IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
JAMES C. ROBINSON,	)	**Supreme Court No. SC95849**
	)	
Respondent.	)	

INFORMANT'S REPLY BRIEF

OFFICE OF
CHIEF DISCIPLINARY COUNSEL

SHARON K. WEEDIN #30526
STAFF COUNSEL
3327 AMERICAN AVENUE
JEFFERSON CITY, MO 65109
(573) 635-7400 - PHONE
(573) 635-2240 – FAX
Sharon.Weedin@courts.mo.gov

ATTORNEY FOR INFORMANT

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POINT RELIED ON

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE THE FEDERAL COURTS HAVE ADJUDGED HIM GUILTY OF PROFESSIONAL MISCONDUCT IN THAT HIS CONDUCT IN REPRESENTING A BANKRUPTCY CLIENT VIOLATED MULTIPLE RULES, INCLUDING THE RULES REQUIRING COMPETENCE, DILIGENCE, COMMUNICATION, AND TO PROTECT THE CLIENT'S INTERESTS UPON TERMINATION OF REPRESENTATION, AND BECAUSE HIS CONDUCT VIOLATED RULES OWED THE LEGAL SYSTEM IN THAT HE OBSTRUCTED DISCOVERY AND ENGAGED IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE.

In re Caranchini, 956 S.W.2d 910 (Mo. banc 1997)

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

Steward v. Robinson (In re Steward), Case No. 11-46399-705 (Bankr. E.D. Mo. June 11, 2014)

ARGUMENT

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE THE FEDERAL COURTS HAVE ADJUDGED HIM GUILTY OF PROFESSIONAL MISCONDUCT IN THAT HIS CONDUCT IN REPRESENTING A BANKRUPTCY CLIENT VIOLATED MULTIPLE RULES, INCLUDING THE RULES REQUIRING COMPETENCE, DILIGENCE, COMMUNICATION, AND TO PROTECT THE CLIENT'S INTERESTS UPON TERMINATION OF REPRESENTATION, AND BECAUSE HIS CONDUCT VIOLATED RULES OWED THE LEGAL SYSTEM IN THAT HE OBSTRUCTED DISCOVERY AND ENGAGED IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE.

In his only Point Relied On, Respondent Robinson argues that he has not been adjudged guilty of professional misconduct by a "sister" jurisdiction or one that has "admitted him to practice." Rule 5.20 reads, in its entirety, as follows.

> 5.20 Reciprocal Discipline for Misconduct
>
> Upon the filing of an information directly in this Court by the chief disciplinary counsel that a lawyer admitted to practice in Missouri has been adjudged guilty of professional misconduct in another jurisdiction, this Court shall cause to

> be served on the lawyer an order to show cause why said adjudication should not be conclusive of said misconduct for the purpose of discipline by this Court.

Respondent Robinson has been "adjudged guilty of professional misconduct" by "another jurisdiction," i.e., the federal courts. The United States Bankruptcy Court for the Eastern District of Missouri found innumerable facts that constitute professional misconduct antecedent to disciplining Respondent pursuant to local rules and its inherent authority. Local Bankruptcy Rule 2093-A provides that attorneys practicing before the bankruptcy court are "governed by the Rules of Professional Conduct adopted by the Supreme Court of Missouri." Local Bankruptcy Rule 2094-C authorizes the bankruptcy court to initiate its own attorney discipline proceedings regardless whether the attorney has been disciplined by another court. The bankruptcy court adopted the district court's rules of disciplinary enforcement (L.R. 2090-A.2), which provide that an attorney "for good cause shown and after having been given an opportunity to be heard, may be disbarred or otherwise disciplined." United States District Court for the Eastern District of Missouri, Local Rule 83-12.02. Thus, the bankruptcy court was authorized to adjudicate Respondent's misconduct.

