IN THE SUPREME COURT
STATE OF MISSOURI

IN RE	)	
	)	
ELBERT A WALTON JR,	)	**Supreme Court No. SC95850**
	)	
Respondent.	)	
	)	
	)	

AMENDED
BRIEF OF RESPONDENT

Respectfully submitted,
WALTON LAW FIRM, LLC
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Jurisdictional Statement

Jurisdiction over attorney discipline matters is established by Mo. Const. Art V, §5, Rule 5, this Court's common law, and §484.040, RSMo (2000).

Introduction and Objection to Documents Offered Into Evidence

This is an original proceeding upon an Information filed in the Supreme Court by the Informant. Therefore the Information must be supported by substantial and competent evidence in the record on the whole. The Respondent does not stipulate to or admit and moreover specifically denies any statements or allegations of facts set forth in the Informant's Brief. Respondent incorporates by reference his Response and specific denial of allegations of facts asserted in the Information filed in this case.

Respondent specifically objects to, denies and disputes any interpretation, impression or reference to any and 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, filed to establish a fact in pursuance to Rule 5.20 for Reciprocal Discipline.

Respondent asserts that a fact may only be established in compliance

with the rules of evidence. Respondent objects to facts asserted by the Informant in his brief in that said facts have not been supported by citation to a certified transcript or certified official document filed with this court. Respondent objects to admission before this court of any and all documents offered in evidence by the Informant, in violation of the rules of evidence.

More specifically, Respondent objects to admission into evidence of the documents offered by the Informant, as exhibits to the Information and in the Appendix to the Informant's Brief, on the grounds that the Informant has failed to lay a proper foundation for admission of said documents into evidence, said documents contain inadmissible hearsay; informant has failed to show the court that any of said documents come within any exception to the hearsay rule. Respondent objects to admission of any out of court testimony by affidavit in that the Respondent has the right to cross examine witnesses and thus only sworn testimony before a court reporter should be admissible in evidence before the court. Respondent also objects that any and all affidavits offered were not shown or alleged to have been made on personal knowledge, and did not show affirmatively that the affiant is competent to testify to the matters stated therein. Moreover, one or more of the affidavits were unsworn. Documents offered into evidence have not been authenticated. Copies of documents were not certified. Informant

submitted no proof that the copies of the documents offered into evidence are true and accurate representations of the originals. Respondent objects to admission of any unauthenticated business records and uncertified official records or documents, including orders and judgments of courts and specifically the bankruptcy court, on the grounds of hearsay as the Informant has failed to demonstrate that any such documents have been offered to the court under any of the exceptions to admission of such hearsay documents under the rules of evidence.

Statement of Facts

Elbert A Walton Jr is an attorney duly to license to practice law in the State of Missouri by the Missouri Supreme Court. He was admitted to practice in 1974. In addition, Walton has been admitted to practice before the US District Court for the Eastern District of Missouri, the US District Court for the Western District of Missouri, the Eighth Circuit Court of Appeals, and the U.S Supreme Court. Walton remains in good standing in each of these jurisdictions.

Admission to practice before the US District Court for the Eastern District of Missouri includes automatic admission to practice before the US Bankruptcy Court of the Eastern District of Missouri, which is a subordinate "court of limited jurisdiction," under the US District Court. Said

Bankruptcy Judges are akin to Commissioners in State Courts.

An Order and Judgment of a US Bankruptcy Judge, sanctioning Respondent for failure of his client, James Robinson, to comply with discovery requests, that included, striking Robinson's pleadings, assessing a fine, and suspending the Respondent from practicing before the US Bankruptcy Court, for the Eastern District of Missouri, for one year, was appealed to the US District Court for the Eastern District of Missouri. The US District Court affirmed the Order and Judgment of the Bankruptcy Court, *In Re Steward,* 529 B.R. 903 (E.D Mo, 2015) (Inf. App. 138) An appeal of the decision of the U.S District Court was taken to the U.S Court of Appeals, Eighth Circuit, which affirmed the decision of the U.S. District Court. *In Re Steward,* 828 F. 3d 672 (8th Cir. 2016) (Inf. App. 157). All of the sanctions have been satisfied.

