

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

BRIAN C. GREER

RESPONDENT

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Supreme Court No: SC95512

RESPONDENT'S REPLY BRIEF

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RESPONDENT PRO SE

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STATEMENT OF FACTS

I was contacted by Theresa Gorajewski in regards to representing her in the municipal court of Blue Springs, Missouri in June, 2012. I continued her case from the June, 2012 date, until August, 2012, notifying Mrs. Gorajewski of her Court date and the money she needed to take care of her tickets (p.55). Mrs. Gorajewski could not be sure whether or not I called her to tell her of the August date (p.54). Mrs. Gorajewski failed to appear at her Court date, and received a letter in the mail that if she did not take care of her tickets by the next Court date, her license would be suspended. However, her license never was suspended (p. 55).

Mrs. Gorajewski never paid any money to my office for any service, including the original continuance, nor did she bring the money to pay her fines to my office (p. 54). Theresa Gorajewski hired new Counsel, Mr. J. Brand Eskew, who took care of the tickets, at no additional cost to Mrs. Gorajewski (p. 54).

I never sent a withdraw letter to Theresa Gorajewski terminating my representation, and I never sent a Motion to Withdraw to Theresa Gorajewski.

In 2008, I was contacted by either Phoenix or Lititz Insurance company, in regards to a lawsuit that had been filed against Dolores Marra by Jon Hengehold, Jackson County, Missouri, case number 0816-CV17332. Lititz was also the same company that had hired Jon Hengehold to do repair work in Ms. Marra's home. The lawsuit involved approximately \$8,000 in an alleged debt still owed to Jon Hengehold by Dolores Marra. I was paid \$500.00 by Lititz for the representation. I never charged Lititz any additional money for anything that was done. Lititz never filed any lawsuit against me or made any demand for payment of this money.

Dolores Marra was served on or about July 15, 2008 (p. 162-169). Dolores Marra never appeared in Court for any Court date, including the first Court date on the service paperwork (o.

78) (Vol. 3 p.421 (Respondent cannot locate the exact page of the information, as the Record of Discipline Panel only goes through page 218. Any reference to any page number after 218 is an approximation. Respondent will attempt to get the specific page number after attempting to get copy of the rest of the File)). In fact, Dolores Marra claims she was never served with a lawsuit (Vol 3 p.421). I entered my appearance for Dolores Marra on September 24, 2008 (p. 160). I did not obtain the client's consent prior to entering, but entered because a default judgment would have been taken against Dolores Marra had I not entered my appearance (p. 77).

I sent six letters to Dolores Marra attempting to get her to call my office, notify her of Court dates, and notify her of trial dates (p. 181-186) (p. 77). Myself and my office attempted to contact her on numerous occasions, and even on one occasion my secretary got her on the phone and once it was mentioned Brian Greer law office, Dolores Marra stated I don't know Brian Greer I didn't hire Brian Greer and she hung up the telephone. This was the only contact I had with Dolores Marra (p. 81). An internal memo with Lititz Insurance stated that our office had contacted Chuck Hennessee who stated that he spoke with Dolores Marra, and that she would now cooperate with our office, but she never did contact my office (p. 79 exhibit 52). Ms. Marra also admitted that she would tear up and throw away any letters she got from an attorney's office in the mail without opening them (p.422 exhibit 54).

During the legal process I either appeared in Court or requested a continuance (p. 78) and even requested a continuance of the trial date twice (p. 162-169 ex 11 and 12). I stayed on Ms. Marra's case in an attempt to try to help her (p.83). While Chuck Hennessee stated he would appear at any Court trial in this matter to testify on behalf of Ms. Marra, he never showed up, claiming he had claims in Oklahoma he had to work on (p.77). Ultimately Jon Hengehold

secured a judgment against Ms. Marra (p.161 exhibit 10) and then garnished her bank account (p.170-172 exhibits 13 and 14). I did not send a copy of the judgment to Ms. Marra (p.69).

Ms. Marra, through her attorney Gina Chiala, received all the money back into her account, and received a settlement from Lititz in the amount of \$72,000 (p. 65). Ms. Marra did not lose a dime due to any representation by my office. Ms. Marra was in no worse position after my representation on her case.

Dolores Marra filed a lawsuit against me personally (p.189 exhibit 18) and ultimately dismissed the lawsuit. During the pendency of the lawsuit in July, 2012, I bought a new computer for personal use as I was going to work for an attorney in her office (p.302 exhibit 25) (p.81). During my deposition testimony, I was asked if I still had a computer and my answer was yes (p.274-275 exhibit 23). However, that answer was in reference to my wife's computer, due to Gina Chiala holding a sheet of my wife's work, who was my secretary at the time, and then asking the question about the computer with regards to that paperwork, not my personal work on my computer (p.72). I did not have my computer, as I had taken them to the Lee's Summit dump to protect personal client information. I did not have any written proof of going to the dump as I just paid cash and then proceeded to the dump (p.70). I had two old computers that were used for business use that I discarded at some point in late July (p.70). I admitted that the information contained in one of those computers could hold information that would be able to be used in the lawsuit filed against me.