The district court confirmed that conclusion, noting the bankruptcy court "had the authority and, in this case, a justifiable basis, to suspend" Respondent's privilege to practice. The court further stated that the bankruptcy court "did not need to refer the matter to appointed counsel for investigation and prosecution of a formal disciplinary proceeding because the misconduct at issue was directed at and witnessed by the

bankruptcy court." Robinson v. Steward (In re Steward), 529 B.R. 903, 919 (E.D. Mo. 2015). The Eighth Circuit Court of Appeals concurred, agreeing with the district court's conclusion that "suspension was proper under the bankruptcy court's inherent authority to discipline attorneys appearing before it and pursuant to the local rules authorizing exercise of that authority." *Robinson v. Steward* (*In re Steward*), 828 F.3d 672, 686 (8th Cir. 2016). Respondent's statement that the bankruptcy court "had no power" (Respondent Robinson's brief, p. 11) to discipline Respondent is a false statement. The fact finding process undertaken by the bankruptcy court and the discipline imposed by that court pursuant to local rules and the court's inherent authority were affirmed, following Respondent's appeals, by the district court and the eighth circuit court of appeals. Again, Respondent has been adjudged guilty of professional misconduct by another jurisdiction and is subject to reciprocal discipline by this Court.

Respondents contend that the district court's June 30, 2014, order proves that no disciplinary adjudication has occurred by the federal courts. To the contrary, the district court's order explicitly references the "disciplinary matter that arose in a proceeding" before the bankruptcy court. The district court stayed its disciplinary proceeding pending the outcome of the Missouri Supreme Court's case (the case at bar), which the district court knew had been referred by the bankruptcy court to state disciplinary authorities as well as the district court. Respondents' contention is without merit.

Respondent argues that he could not be disciplined by the bankruptcy court because the bankruptcy court did not issue him a license. Rule 5.20 simply does not say

that reciprocal discipline is available only from a jurisdiction that issued a law license. Local Rule 2090 for the Bankruptcy Court, Eastern District of Missouri, provides that its bar shall consist of any attorney in good standing before the United States District Court for the Eastern District of Missouri. Likewise, the local bankruptcy rule adopts the district court's "standards concerning attorney discipline." Respondent is admitted to practice in the federal district court, so by local rule is admitted to practice in the bankruptcy court and is subject to that court's disciplinary proceedings.[1]

Respondent cites from the district court's concluding paragraph in *Robinson v. Steward* (*In re Steward*), 529 B.R. 903 (E.D. Mo. 2015), for the proposition that he has not been adjudicated guilty of misconduct. The court stated in that paragraph that "It also appears, based on Steward's experience, that Robinson and Critique are violating legal ethical rules in their representation of clients in bankruptcy matters. However, the resolution of these issues is not the subject of this appeal." 529 B.R. at 919-920. The court was not suggesting that Respondent had not been adjudicated guilty of professional

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[1] Although not an issue here, it is noted that admission to practice law in the originating jurisdiction is not a prerequisite to reciprocal discipline under Rule 5.20. For example, a Missouri-licensed attorney is subject to reciprocal discipline by the Missouri Supreme Court if the attorney is adjudged to have engaged in the unlicensed practice of law in an originating jurisdiction where he was not admitted to practice. See, *e.g.*, *In re Sanderson*, SC94975 (May 27, 2015).

misconduct in the case before it; rather, the court was commenting on the likelihood that ethical violations had occurred in Respondent's representations of many other Critique/Robinson bankruptcy clients.

Respondents dismissively, and repeatedly, characterize the federal bankruptcy court as a "subordinate" court, "akin to Commissioners in State Courts." Respondent's brief, p. 5. United States bankruptcy courts are federal courts created pursuant to Article I of the United States Constitution. Article III courts, which encompass the district courts and courts of appeal, refer jurisdiction over Title 11 bankruptcy proceedings to bankruptcy courts pursuant to legislation authorizing the same. Bankruptcy courts "constitute a unit of the district court" and may enter final judgments in all cases under Title 11 and all core proceedings arising under Title 11 or arising in a case under Title 11. 28 U.S.C. § 151, 157. The bankruptcy court's amended memorandum opinion and order, affirmed by two reviewing federal courts, is an adjudication of professional misconduct by "another jurisdiction" that subjects Respondent to reciprocal discipline under Rule 5.20. Respondent's attempt to denigrate the authority of the court is an extension of the unethical and disrespectful conduct Respondents consistently displayed in their practice before the bankruptcy judge.