As Walton's license to practice in the US District Court, and automatically to also practice in the US Bankruptcy Court, was issued by the US District Court, and not the US Bankruptcy Court, the Bankruptcy Judge suggested to the US District Court that Walton be disciplined, by the US District Court, based on the allegations made by the Bankruptcy Judge in the *Steward* case and the Judgment and Order issued by said Bankruptcy Judge in said case. The US District Court declined to issue any reciprocal

discipline against Walton, based on said Judgment and Order of said Bankruptcy court. Instead, the US District Court determined that any discipline that may be warranted against Walton should first be determined by the Missouri Supreme Court; and if any such discipline is so issued by the Missouri Supreme Court, then the US District court could determine thereafter if any reciprocal discipline should be issued against Respondent. The US District Court thus stayed any action on the Bankruptcy Court's referral pending any decisions and orders of the Missouri Supreme Court. (Inf. App. 172)

Informant cited the court to Respondent's disciplinary history as though that is relevant to a finding of guilt, which it is not.

In the case at bar, the Office of Chief Disciplinary Counsel failed to conduct an independent investigation of any allegations against Respondent, and no Bar panel was presented any competent evidence of any ethical violations by Respondent prior to the filing of an Information by Informant in the Missouri Supreme Court.

This case was filed as information seeking reciprocal discipline in accordance with procedures set forth in Rule 5.20. The rule provides for an expedited proceeding, without a hearing, after a Respondent has been adjudged guilty of professional misconduct by another competent

jurisdiction to which Respondent has been admitted to practice law.

Points Relied On – Point I

THE RESPONDENT IS NOT SUBJECT TO RECIPROCAL DISCIPLNE BY THE MISSOURI SUPREME COURT IN THAT RESPONDENT HAS NOT BEEN ADJUDGED GUILITY OF PROFESSIONAL MISCONDUCT AND DISCIPLINED BY A SISTER JURISDICTION OR COURT WHICH HAD ADMITTED HIM TO PRACTICE LAW

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Argument – Point I

THE RESPONDENT IS NOT SUBJECT TO RECIPROCAL DISCIPLNE BY THE MISSOURI SUPREME COURT IN THAT RESPONDENT HAS NOT BEEN ADJUDGED GUILITY OF

PROFESSIONAL MISCONDUCT AND DISCIPLINED BY A SISTER JURISDICTION OR COURT WHICH HAD ADMITTED HIM TO PRACTICE LAW

This case was filed as an Information seeking reciprocal discipline in accordance with the grounds and procedures set forth in Rule 5.20. That rule provides for an expedited procedure for disciplining lawyers "*adjudged guilty of professional misconduct in another jurisdiction*."

A reciprocal discipline case filed under Rule 5.20 for disciplining counsel seeks discipline against a Missouri-licensed attorney where the attorney has been "*adjudged guilty of professional misconduct in another jurisdiction*". The basis for reciprocal discipline under that Rule is the adjudication, in another or sister jurisdiction, in which the Missouri licensed attorney was also licensed to practice law, that the Missouri licensed attorney violated that sister jurisdiction's rules of professional conduct in a disciplinary proceeding and was found guilty of professional misconduct. (See Rule 5.20 also *In Re Lawrence Joseph Hess*, Mo. SC92923, p. 4, of the Informant in that case's Reply Brief).

