IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
NAREN CHAGANTI,	)	**Supreme Court #SC94181**
	)	
Respondent.	)	

INFORMANT'S REPLY BRIEF

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I.

THE SUPREME COURT SHOULD SUSPEND RESPONDENT BECAUSE:

(A) IN HIS REPRESENTATIVE CAPACITY HE COMMUNICATED ABOUT THE SUBJECT MATTER OF THE REPRESENTATION WITH A PERSON HE KNEW TO BE REPRESENTED BY ANOTHER LAWYER IN THE MATTER, WITHOUT CONSENT;

(B) THE ABA SANCTION STANDARDS AND THE PRESENCE OF AGGRAVATING CIRCUMSTANCES SUPPORT SUSPENSION; AND

(C) THE DISCIPLINARY HEARING PANEL RECOMMENDED SUSPENSION.

Respondent's Brief contains factual misstatements that are unsupported by and inconsistent with the evidentiary record in this case. In addition, Respondent's Brief misinterprets the plain language of Rule 4.2 in an attempt to sidestep responsibility for his professional misconduct. Informant will reply herein to a few of the more egregious factual and legal misstatements.

Respondent's representation of Whispering Oaks. Respondent insists that because he is the sole owner and officer of Whispering Oaks, he morphed into a "party" to

the dispute between Whispering Oaks and Mr. Manse for the purposes of Rule 4-4.2. That fallacious argument is a recent creation by Respondent. At the time he wrote the letter to Mr. Manse, Respondent clearly believed that Rule 4.2 did apply to him. In his letter, Respondent wrote:

> I could not contact you until the suit was dismissed in view that your attorney refused to permit direct discussion between us to settle the suit.
>
> (Ex. 5 – **Vol. 3, pg. 541**).

Respondent confirmed his status as an attorney for a client in this particular matter, which prohibiting unconsented, direct communication with Manse. Respondent even used his attorney letterhead, which clearly announced who was speaking: "NAREN CHAGANTI, ESQUIRE *ADMITTED TO PRACTICE LAW IN: VIRGINIA, DISTRICT OF COLUMBIA, CALIFORNIA AND MISSOURI." **App. Vol. 1, pg. 15**. Finally, the evidentiary record's remaining reference to the capacity in which Respondent was acting is found in the underlying Petition, where Respondent listed himself as the "Attorney for Plaintiff [Whispering Oaks]." **App. Vol. 4, pg. 635**.

Respondent cites no legal authority which permits his transformation from representative counsel to a "party' to the matter. The non-binding Informal Opinion (No. 950101) that purportedly permits direct communication between an attorney and attorney's spouse in a divorce case is inapplicable. In that situation, the attorney was not representing a client. He was representing himself.

Respondent does cite to the first sentence of Restatement (Third) of the Law: The Law Governing Lawyers § 99 cmt. e at 73 (2000) as supportive of his proposition. ("A lawyer representing his or her own interests pro se may communicate with an opposing represented nonclient on the same basis as other principals."). That citation, however, is inapplicable, because Respondent was not *pro se* in the underlying dispute. Furthermore, Respondent could have been more candid with the Court and included in his Brief the second sentence to comment e. ("A lawyer representing both a client and the lawyer's own interests in the same matter is subject to the anti-contact rule of the Section.") *See* Respondent's Brief, p. 28. Unlike the first sentence, the second sentence does apply. Respondent was, in fact, representing both a client (Whispering Oaks) and his own interests in the dispute, and therefore was subject to the anti-contact Rule 4.2.

Moreover, Rule 4.2 has no requirement of formal litigation. The only requirement of the rule is that the recipient of the communication be represented by an attorney in the matter. Mo. S. Ct. Rule 4-4.2.

Respondent's actual knowledge of Mr. DeVoto's continued representation of Mr. Manse. Respondent states there was no evidence that he had actual knowledge that Mr. DeVoto continued to represent Mr. Manse in the Whispering Oaks matter after October 31, 2012. That is simply false. Respondent ignores the testimony from Mr. DeVoto describing that after Judge Clifford denied Respondent's Motion to Set Aside the Dismissal, the Respondent appeared frustrated and told Mr. DeVoto that because the case was now dismissed Mr. DeVoto no longer represented Mr. Manse. Mr. DeVoto testified

that he told Respondent that he (Mr. DeVoto) still represented Mr. Manse, and that if Respondent were to contact Mr. Manse directly, Mr. DeVoto would report Respondent to the bar association. **App. Vol. 2, pg. 289**. Not surprisingly, the DHP believed that the verbal exchange occurred. The DHP also believed that Mr. DeVoto's File Memorandum dated October 31, 2012 was a valid business record and confirming evidence of Mr. DeVoto's testimony. **App. Vol. 4, pg. 633**.

Mr. DeVoto's File Memorandum. Respondent insists that Mr. DeVoto's contemporaneous File Memorandum is a fabrication, created a year after the event and for the sole purpose of the disciplinary hearing. This is another baseless allegation.

