IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
PYLE, THOMAS G.,	)	**Supreme Court #85650**
	)	
Respondent.	)	

INFORMANT'S REPLY BRIEF

OFFICE OF
CHIEF DISCIPLINARY COUNSEL

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STATEMENT OF JURISDICTION

Respondent asserts that this Court does not have jurisdiction over this matter because of the reasons set forth in his November 13, 2003, Motion to Dismiss which was previously filed with this Court. Respondent incorporates his Motion into his Brief.[1] Informant counters that this Court does have jurisdiction over this matter for the reasons set forth in her Suggestions in Opposition to Respondent's Motion to Dismiss and incorporates her Suggestions into this Brief.[2]

In addition, Respondent claims Informant's Jurisdictional Statement was inadequate because it was a bare recital of this Court's jurisdiction. A "bare recital of jurisdiction" is a situation whereby the Appellant or Informant fails to set forth facts why a Court has jurisdiction over the matter. *Mobley v. Baker*, 72 S.W.3d 251, 255 (Mo. App. W.D. 2002).

In her original Brief, Informant alleged:

> "This action is one in which the Chief Disciplinary Counsel is seeking to discipline an attorney licensed by the Missouri Bar for

[1] On December 23, 2003, the Court overruled Respondent's Motion to Dismiss.

[2] Respondent also complains that he was hindered in the preparation of his Brief because Informant failed to provide him with a copy of the transcript from the August 12, 2003, hearing. Informant's response to Respondent's assertion is addressed in Informant's Suggestions in Opposition to Respondent's Motion to Dismiss. As noted in the previous footnote, this Court overruled Respondent's Motion to Dismiss on December 23, 2003.

> violations of the Missouri Rules of Professional Conduct. 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."

By stating that this matter was one in which Informant was seeking to discipline an attorney licensed by the Missouri Bar for violations of the Missouri Rules of Professional Conduct, Informant provides this Court with sufficient factual detail to know that the matter falls into this Court's jurisdiction. Therefore, Informant's jurisdiction statement is sufficient.

Finally, Respondent asserts that this Court lacks jurisdiction over the matters raised in Point IV of Informant's Brief as the Disciplinary Hearing Panel denied Informant permission to amend her Information to allege that Respondent failed to properly supervise an employee. According to Respondent this Court then lacks jurisdiction to consider any issue related to whether Respondent properly supervised his employee. Respondent's argument is without merit. In matters of attorney discipline, this Court reviews the evidence de novo and reaches its own conclusions of law. *In re Wiles*, 107 S.W.3d 228, 229 (Mo. banc 2003). Whether Informant should be allowed to amend her Information is a question of law. According to the standard of review for this case, this Court is able to reach its own conclusions of law and decide whether Informant's Information should be amended. Therefore, this Court has jurisdiction over the issues raised in Point IV of Informant's Brief.

STATEMENT OF FACTS

In his Statement of Facts, Respondent states that to "the best of his knowledge" he was never ordered to file an Answer. Informant would like to direct this Court's attention to the July 29, 2003, letter of the Disciplinary Hearing Panel Presiding Officer, Karl W. Blanchard, Jr.[3] The letter provides that Respondent's June 2003 Motion to Dismiss will be treated as a Motion for Summary Judgment and further states "an answer is due from Respondent." Furthermore, pursuant to Rule 5.13, Respondent was required to file an Answer.

Respondent also states in his Statement of Facts that the Disciplinary Hearing Panel's decision that he engaged in a material misrepresentation is incorrect because the Panel based its decision upon a finding that he did not have the consent or approval of his client to sign the Authorization. Respondent asserts that the evidence showed that he had authority to sign his client's name to the Authorization.

What Respondent is doing is arguing that the Disciplinary Hearing Panel erred. Rule 84.04 specifically prohibits argument in the statement of facts. Additionally, the Rule requires that "[a]ll statements of fact . . . shall have specific page references to the legal file or the transcript." Respondent does not provide any citation to his statement that he had the consent of the client to sign the Authorization. Therefore, Informant asks that this Court strike and/ or disregard Respondent's statements that there was evidence that Respondent had authority to sign his clients name to the Authorization and that the

[3] The letter is part of the record in this matter.

Disciplinary Hearing Panel was incorrect in finding that he committed a material misrepresentation.

POINT RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE RESPONDENT VIOLATED RULES 4-4.1(a) AND 4-8.4(c) IN THAT RESPONDENT REPRESENTED TO OPPOSING COUNSEL AND THE PSYCHIATRIC CENTER THAT MS. GANNAWAY HAD SIGNED THE JULY 16, 2002, MEDICAL RELEASE AUTHORIZATION WHEN IN FACT RESPONDENT HAD SIGNED THE AUTHORIZATION ON MS. GANNAWAY'S BEHALF WITHOUT NOTATING SUCH AND THEN RESPONDENT HAD HIS SECRETARY, THE NOTARY, SWEAR AND SUBSCRIBE TO MS. GANNAWAY'S SIGNATURE.