With regards to client files, my understanding was that I was to keep the hard copy of the file for 10 years, unless otherwise agreed to by the client (p.81). My intent was not to attempt to hide information, but to protect client information, by destroying the hard drive and dumping the

old computers. My intent was not fraudulent, deceitful, or intentional, the only thing on my mind was to protect client information.

In 2006, I had four complaints filed against me, which resulted in an information and a diversion (p.327 exhibit 36). I failed to complete the diversion due to not getting bar insurance, but completed the rest of the agreement which including paying restitution, going to solo and small firm conference, and attending an ethics seminar (p.81). By failing to complete the diversion, I received four admonitions on the cases, and a fifth admonition for failing to complete the diversion. I have received a sixth admonition for having an overdraft on my trust account due to writing a check prior to verifying it cleared in my bank. This is the extent of my discipline prior to these two claims.

The two claims result from a 2008 representation of Dolores Marra, the 2012 representation of Theresa Gorajewski, and the 2012 computer destruction. I have never had a Judge or opposing Counsel file any complaint or misconduct allegation against me from being in court (p.82). I have not been sanctioned by any Court or Judge while representing a client, the only sanction was the lawsuit filed by Dolores Marra, which was against me personally, and not my representation of a client (p.84).

POINT RELIED UPON

RESPONDNET IS SUBJECT TO DISCIPLINE DUE TO HIS VIOLATIONS OF THE RULES OF PROFESSIONAL CONDUCT, HOWEVER, THE VIOLATIONS THEMSELVES, AND THE ULTIMATE RESULT OF THE CONDUCT WARRANTS A REPRIMAND OR A PROBATION, NOT DISBARMENT OR SUSPENSION OF HIS LICENSE.

ARGUMENT

RESPONDNET IS SUBJECT TO DISCIPLINE DUE TO HIS VIOLATIONS OF THE RULES OF PROFESSIONAL CONDUCT, HOWEVER, THE VIOLATIONS THEMSELVES, AND THE ULTIMATE RESULT OF THE CONDUCT WARRANTS A REPRIMAND OR A PROBATION, NOT DISBARMENT OR SUSPENSION OF HIS LICENSE.

I violated the Rules of Professional Conduct. Specifically, those rules are 4-1.1, competence, 4-1.3 diligence, 4-1.4 failing to provide adequate communication, 4-1.16D abandoning the representation without notice, 4-1.7 conflict of interest, 4-3.4D failing to make reasonably diligent effort to comply with a legally proper discovery request, and 4-8.4D engaging in conduct that is prejudicial to the administration of justice. What I have not done is commit anything frivolous, or with intent to deceive or defraud. There are three issues to address and the relevant punishment as a whole that I should have levied against me and my bar license. These are first, the municipal court representation of Theresa Gorajewski, second, the representation of Delores Marra, and third, the discovery process during the malpractice lawsuit filed against me by Delores Marra.

First I will address the Theresa Gorajewski allegations. Mrs. Gorajewski contacted me in regards to representing her in the Blue Springs Municipal Court, as a result of some traffic violations. Mrs. Gorajewski did not have any money, but I agreed to get her a continuance of her Court date, at which time she stated she would have money in a couple of months. I continued the June, 2012, Court date into August, 2012. I contacted Mrs. Gorajewski by telephone informing her of the costs and the new Court date, however, I did not send a written letter. Mrs. Gorajewski never brought the money to handle her cases to the office. No one appeared at the

next Court date. Mrs. Gorajewski then hired another attorney to resolve her traffic cases. No additional penalties were ever paid by Mrs. Gorajewski and her license was never suspended.

What I should have done was to appear in Court in August, continue the date to a future date, write Mrs. Gorajewski a letter informing her of her Court date, and sending a Motion to Withdraw if payments were not made, informing her that I would be withdrawing if my fee was not paid prior to the Court date. This was 100% my error.

I entered on the case in an attempt to help someone who did not have the money to initially hire a lawyer. When I entered, I agreed that I would act professionally and in accordance with the rules of ethics and professional responsibility, and I failed to act in that manner.