Respondent will recall that after the disciplinary hearing, he sent an email to Informant's attorney contending that Mr. DeVoto's memorandum was not drafted contemporaneously in time to the events of October 31, 2012, that the document was created after Respondent filed his Motion to Dismiss in this matter, and that Mr. DeVoto perjured himself by testifying to the contrary. Respondent demanded in the email that Informant's attorney had a duty as an officer of the court to "distance yourself from this falsehood." In response, Informant's attorney sent Respondent an email stating: "As an officer of the court, I confirm to you that I received a copy of the October 31, 2012 document from Mr. DeVoto when I met with him at his office on May 9, 2013, just as he testified." (*See* reference to this post-hearing exchange in Informant's written Closing Argument at **App. Vol. 4, pg. 596**.)

Undaunted, Respondent points to the September 20, 2013 date on Mr. DeVoto's Affidavit as proof that the File Memorandum was created only then. Respondent ignores the text of the Affidavit which states that on September 20, 2013 Mr. DeVoto was producing a duplicate of an original business record that Mr. DeVoto had kept in the regular course of business and that "the record was made at or near the time of the act, event, condition, opinion, as so indicated." **App. Vol. 1, pg. 198**. As the attached File Memorandum to the Affidavit so indicated, it was made on October 31, 2012. **App. Vol. 1, pg. 199**.

Finally, the Court can see for itself that the allegations in paragraphs 16 and 18 of the Information contain direct quotes taken from Mr. DeVoto's File Memorandum, which is further confirmation that the File Memorandum preexisted the filing of the Information. **App. Vol. 1, pg. 4; App. Vol. 3, pg. 526**. Respondent's unsupported assertion that Mr. DeVoto, also an officer of the court, would perjure himself in his testimony before the panel is spurious and should be summarily rejected.

Respondent's discovery issues. Respondent had ample opportunity, as provided by Rule 5, to depose Mr. DeVoto, but chose not to. Had he deposed Mr. DeVoto, Respondent could have explored the origin of the File Memorandum and the details of how Mr. DeVoto came to give Informant's attorney a copy, instead of just speculating.

As for allowing the production of Mr. DeVoto's client file to Respondent, the DHP correctly held that Respondent failed to show a valid reason for viewing privileged and confidential documents, particularly because Respondent was planning on refiling the

lawsuit (which he recently did). Respondent contends that if he were only given the chance to look at the file, he would find evidence that no attorney-client relationship existed after October 31, 2012. What is in the file, however, is immaterial as to what Respondent knew on November 1, 2012. Looking at Mr. DeVoto's file will not change what Respondent knew on November 1, 2012. And, as the evidence from Mr. DeVoto showed, what Respondent knew on November 1, 2012 was that Mr. Manse was still represented.

Respondent's constitutional argument. Respondent argues that Rule 4.2 is constitutionally vague for the reason that it does not specifically state that an attorney-corporate owner is prohibited from speaking directly to a represented opponent about settling a corporate dispute.

Again, despite his protestation to the contrary, Respondent actually knows that Rule 4.2 applies to him, even as sole shareholder, officer, employee and manager of Whispering Oaks. That is why early on in the litigation he terminated a contact attempted by Mr. Manse and reported it to Mr. DeVoto. *See* Respondent's Brief, p. 50. That is also why he wrote to Mr. Manse that he could not contact him until the suit was dismissed.

Again, Respondent created an after-the-fact (fallacious) theory that once the formal lawsuit was dismissed (even temporarily), Rule 4.2 did not legally apply to him.

Rule 5 provides ample due process to all Missouri attorneys who, by their own Oath or Affirmation, solemnly swear/affirm that they will at all times conduct themselves in accordance with the Rules of Professional Conduct. Respondent received his evidentiary hearing, and now the Court will review the matter *de novo*.

As for equal protection, a plain reading of Rule 4.2 prohibits all lawyers in a representative capacity from direct communication with a protected client. It does not treat one class of lawyers differently.

CONCLUSION

On November 1, 2012, after being warned the day before by Attorney, Thomas DeVoto not to contact his client, Lafayane Manse about the Whispering Oak's dispute, Respondent intentionally and brazenly sent Mr. Manse a threatening and harassing letter in an attempt to squeeze out more settlement dollars for his corporation. Mr. Manse suffered real harm as a result.

Respondent's Brief indicates that Respondent still refuses to take responsibility for his ethical wrongdoing.

In order to protect the integrity of the profession, Informant respectfully requests that this Court follow the DHP's recommendation to indefinitely suspend Respondent from the practice of law with no leave to apply for reinstatement until after six months.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July, 2014, the Informant's Brief was sent via the Missouri Supreme Court e-filing system to Respondent:

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Town & Country, MO 63017

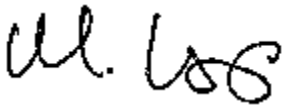
Respondent

Marc A. Lapp

CERTIFICATION: RULE 84.06(c)

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 1896 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



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