

**IN THE SUPREME COURT  
STATE OF MISSOURI**

---

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

---

---

**INFORMANT'S REPLY BRIEF**

---

OFFICE OF  
CHIEF DISCIPLINARY COUNSEL

SHARON K. WEEDIN #30526  
STAFF COUNSEL  
3335 American Avenue  
Jefferson City, MO 65109  
(573) 635-7400

ATTORNEYS FOR INFORMANT

## TABLE OF CONTENTS

<u>TABLE OF CONTENTS</u> .....	1
<u>TABLE OF AUTHORITIES</u> .....	2
<u>POINT RELIED ON</u> .....	3
<u>I.</u> .....	3
<u>II.</u> .....	4
<u>III.</u> .....	5
<u>ARGUMENT</u> .....	6
<u>I.</u> .....	6
<u>II.</u> .....	9
<u>III.</u> .....	11
<u>CONCLUSION</u> .....	12
<u>CERTIFICATE OF SERVICE</u> .....	13
<u>CERTIFICATION: SPECIAL RULE NO. 1(C)</u> .....	13

## **TABLE OF AUTHORITIES**

### **CASES**

*In re Cupples*, 952 S.W.2d 226, 232-233 (Mo. banc 1997).....3, 6, 7

### **RULES**

Rule 4-1.13(d)(e) .....3, 8

Rule 4-1.7 .....3, 8

Rule 5.08(a) .....3, 7

Rule 5.16.....3, 6

**POINT 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 FRIVOLOUS 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 5.16

*In re Cupples*, 952 S.W.2d 226, 232-233 (Mo. banc 1997)

Rule 5.08(a)

Rule 4-1.13(d)(e)

Rule 4-1.7

**POINT 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)).

**POINT 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.**

## 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 FRIVOLOUS 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)).**

Respondent protests that no Disciplinary Hearing Panel decision, signed and dated, was ever issued by the Panel assigned to hear his case. The certificates of service found at **App. 24** and **App. 25**, as well as the presiding officer's affidavit, at **App. 26**, refute Respondent's contention. Obviously, there was a panel decision, it was properly served on Respondent, and unlike many Panel decisions, it was served within 30 days after the hearing. Even had it not been, the Rule expressly provides that the time frame posed for Panel decisions is a "guideline," and is not jurisdictional. Rule 5.16. Respondent should be mindful of the Court's remonstrance in *In re Cupples*, 952 S.W.2d

226, 232-233 (Mo. banc 1997): “This Court conducts the judicial component of the attorney disciplinary proceedings. . . . Absent a specific showing of actual prejudice, this Court will focus upon the merits of disciplinary proceedings, as should the attorneys participating in those cases.”

Respondent likewise complains that Mr. Heap, one of the individuals who complained about Respondent’s conduct, did not provide live testimony at the hearing. There is no indication in the record that Respondent ever objected to Mr. Heap’s physical absence, or that Respondent ever made any effort to compel Mr. Heap’s presence. Certainly Mr. Heap’s physical presence was not essential to Informant’s presentation of its case. See Rule 5.08(a).

The record does not support Respondent’s assertion, on page 14 of his brief, that Judge Nixon recused himself from presiding in *Bank of Jacomo v. Fox*, 99CV206235. Quite to the contrary, one of the lawyers representing the bank testified at the disciplinary hearing that Judge Nixon told the litigants he did not believe he had a conflict that would preclude him from presiding. **App. 34 (T. 31-32)**. Indeed, Respondent admitted in his testimony that he made a conscious decision to let a default be taken against him in *Bank of Jacomo v. Fox* when he decided, apparently on his own hook, that the judge had a conflict of interest. **App. 70 (T. 174-75), 384-87**. Further, this is not a disciplinary case “based upon a case tried before a judge who had recused himself,” as Respondent characterizes it, on page 15 of his brief. The transcript from the trial in *Bank of Jacomo v. Fox*, as well as various orders and pleadings from that case, were only a portion of the evidence offered by Informant to establish the misconduct alleged in Counts I, II, and III



of the information. Respondent was at liberty to offer whatever evidence he could muster to oppose Informant's evidence. Obviously the Panel found Informant's evidence of misconduct credible and persuasive.

As the instant case is not one under the Uniform Commercial Code to enforce the obligation of a party to pay a note, Respondent's citation to the Code's statute of limitations is inapposite. Finally, Respondent's position that his (then) client Fox was empowered to hire Respondent to represent the corporation, and, Respondent would likely hasten to add, pay Respondent's fees from corporate assets, after Fox's status with the corporation had clearly been put in question, is completely at odds with basic ethical precepts. See Rules 4-1.13(d)(e) and 4-1.7.

## **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 refutes Informant's second Point Relied On, which alleges seven different Rule violations, by noting he "did a good job" for his clients and asserting that through his "heroic efforts" some money may eventually be recovered by them. As there is no real substantive argument to counter, Informant will not reargue points covered in the initial brief.

## **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.**

Respondent's arguments as to the timeliness of the Panel's decision and the statute of limitations have already been addressed in this Reply brief and will not be repeated. When the checks written by Mr. Fox between March 16 and April 1, 1999, are referred to in the record and Informant's brief as "fake," or "unauthorized," it is the legitimacy and authority of Mr. Fox as drawer that is being questioned, not whether the paper satisfies the Uniform Commercial Code's definitional terms. The Uniform Commercial Code provides Respondent no relief from his professional misconduct.

## **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,

OFFICE OF  
CHIEF DISCIPLINARY COUNSEL

By: \_\_\_\_\_  
Sharon K. Weedin #30526  
Staff Counsel  
3335 American Avenue  
Jefferson City, MO 65109  
(573) 635-7400

ATTORNEYS FOR INFORMANT

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2004, two copies of  
Informant's Reply Brief have been sent via First Class mail to:

Mr. Jeffrey L. Brown  
Attorney at Law  
4741 Central Street, #254  
Kansas City, MO 64112

\_\_\_\_\_  
Sharon K. Weedon

**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 1,580 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. Weedon