As relevant to the case at bar, Respondent was admitted to practice law by both the Missouri Supreme Court and the US District Court for the Eastern District of Missouri -- two separate and distinct attorney licensing

jurisdictions. His admission to practice in the US District Court automatically includes practice before Bankruptcy Judges who are subordinate judicial officers in the District, akin to Court Commissioners in state court. At no time has the US District Court for the Eastern District of Missouri adjudicated or ruled, in a disciplinary proceeding, that Respondent violated the US District Court's rules of professional conduct, and was thus adjudicated guilty of professional misconduct and disciplined accordingly. The Informant brings this case as a reciprocal disciplinary case, based on the issuance of sanctions against the Respondent by a single US Bankruptcy Judge, a judicial office that is akin to a state Court Commissioner, for his client's non compliance with discovery request.

That Bankruptcy Judge had no power to discipline the Respondent for professional misconduct, and did not discipline the Respondent for professional misconduct. Instead, he referred the question as to whether or not the Respondent should be disciplined for professional misconduct to the US District Court, which was the jurisdiction that licensed the Respondent to practice in the US District and Bankruptcy Courts for the Eastern District of Missouri. (Inf. App. 172) Clearly then, since even the Bankruptcy Judge, who issued the orders and judgment which is alleged to be the disciplinary order and judgment that subjects the Respondent to reciprocal discipline,

concluded that his order and judgment did not rise to the level of discipline for professional misconduct, but was merely sanctions for alleged violations of discovery orders, certainly, then that Bankruptcy Judge's order and judgment cannot serve as the foundation upon which this Honorable Supreme Court can issue an Order of reciprocal discipline.

In the case of *In Re Noel F. Bisges*, Mo. SC95332 (Oct. 18, 2016), Informant brought an action for reciprocal discipline under Rule 5.20. *In Bisges*, the United States District Court for the Western District of Missouri, in a disciplinary proceeding, adjudged Bisges guilty of professional misconduct. Bisges's prior disciplinary history, in the District court, consisted of two (2) admonitions.

In a memorandum opinion dated April 23, 2013, a U.S. Bankruptcy Judge sanctioned Bisges and ordered him to disgorge fees as a result of his conduct in representing the debtor. Respondent Bisges appealed the bankruptcy court's decision to the U.S. District Court for the Western District of Missouri. On August 13, 2013, a District Judge issued a memorandum and order affirming the bankruptcy court's decision. Respondent *Bisges* appealed the district court decision to the Eighth Circuit Court of Appeals. That court also affirmed the district court in a decision that was filed on October 21, 2014. On February 3, 2015, the chief judge of

the U.S District Court for the Western District issued to Respondent an Order to Show Cause why he should not be disciplined for professional misconduct in advising his client to mislead and lie to the bankruptcy court. Respondent filed a response explaining his actions, apologizing for them, and presented mitigating information. The three-judge panel appointed to consider the matter recommended that Respondent be publicly censured. On August 5, 2015, the district court issued an order of public censure against Respondent. Following such order of public censure, *Bisges*, was brought before the Missouri Supreme Court for reciprocal discipline based on the U.S District Court's disciplinary order of public censure for professional misconduct, and, accordingly, the Missouri Supreme Court issued a reciprocal order of public censure or a reprimand.

Both the procedural and substantive history of *Bisges* is not analogous to the facts in Respondent's (Walton) case, as alleged in the Information and Brief by Informant. Walton has never been in a disciplinary proceeding and adjudged guilty by the US District Court of the Eastern District of Missouri. The issuance of sanctions, against Walton by a single US Bankruptcy Court Judge, a position that is analogous to a State Court Commissioner, for his client's alleged violations of discovery orders, is not discipline for professional misconduct by another attorney licensing jurisdiction.

Therefore, absent a disciplinary proceeding, for professional misconduct, being brought against Respondent, by a sister jurisdiction, this Honorable Court should dismiss the Informant's Information for failure to state a claim upon which relief may be granted in that this is not a case in which the Respondent has been previously adjudicated guilty of professional misconduct by a sister jurisdiction or attorney licensing court before which he has also been admitted to practice law.