Committee on Professional Ethics and Conduct v. West, 387 N.W.2d 338 (Iowa 1986)

State v. Pennick, 364 S.W.2d 556, 559 (Mo. 1963)

Rule 4-4.1(a)

Rule 4-8.4(c)

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE RESPONDENT VIOLATED RULES 4-4.1(a) AND 4-8.4(c) IN THAT RESPONDENT REPRESENTED TO OPPOSING COUNSEL AND THE PSYCHIATRIC CENTER THAT MS. GANNAWAY HAD SIGNED THE JULY 16, 2002, MEDICAL RELEASE AUTHORIZATION WHEN IN FACT RESPONDENT HAD SIGNED THE AUTHORIZATION ON MS. GANNAWAY'S BEHALF WITHOUT NOTATING SUCH AND THEN RESPONDENT HAD HIS SECRETARY, THE NOTARY, SWEAR AND SUBSCRIBE TO MS. GANNAWAY'S SIGNATURE.

Informant will reply to Respondent's Brief under Point I, as in Informant's judgment the issues raised by Respondent in his Brief are best encompassed under Informant's Point I.

Respondent contends that he should not be disciplined because the evidence only establishes that Respondent twice committed a ministerial error by signing his client's name to two different documents without properly noting thereon that he was signing on behalf of his client.

Respondent's argument fails to meet the "smell test." What Respondent committed was much more than a ministerial error. Respondent has been licensed as an

attorney for 19 years. Even a recent law school graduate would be expected to know that one should not sign a client's name to legal document without notating they were signing on behalf of the client and then ensuring that the notarization on the document clearly reflects that the attorney signed on behalf of the client. It seems highly unlikely that Respondent, an experienced attorney, would forget on two different occasions to notate that he was signing on behalf of his client and then fail to ensure that his secretary/notary notarized the documents to reflect that he had signed on behalf of his client. The only conclusion that can be drawn from Respondent's actions is that he wanted the readers of both documents to believe that his client, Ms. Gannaway, had actually signed the documents. Such subjects Respondent to discipline for violation of Rule 4-4.1(a) and 4-8.4(c).

Respondent also tries to avoid discipline by diverting blame to his secretary/notary by stating that he did not specifically instruct his secretary/notary on how the documents should be notarized and then further asserting that a notary public has an independent duty to ensure proper execution and attestation of documents. What is interesting to note is that when the Secretary of State was investigating the activities of Respondent's secretary/notary, Respondent was willing to take the blame for the improper notarization. In his October 14, 2002, letter to Gary Schmidt, Corporations Counsel for the Office of the Secretary of State, Respondent never states that his secretary had an independent duty to ensure proper execution and attestation of the Authorization or that his secretary should have notarized the Authorization to reflect that he signed the Authorization on behalf of the client. **Ex.** 12. Rather, Respondent states the <u>mistake was his</u> for failing to

notate that he had signed the Authorization on behalf of his client. **Ex.** 12. Now, after Respondent's secretary no longer has to worry about criminal prosecution by the Secretary of State and Respondent's license is in jeopardy, he is "pointing the finger" at his secretary/notary.

After previously admitting he was at fault, Respondent should not be allowed to place the blame on his secretary/notary and escape discipline for his misconduct. Because Respondent signed the Authorization on the behalf of Ms. Gannaway without notating he was signing on her behalf, he had a duty to ensure that his secretary/notary acknowledged that he, not Ms. Gannaway, had signed the Authorization. Respondent failed to notate that he was signing on Ms. Gannaway's behalf, failed to attach documentation to the Authorization showing his authority to sign on Ms. Gannaway's behalf and failed to ensure that his secretary/notary acknowledged the document to reflect that he had signed upon behalf of Ms. Gannaway. Respondent's conduct subjects him to discipline.

Respondent further states that he had express written authority from his client to sign her name to each document and that he also confirmed orally prior to the signing of each document that Ms. Gannaway was authorizing him to sign on her behalf. Respondent further states that the Affidavit he submitted with his June 2003 Motion to Dismiss provides that he obtained the oral approval of Ms. Gannaway to sign the documents.

First, while the June 2003 Motion to Dismiss[4] is part of the record, it was not part of the Stipulation of Facts. At the August 12, 2003, hearing the parties agreed that the outstanding motions would be decided based upon the Stipulation of Facts and that the Disciplinary Hearing Panel should not consider any evidence beyond those facts set forth in the Stipulation of Facts. **T.** 5-7. Thus, any Affidavit Respondent attached to his Motion to Dismiss is irrelevant and should not be considered by this Court.