Respondents filed an "objection" to "all court orders or judgments contained in or from the Information, including documents attached as an Exhibit to said Information and/or included in the Appendix to Informant's Brief." Respondent's brief, p. 3. Supreme Court Rule 84.24(i), referenced by the Court in its November 22, 2016, order

activating a briefing schedule in this matter, states that "briefs shall be filed as is required on appeals." Supreme Court Rule 84.04(h), which sets forth the rules on briefs, requires that the "judgment, order, or decision in question," be included in an Appendix, which is to be filed with the brief. Informant's inclusion of the bankruptcy court's amended memorandum opinion and order, the district court's opinion, and the eighth circuit's opinion, was required by Supreme Court Rule. Those opinions, including the attachments to the bankruptcy court's opinion, are the basis for the information for reciprocal discipline and are appropriately included in the Appendix to Informant's brief and as exhibits to the information for reciprocal discipline. Respondents' "objection" to the inclusion of those opinions is without legal basis, contrary to Supreme Court Rule, and should be overruled.

Respondent makes much of the fact that the courts' opinions attached to the Information for Reciprocal Discipline and in the Appendix were not certified copies. The district court and eighth circuit opinions were printed from West Publications. The bankruptcy court's opinion reflects the PACER information running across the top of each page. Respondents do not contend Informant did not provide the Court with proper copies of the courts' opinions. Nevertheless, to assuage any concern that the bankruptcy court's opinion, which was not published in a reporter, is not an accurate copy, a certified copy is included in the Appendix filed with this Reply Brief.

Whether this Court orders discipline under the reciprocal rule or orders further disciplinary proceedings against Respondent, the facts established in the federal court decisions are binding on Respondent Robinson. Application of offensive non-mutual

collateral estoppel precludes Respondent from relitigating the facts developed by the bankruptcy court, and affirmed by the district court and court of appeals. "The very basis of collateral estoppel is the notion that once particular facts have been determined by a valid judgment, a party to that judgment cannot later relitigate those same facts in a subsequent lawsuit." *In re Caranchini*, 956 S.W.2d 910, 913 (Mo. banc 1997). Thus, Respondent's plaint that disciplinary counsel "failed to conduct an independent investigation" or present evidence to a disciplinary panel is an argument that misapprehends the finality of the fact findings by the federal courts.

The four factors that should be considered when offensive non-mutual collateral estoppel is asserted are all met in this the instant case. The first factor is whether there is an identity of issues in the prior adjudication and this reciprocal action. Respondent Robinson's conduct, which was the basis for the federal sanctions, is the very same conduct that this Court examines in determining whether a rule of professional conduct has been violated. There is an identity of issues. *Caranchini,* 956 S.W.2d at 913.

The second factor is whether the prior adjudication was on the merits. The sanctions imposed against Respondent resulted from an adjudication of the facts justifying sanctions, i.e., issues on the merits.

The third consideration in whether a court will allow offensive use of collateral estoppel is whether the party against whom the doctrine is asserted was a party to the prior adjudication. Here, Respondent Robinson was a party in the three decisions imposing and affirming imposition of sanctions based on his conduct. For example, he

knowingly participated with Respondent Walton in the vexatious filings that alleged conflicts that did not exist and contumaciously, to this day, has refused to provide discovery responses.

The fourth factor is whether Respondent Robinson was provided a full and fair opportunity to litigate the issues in the prior litigation. The federal court opinions included in Informant's Appendix set forth at great length the due process accorded Respondent in the process of developing the facts that underlay the court's eventual imposition of discipline. "The record shows that appellants [Respondents] had multiple notices of the impending sanctions and multiple opportunities to respond, and appeared before the court on multiple occasions before the sanctions were made final." *Robinson v. Steward* (*In re Steward*), 828 F.3d 672, 686 (8th Cir. 2016). It should also be noted that the bankruptcy court issued several orders providing for the possibility of resolving the controversy short of discipline and sanctions, by Respondent's production of the outstanding discovery requests. Respondents never complied with the discovery requests. There was no lack of notice to Respondent and opportunity for Respondent to be heard. He had plentiful opportunities to respond by briefing, argument, and most telling, by simply complying with discovery orders, which he declined to do.