When looking at what punishment should be levied against me in this case with this case, we must look at what harm was done to the public. In the case of Theresa Gorajewski, she suffered no damages due to my failing my ethical duties in this case. Mrs. Gorajewski did not pay any additional penalties and never had her license suspended. If I had done nothing in this case and not entered my appearance at Court, Mrs. Gorajewski still would have had to either appear in Court and handle the matter. If she would have failed to appear herself on the first Court date, she would have received the same letter. If this was the only case against me, I would state this claim would merit an admonition.

The event with Theresa Gorajewski was in 2012, four years ago. This ethical misconduct has not been repeated as I have learned from my mistake, and have corrected this conduct. If I withdraw from a case, I send out a written Motion and notice up the Motion in Court, giving notice of the Court date.

The second issue is the representation of Delores Marra. I never should have entered on behalf of Mrs. Marra due to a conflict of interest in the fact that the person that sued Mrs. Marra was hired by the same insurance company that hired me, Lititz Insurance. I should have seen the conflict, but what I wanted to do was not only help Ms. Marra, but build a new client in Lititz. I should not have, but I did enter my appearance to represent Ms. Marra. Opposing Counsel had stated that if I did not enter, he would be taking a default judgment against Ms. Marra and with wanting to help her, I entered my appearance.

I was told by Chuck Hennessee that he would appear at any Court appearance needed to testify that the work done by Jon Hengehold was subpar, and there was still work to be done. Of course, when called upon twice, Chuck was in Oklahoma, and would not come up to testify. I also learned that you must send letters out to your clients informing them of their Court dates. These are commonly referred to as CYA or protection letters. You need proof in case a situation arises where someone claims you were not properly representing them by not giving adequate notice of Court dates.

I did what I could in attempting to contact Ms. Marra. I called, my wife who was my secretary at the time called, and I sent letters. Ms. Marra tore up any letters she received from a law office. We called Chuck Hennessee for help, and he stated he contacted Ms. Marra and told her we were there to help, but she never contacted us or returned any messages. The one time we got her on the phone, she hung up on us saying she didn't know who we were. The only thing I could do was appear in Court and request a continuance of the trial setting, which was granted once, but denied the second time.

When looking at what punishment should be levied against me in this case with this case, we must look at what harm was done to the public. By Mrs. Marra's own statements, she was

never served with a lawsuit and never had a date to appear in Court, which we know was not the case. Also, she states the insurance company Lititz, not my office, told her they would handle everything and not to worry about anything. Mrs. Marra never appeared in Court, and a default judgment would have been entered against her. She would have been in the same circumstances as she was, except it would have occurred much sooner, i.e., at the first Court date rather than nearly nine months later. She would have been in the same position as being able to set aside the default judgment as she was.

While money was initially taken out of Ms. Marra's bank account, that money was extremely quickly put back into her account. Ms. Marra never lost a dime to any judgment. Had I not entered, a default judgment would have been taken against her, and the Plaintiff would have done the same garnishment as they did, and the same money would have come out of her account. Ultimately the way the case went, the insurance company decided to pay her \$72,000 in damages for their actions in this case.

While I did wrong in Mrs. Marra's representation, I do not believe this should warrant a suspension or disbarment, but a public reprimand, or at the highest level of punishment, a probation. While Mrs. Marra was shocked that money was taken out of her account, this would have happened even if I did nothing on her case due to a default judgment that would have been entered against her. Ultimately, she never lost a dime of money by my actions. And finally, my actions were to try to help a lady being sued. My intentions were not to try to degrade the law profession or hurt anyone.

The third issue is the malpractice claim filed by Gina Chiala during the lawsuit filed against me by Dolores Marra and my conduct during that action. I had a malpractice lawsuit filed against me by Dolores Marra. During the progression of this case, I had discovery requests,

which included a document production request. I fully copied the entire hard file and submitted that to the attorney for Ms. Marra. Later on, a request was made to have an expert examine my computer to determine whether or not those letters had been typed on that computer. I no longer had the computer at the time of the request.

In July, 2012, I was working at the Jennifer Benedict Law Firm, and no longer had my own private practice (I have since gone back into my own practice in April, 2013), and no longer needed my work computers that I had used for twelve years. Therefore, I bought a new personal use computer for my home, and wanted to get rid of the old computers and the information that they contained. What I did was tried to destroy the hard drives then take the computers to the dump. I figured that if the computers are out at the dump, no one would be able to access any of the private, personal information in them. This was done during the time the lawsuit was pending against me, and that's why I have admitted that this act was prejudicial to the administration of justice. I had only one intent when destroying the computers. At that time, I had no idea the information you could get off of a hard drive. I kept the hardcopy of the file, and thought that was what was required by the rule.