CASE AT BAR DOES NOT COME WITHIN STATUTORY GROUNDS FOR CONCLUSIVE DISCIPLINARY ACTION

Informant in this case cites three cases for an alleged similar posture to the Information brought against Respondent, which are not. As noted above, *In Re Noel F. Bisges*, Mo. SC95332 (Oct. 18, 2016), *Bisges* was adjudged guilty in a disciplinary proceeding by the US District Court that had admitted him to practice law and not simply sanctioned by a Bankruptcy Judge for his actions. *In re McCrary*, SC95746 (Oct. 5, 2016) *McCrary*, failed to respond to a disciplinary proceeding; and thus was disciplined by default. *In re Meriwether*, SC95448 (March 1, 2016), *Meriwether* did not challenge that he was subject to reciprocal discipline under Rule 5.20, and thus waived that defense.

Rule 5.20 clearly states:

> *"Upon 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 has never been adjudged guilty of professional misconduct in a disciplinary proceeding by an attorney licensing or admitting court in any sister jurisdiction in which he has been admitted to practice law. Being sanctioned for one's client's violation of orders compelling discovery by a single commissioner type judge, in a single case, is not being adjudicated guilty of professional misconduct in a disciplinary proceeding by a sister court or jurisdiction which had admitted Respondent to practice law. To proceed with a reciprocal action against Respondent, without Respondent being adjudged guilty in a disciplinary proceeding, is beyond the jurisdiction of the court under Rule 5.20. Moreover, it is a denial of Respondents right to a full hearing to ensure under Missouri and the United States Constitution that Due Process has been met.

SUPREME COURT REVIEWS EVIDENCE DE NOVO FOR NON –

CONCLUSIVE DISCIPLINARY ACTIONS

Missouri is a show cause state for non-conclusive disciplinary actions not found in §484.040, RSMo (2000). (See *Matter of Westfall*, 80 S.W.2d 829 (Mo Banc 1991) "This Court reviews the evidence de novo, determines independently the credibility, weight and value of the testimony of the witnesses, and draws its own conclusions of law" cited in *In Re Waldron* 790 S.W.2d 456, 457 (Mo. Banc 1990).

In *Westfall*, he was charged with violation of Rules of Professional Conduct. The Judge made findings and recommended that Westfall be suspended from the practice of law for one year. In a disciplinary proceeding, the Master's findings, conclusions and recommendations where made which where advisory. "… In that Missouri makes its own independent judgment as to the fitness of the members of it's Bar". (See *In Re Weiner*, 530 S. W. 2d 222 (Mo. Banc 1975)).

In Re Weiner, 530 S. W. 2d 222 (Mo. Banc 1975), this case presents the question of what procedural safeguards should Missouri employ in disciplining a member of its own Bar. Disciplinary proceedings are based on (then) Rule 5.19 (now Rule 5.20) which provides, in substance, "that where a Missouri attorney has been **adjudicated guilty** of professional misconduct in another jurisdiction, an order shall be served to show cause

why said adjudication should not be conclusive of said misconduct for the purpose of discipline by this Court". (See *In Re Weiner*, 530 S. W. 2d 222 (Mo. Banc 1975). "There may be cases in the future where, recognizing the finality of the foreign adjudication, we may not see fit to give it effect in Missouri . . ." *In re Veach*, 287 S.W.2d 753, 759 (Banc 1956), cited in *In Re Weiner*.

BANKRUPTCY COURT DECISIONS ARE NOT CONCLUSIVE FOR DISCIPLINARY ACTION IN MISSOURI IN THAT MISSOURI IS STILL FREE TO MAKE ITS OWN DETERMINATION OF GUILT

In the Matter of *In Re Coe* 903, S.W.2d 916 (Mo Banc 1975), *Coe* was charged with contempt by a federal court. The U.S. District Court for Western District of Missouri charged Coe with contempt of court four times and ordered her into custody. This matter was not conclusive and an Advisory Hearing was held. The Master's findings and conclusions, and recommendations were held advisory. "…this Court examines the evidence and determines the facts". (See also *In Re Harris*, 890 S.W.2d 299, 299 (Mo Banc 1994).

