court the great responsibility of scrutinizing a lawyer's fitness to practice law. The extensive record underlying this case leaves one with the firm conviction that Respondent is "demonstrably unfit to continue the practice of law." *In re Frank*, 885 S.W.2d 328, 334 (Mo. banc 1994). The Office of Chief Disciplinary Counsel joins the Disciplinary Hearing Panel in recommending disbarment.

CONCLUSION

The Disciplinary Hearing Panel recommended disbarment upon concluding from the facts that Respondent Jeffrey Brown violated Rules 4-1.5, 4-1.6, 4-1.7(a), 4-1.8(b), 4-1.9(a), 4-1.15(b), 4-1.16(a)(3), 4-3.1, and 4-8.4(c)(d). Respondent's misconduct included concocting a scheme with a client to write unauthorized checks out of a corporate checking account, some $16,000.00 of which was directed to Respondent, and egregious violations of the duty of confidentiality and the conflict of interest rules. Respondent's conduct demonstrates that he is unfit to continue in the practice of law and should be disbarred.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2003, two copies of Informant's Brief have been sent via First Class mail to:

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_____
Sharon K. Weedin

CERTIFICATION: SPECIAL RULE NO. 1(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 Special Rule No. 1(b);

3. Contains 5,711 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and

4. That Norton Anti-Virus software was used to scan the disk for viruses and that it is virus free.

_____
Sharon K. Weedin

APPENDIX