Respondent Robinson, as did the Respondent in *In re Caranchini*, argues that this Court should not "automatically" discipline him based on the federal decisions. Imposition of reciprocal discipline is not, and never has been, "automatic." That argument misapprehends the Court's role in cases involving offensive non-mutual collateral estoppel and reciprocal discipline. In those cases, facts regarding the lawyer's

conduct, which were established in another jurisdiction in another proceeding, may be binding in a disciplinary case filed against the lawyer here. So long as the four factors discussed above are present, the facts established in the prior cases may not be relitigated. "The facts found in the federal proceeding are merely used to make an independent determination of whether the Missouri Rules have been violated." *In re Carey & Danis*, 89 S.W.3d 477, 499 (Mo. banc 2002). Thus, Respondent is not at liberty to relitigate the facts established in the federal proceedings regardless of the procedural route the Court takes in considering discipline against him. Indeed, were the Court to refer this case for a disciplinary hearing before a panel or special master, testimony or evidence regarding the propriety of Respondent's actions in the federal courts would be "nothing more than a veiled attempt to collaterally attack the underlying federal court findings" and would have to be given no effect due to the application of collateral estoppel. *In re Caranchini*, 956 S.W.2d 910, 919.

Whether those facts constitute violations of Missouri's Rules of Professional Conduct is a legal conclusion reserved to the Missouri Supreme Court. Respondent is entitled to argue whether the federal fact findings in this case justify discipline under the Missouri Rules. Respondent was afforded the opportunity to make that argument in his response to the Court's show cause order, and now in the briefing process. Resolution of whether the established facts constitute rule violations is essentially a legal argument, well-suited for resolution by response to a show cause order. "The practice of imposing reciprocal discipline also presents a streamlined process that preserves the valuable

resources of the courts." *In re Hess*, 406 S.W.3d 37, 42 (Mo. banc 2013). The *Hess* Court also noted that reciprocal discipline "dispenses with the necessity of resolving critical factual issues" and facilitates the orderly and efficient administration of lawyer discipline. 406 S.W.3d at 42, citing Benjamin, Student Project, *Reciprocal Discipline: An Approach to Lawyer Discipline*, 31 HOW. L.J. 299, 301 (1988).

Tellingly, *Caranchini* and *Carey & Danis* both involve attorney misconduct established factually by federal courts and arising out of cases in which the attorneys abused the discovery process. The Respondents in this case, Robinson and Walton, are charged with violating at least three of the same rules violated by Caranchini and Carey and Danis: 4-3.3(a)(1), 4-3.4(a), and 4-8.4(d), all arising out of abuse of the discovery process. They, like the predecessor Respondents, obstructed access to evidence or other material having potential evidentiary value. Respondents also knowingly made false statements of fact or law to the bankruptcy court. Respondents misrepresented facts in motions seeking to disqualify the bankruptcy judge, falsely mischaracterizing the judge's role in prior litigation and his previous job responsibilities. Respondent Robinson provided incompetent representation to his client, Ms. Steward, regarding the rescission issue and by losing documents from her file. He involved his client in protracted litigation in violation of the diligence rule. He failed to communicate with her as ethically required by the communication rule. He failed to turn over her file as required by Rule 4-1.16. Respondents misrepresented to the court that their discovery responses were prepared and forthcoming when they were not. In fact, Respondents never produced the information requested in discovery, information that would finally resolve

the question of what the legal relationship is between Critique Services and Respondent Robinson. As is discussed at length in the bankruptcy court's opinion, the questions Respondents refused to answer bear significant relevance to the nature of the legal representation being provided to clients by Respondent (and other attorneys) and Critique Services. For a factual description of one attorney's relationship with Critique Services and the legal representation provided to bankruptcy clients, see Partial Consent Judgment and Permanent Injunction as to Defendant Dean Meriwether, entered August 24, 2016, *State ex rel. Koster v. Critique Services*, Case No. 1622-CC00503 (22d Cir. Ct.). **Reply Brief App. 141**.

Respondents' characterization of their misconduct as "alleged" violations of discovery orders[2], or as "simply" not producing documents that were ordered to be produced is a gross underrepresentation of the scope and breadth of the conduct for which they were disciplined. The many rules Informant has alleged that Respondent Robinson violated, along with the facts underlying the rule violations, are set forth in the Information for Reciprocal Discipline and Informant's Brief and will not be repeated here. As the bankruptcy court concluded:

> Good cause has been shown to suspend Mr. Robinson and Mr. Walton each from the privilege to practice. As detailed

[2] The discovery order violations are no longer "alleged," they are established and affirmed in a final judgment.