In the case at bar this matter is not conclusive by law, and thus Respondent moves this Honorable Court to dismiss the Information for failure to state a claim upon which relief may be granted. If the Informant

was of the opinion that the facts in the Bankruptcy Court case rose to the level of warranting disciplinary action against the Respondent for professional misconduct, the Informant should have proceeded to refer the matter to an Advisory Hearing Panel, as in *In Re Coe*,

> …. *In order, properly to resolve this issue, this Court and its agencies must, in every disciplinary proceeding whether based upon acts of misconduct already adjudicated in another state or upon acts committed in this state, fully informs themselves concerning the nature of the misconduct and all the attendant circumstances. In doing this, all available sources which can be properly utilized should be considered, including all evidence properly offered in the Florida proceeding and the record of proceeding in the sister state*".
>
> (referencing, *Florida Bar v. Wilkes*, 179 So. 2d 193, 197 (Fla. 1965).

Respondent's case, is non- conclusive as *In Re Coe*, and an advisory hearing panel would consider the following factors:

> (1) Respondent has never been adjudicated guilty of professional misconduct,
>
> (2) removed, sanctioned, disciplined or suspended from practice before the U.S. District Court of the Eastern District of Missouri, where Respondent is in good standing, and has filed cases

in the Eastern District subsequent to the sanctions being issued against the Respondent by the Bankruptcy Judge (in fact, one of the cases filed by Respondent in the Eastern District, in 2016, was transferred to the Western District of Missouri, and accordingly the Respondent has recently been admitted to practice before the U.S. District Court for the Western District of Missouri, pro hac vice, and may practice in the Bankruptcy Courts of that District, notwithstanding the sanctions of the Bankruptcy Judge in the Eastern District),

(3) the one year suspension has run, and thus the claim in the Information is now moot,

(4) although the one year suspension has ended, Respondent has determined that he shall no longer practice in the Bankruptcy Court of the Eastern District of Missouri, or for that matter, Respondent is now 75 years of age and semi-retired,

(5) The alleged violations of professional conduct in the Information was not before any sister jurisdiction in any disciplinary proceedings which makes it subject to Rule 5.20,

(6) the monetary sanctions have been paid in full,

(7) being sanctioned by a Bankruptcy Judge (who is akin to a Court Commissioner) for alleged violations of discovery orders does

not preclude this Honorable Supreme Court from reviewing the allegations, de novo, and thus to render a decision from the preponderance of all creditable evidence,

(8) Respondent was not found guilty of professional misconduct by a sister jurisdiction,

(9) the Informant's documentary evidence in support of Informant's Information is inadmissible in evidence for the reasons set forth in the Introduction and Objections set forth in the brief, above, as well as in the separate objection to said documents filed contemporaneously with the Respondent's Brief,

(10) the Informant has failed to state a claim upon which relief may be granted and thus the court should dismiss the Information for lack of jurisdiction over the subject matter, and

(11) the Informant has failed to make a submissible case in that his case is unsupported by substantial admissible evidence on the whole record.

THE BANKRUPTCY COURT'S SANCTIONS AGAINST RESPONDENT FOR ALLEGED DISCOVERY ORDER VIOLATIONS, THOUGH AFFIRMED BY THE DISTRICT COURT AND COURT OF APPEALS, CAN NOT BE DEEMED CONCLUSIVE

IN A DISCIPLINARY ACTION, BEFORE THE MISSOURI SUPREME COURT, AGAINST RESPONDENT IN THAT THE PROCEEDING BEFORE THE BANKRUPTCY COURT WAS NOT A PROFESSIONAL MISCONDUCT DISCIPLINARY ACTION