Second, the Affidavit Respondent references does not provide that Respondent obtained Ms. Gannaway's prior oral consent to Respondent signing her name to the Authorization. All the Affidavit states is that Ms. Gannaway signed a fee agreement which included a general power of attorney. Respondent then goes on to state in the Affidavit that the general power of attorney in the fee agreement gave him the power to sign Ms. Gannaway's name to the Authorization. There is nothing in the Affidavit which even suggests that Respondent obtained prior oral approval from Ms. Gannaway to sign the Authorization.

Moreover, as discussed in Informant's Brief, whether Respondent had authority to sign the Authorization is not critical to the issues before this Court. The critical fact is Respondent did not notate that he was signing the Authorization on Ms. Gannaway's behalf and the notarization was notarized by Respondent's secretary to reflect that Ms. Gannaway had appeared before the notary and signed the document.

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[4] The June 3, 2003, Motion to Dismiss is part of the record and found under a cover designated "Response of Thomas G. Pyle".

Respondent asserts that he should not be disciplined because the cases Informant cites to in her brief only address the situation whereby the attorney is the notary. This is incorrect. In *Committee on Professional Ethics and Conduct v. West,* 387 N.W.2d 338 (Iowa 1986), the attorney in question had his secretary notarize signature of parties to instruments when the parties did not appear before her. The Iowa Supreme Court found that the attorney was subject to discipline for aiding and abetting his secretary in the commission of a crime.

Respondent also asserts that there is no evidence that the Authorization or deposition signature page were ever presented to him for review following notarization and that he was entitled to rely upon the notary in properly performing her duties. First, Respondent admits that he signed the document in his secretary's presence. **Ex.** 12. Typically a notary completes the acknowledgement immediately after observing an individual signing the document. Thus, the inference is that Respondent would have had an opportunity to view the notary's actions. Furthermore, there is no dispute that the Authorization was transmitted to opposing counsel. The inference would be that Respondent would have seen the Authorization when he transmitted it to opposing counsel. Moreover, as discussed above, because Respondent signed Ms. Gannaway's name to the Authorization, Respondent had a duty to ensure that his secretary/notary properly acknowledged the document to reflect that he had signed on Ms. Gannaway's behalf. Respondent obviously did not do this.

Finally, Respondent argues that there was no evidence to support Informant's argument that Ms. Gannaway was incapacitated such that any authority he might have

had under a general power of attorney was suspended. In support of his argument, Respondent states that Ms. Gannaway was discharged from the Psychiatric Center after only 96 hours, and without any medications or follow up treatment ordered. First, the record does not contain any evidence regarding the length of time Ms. Gannaway was committed to the Psychiatric Center or any of the conditions of her discharge. Thus, this Court should not consider Respondent's assertions.

Second, in his June 2003 Motion to Dismiss, Respondent admits that both before and after her commitment Ms. Gannaway was suffering from severe depression which affected her ability to function normally and resulted in Ms. Gannaway acting irrationally. Respondent cannot now change his position and assert that Ms. Gannaway was mentally competent at the time he signed the Authorization on her behalf.

Respondent also asserts that Ms. Gannaway was not incapacitated at the time he signed the Authorization because the case was settled without the federal court appointing any conservator or guardian for Ms. Gannaway.

This Court should not consider Respondent's assertion regarding the lack of appointment of a guardian or conservator in the underlying case because the pleadings or docket sheet in the underlying litigation were not entered into evidence. *State v. Pennick,* 364 S.W.2d 556, 559 (Mo. 1963). (A court cannot take judicial notice of files from litigation heard by another court unless the parties consent or the files and records from the other case are introduced into evidence.) Furthermore, Ms. Gannaway's case did not settle until April 22, 2003, more than nine months after Respondent signed Ms. Gannaway's name to the Authorization. Her condition at the time of settlement may

have been very different from that of nine months earlier when he signed the Authorization. Thus, her mental condition at the time of settlement is not relevant as to her condition at the time Respondent signed the Authorization upon her behalf.

CONCLUSION

For the reasons set forth above and in Informant's Brief, this Court should find that Respondent violated Rules 4-4.1(a), 4-8.4(c), 4-3.4(b), and 4-5.3(c)(1), publicly reprimand Respondent, and tax costs in this matter against Respondent.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of December, 2003, two copies of Informant's Reply Brief and a copy of the diskette containing the brief have been sent via First Class mail to:

Thomas G. Pyle
1765 Seclusion Pt, Apt. F
Colorado Springs, CO 80918

_____
Nancy L. Ripperger

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 2,758 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.

_____
Nancy L. Ripperger