in the footnotes throughout this Memorandum Opinion, Mr. Walton and Mr. Robinson violated numerous Rules of the Missouri Supreme Court's Rules of Professional Conduct. They refused to obey a lawful discovery order in violation of Rule 37(a). They falsely represented their intent to meet their discovery obligations. They purposely and in bad faith stalled on making discovery, and what little discovery they did make was grossly inadequate. They made an unfounded personal attack on opposing counsel in a pleading. They violated Bankruptcy Rule 9011 by conducting no reasonable inquiry before making material factual allegations. They lied about the Judge in pleadings in an effort to obtain disqualification. They filed frivolous motions, took meritless legal positions, asserted waived objections, abused the judicial process and vexatiously litigated. Not only did Mr. Robinson and Mr. Walton show bad faith by delaying or disrupting the litigation [and] by hampering enforcement of a court order, but by their actions, "the very temple of justice has been defiled." *Chambers v. NASCO, Inc.*, 501 U.S. at 44. These attorneys—who were entrusted with the privilege of practicing upon their oath—flagrantly disregarded their obligations as officers of the Court to pursue their illicit plan

> of contempt and abuse, which deprived the Debtor her opportunity to prosecute her motion upon the discovery to which she was legally entitled. And they did all of this to avoid disclosure of information regarding the Respondents' business—a business that is in the business of filing pleadings before this Court. Mr. Robinson and Mr. Walton "cannot be depended upon to faithfully perform the duties of an attorney representing a debtor under any chapter of the Bankruptcy Code in this Court." *In re Moix-McNutt*, 220 B.R. 631, 638 (Bankr. E.D. Ark. 1998).

Steward v. Robinson (In re Steward), Case No. 11-46399-705 (Bankr. E.D. Mo. June 11, 2014), at **Reply Brief App. 100-101**.

Respondent grossly underrepresented the extent of his misconduct in his brief to this Court, demonstrating his lack of remorse.

Disciplinary proceedings are an inquiry for the protection of the courts, the public, and the profession. "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." *In re Cupples*, 952 S.W.2d 226, 232-33 (Mo. banc 1997). Respondent has been accorded ample due process through months of hearings before the bankruptcy court, and years of appellate proceedings before the district court and court of appeals. Facts have been established that are binding on Respondent in this disciplinary proceeding, leaving

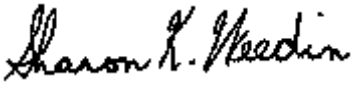
only the legal issues of whether the facts constitute rule violations and, if so, the appropriate sanction. Informant urges the Court to conclude Respondent has violated the rules enumerated in the information and Informant's brief and order Respondent's license indefinitely suspended with no leave to apply for reinstatement for one year.

CONCLUSION

Respondent's adjudication of misconduct by three federal courts is conclusive for purposes of facilitating the orderly and efficient administration of discipline from this Court in accordance with Rule 5.20. Informant has filed an appropriate Information for Reciprocal Discipline under Rule 5.20 and Respondent's motion to dismiss is unfounded and should be denied. The "documents" filed with the Information were appropriately presented to the Court as part of the federal court opinions. Respondent violated rules implicating duties owed to clients and the legal system. He did so knowingly. He caused actual financial injury to his client and wasted judicial resources by obstructing discovery. Respondent has been practicing law since 1995 and is a long-time bankruptcy practitioner. He received an admonition in 2011 for conduct similar to one aspect of this case. This case involves multiple rule violations. Informant recommends that Respondent's license be suspended with no leave to apply for reinstatement for one year.

Respectfully submitted,

ALAN D. PRATZEL #29141
Chief Disciplinary Counsel

By: 

Sharon K. Weedin #30526
Staff Counsel
3327 American Avenue
Jefferson City, MO 65109
(573) 635-7400 – Phone
(573) 635-2240 – Fax
Sharon.Weedin@courts.mo.gov

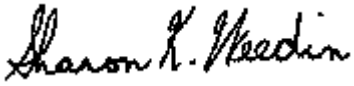
ATTORNEYS FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 2017, a true and correct copy of the foregoing was served via the Missouri Supreme Court e-filing system to:

James C. Robinson
P.O. Box 771812
St. Louis, MO 63177-1812

Respondent



Sharon K. Weedin

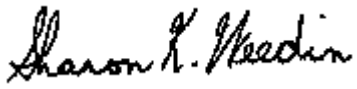
CERTIFICATION: RULE 84.06(c)

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 3,873 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



Sharon K. Weedin