With regards to the question of whether or not I still had the computer when I gave my deposition, Gina Chiala, the attorney for Ms. Marra, was going back and forth between my wife's papers and the letters that I had typed. When she asked the question do I still have the computer for the documents, she was holding my wife's discovery that she kept in a separate file from mine, discovery that was provided to Ms. Chiala. So when I was asked the question about documents, I assumed she meant my wife's computer, because those are the documents she had in her hand when she asked the question.

When looking at what punishment should be levied against me in this case with this case, we must look at what harm was done to the public by me destroying my two computers. I believe in this case you must look at my intent. My intent on destroying computers was not to hide or cover up any information, but to protect all my past client's information that was stored in the hard drives. Nothing I did was intended to be fraudulent, malicious, or to hide anything. You must ask yourself what my intent was. During my oral argument, question me at will and direct any question to me. I will answer truthfully. I believe again that in this case, the punishment should be a reprimand or at the harshest, a probation term, the length decided by this Court.

The ABA Standards for Imposing Lawyer Sanctions (ABA Standards) has several mitigating factors. Under section E, full and free disclosure, I believe helps my argument. I have always answered every question and been available whenever requested to be. I admitted when I've made mistakes. With regards to sending letters to Dolores Marra, if I was lying about sending any letters, why would I also not just state that I sent her the Judgment too, knowing that not sending the Judgment was a violation of ethical rules? Because I am honest. Absolutely nothing in my past history would lead anyone to believe that I am not honest. I believe that even if I had kept the computer I used to type the letters and it was proven that the letters were typed, Ms. Gina Chiala would have still denied that I sent them under some accusation.

Section G of the ABA Standards is character and reputation. I believe my reputation and character factor heavily into your decision. I presented two letters from Counsel that I have come in contact with my time as an attorney. I believe that is just a small sample size of what the bar in general thinks of me and my representation of clients. Everyone from the janitors, to judicial assistants, to law clerks, and to Judges say I always have a smile on my face, and am

pleasant to be around. The Sheriff's deputies who provide courthouse security always welcome me to their courthouse. I have worked hard over nearly 16 years to create my image, and I believe that I represent the legal community in the highest standards, giving lawyers a much needed good face to attach to the profession.

Section I of the ABA Standards is causing any delay in the disciplinary proceedings. Not once have I caused a delay in these proceedings, and have been available whenever I was called upon to answer for my conduct. In fact, the hearing panel cancelled at least once, and possibly twice, and kept rescheduling the hearing, but I appeared when I was called upon.

Section L of the ABA Standards is remorse. You will have to determine if I am remorseful. I am. I am not out to intentionally harm anyone as a lawyer, or to cause any harm to the legal profession. I want to help people. I love that I get to help people. I am sorry that I committed ethical violations. I want to do better as a person. We make mistakes. The question is have I learned from them or am I still making the same mistakes?

If I am such a threat to the public in general, and am such a detriment to the legal profession, why has it taken years for the Office of Chief Disciplinary committee to first file the Information against me, and why has it been almost four years since my last alleged violation of any ethical rules? I feel like I have been singled out and have been made a target. Not one person has lost a dime from my representation in any unethical manner. I have never appeared in the news or in any print medium "soiling" the legal profession. In fact, I believe that I am a great champion of lawyers, and giving a good name to a profession where people have preconceived notions of what an attorney is and how they act. I beg of your mercy to allow me to continue the profession that I love.

By placing a reprimand or probation against my disciplinary record, the public will be alerted to what I have done, and can then have that tool when deciding whether or not to retain my services. That is a very harsh punishment in today's climate with everyone having instant access to the internet and people's disciplinary history. I have represented hundreds of clients since the last allegation and admission of ethical misconduct, and hope that my lawyer career may continue.

CONCLUSION

In conclusion, I am asking you, the Missouri Supreme Court, to not suspend my license or enter a disbarment, but to either issue a reprimand or to place me on a probationary period for whatever time frame this Court deems appropriate. With only being admonished to this point in my career, a reprimand or probation would be a permanent mark against my legal career, visible by all members of the public to view and decide if they wish to engage my services. I believe I offer valuable services to the public and actually present a great image of lawyers in the State of Missouri, and lawyers in general.

RESPECTFULLY SUBMITTED,

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RESPONDENT PRO SE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Respondent's Reply Brief was served upon all parties of record pursuant to Rule 103.08 this 18 day of April, 2016.

/s/ Brian C. Greer
Brian C. Greer

CERTIFICATION RULE 84.06(c)

I HEREBY 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 in Rule 84.06(c);
3. Contains 4,194 words according to Microsoft Word, which is the word processing system used to prepare this Reply Brief.

/s/ Brian C. Greer
Brian C. Greer