The ethical violations alleged by the Informant were not adjudicated by the U.S. District Court when it considered the appeal of the Bankruptcy Court's Judgment and Order in that the U.S. District Court held:

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. (Inf App. 154)

As *In Re Coe*, Id, this issue should be properly addressed, de novo, by the Missouri Supreme Court. The Missouri Supreme Court is not compelled to deem a foreign judgment conclusive as to automatically impose discipline upon its own members of the Bar without a full blown evidentiary hearing and determination of the applicable ethical rules and law. The Missouri Supreme Court should make its own independent judgment as to the fitness of the members of the Missouri Bar. (See *In Re Weiner*, 530 S. W. 2d 222 (Mo. Banc 1975) stated *"…. the fact that a person is admitted or disbarred to or from the bar of one state does not compel any other state to admit or*

disbar that person to or from its own Bar". Moreover, the Respondent has not been disciplined, at all, by a sister jurisdiction.

TO PROPERLY ADDRESS ANY ETHICAL VIOLATIONS, IT MUST BE ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE IN A DISCIPLINARY PROCEEDING

To properly address any ethical violations, it must be established by a preponderance of the evidence. "Professional misconduct must be proven by a preponderance of the evidence before discipline will be imposed." *In Re Farris*, 472 S. W. 3d 549, 557 (Mo. Banc 2015).

The statement of facts by Informant, and the documents in the Informant's Appendix, offered no admissible evidence before the Supreme Court in this original proceeding. The Informant must offer evidence, admissible under the Rules of Evidence, in support of Informant's allegations against Respondent, and may not rest on documents and affidavits that do not meet the standards for admissibility under the rules of evidence. Both in Respondent's Introduction and Objection in this Brief, as well as in a separate motion, the Respondent has objected to the admission into evidence before the court of any and all of the documents and affidavits offered by the Informant in support of its Information and Brief. Unless and until the Informant properly brings an original proceeding before this

Honorable Supreme Court in strict compliance with the rules of evidence, the rules of procedure and the substantive law, the Information should be dismissed both for failure to state a claim upon which relief may be granted and for failure to make a submissible original case.

Informant now comes before this Court seeking to have the court admit into evidence incompetent affidavits, uncertified documents and hearsay all in violation of the rules of evidence. This, the court cannot do. No credit should be given by this court to any of the documentary evidence offered by the Informant both as an Exhibit to Informant's Information and in the Appendix to Informant's Brief. These are clearly substantial evidentiary matters that this Court should consider before any attempt to discipline Respondent for alleged professional misconduct.

Moreover, such evidence would be unnecessary if this was a case that warranted automatic discipline against Respondent under a theory of reciprocity. If this was a reciprocal disciplinary case, the only thing that would be necessary to present to this Honorable Supreme Court would be the Order and Judgment of the U.S. District Court disciplining the Respondent for professional misconduct. *No such Order and Judgment exists.* Thus, the Informant seeks not to have Respondent disciplined under any reciprocal theory, but rather under a theory that the evidence offered to

the Court warrants disciplinary action against the Respondent. If, so then the Informant must offer substantial credible evidence in support of Informant's Information admissible in evidence in support of Respondent's claims under the rules of evidence. Informant has failed to state a claim upon which relief may be granted, has failed to present sufficient admissible evidence in support of said claim, and thus the Information should be dismissed.

THE RULE OF RECIPROCITY DOES NOT REQUIRE THE MISSOURI SUPREME COURT TO DEEM CONCLUSIVE A FOREIGN JUDGMENT ON THE QUESTION OF ALLEGED ETHICAL VIOLATIONS.

There is a corollary to full Faith and Credit that might be called the Rule of Reciprocity. The Full Faith and Credit Clause of the United States Constitution (See U.S. Const. Art IV) requires that each state accord a judgment of another state as much respect and credit as it would receive in the rendering state. This rule of reciprocity namely, that our federal system does not require an enforcing state to give a judgment any more authority that it would receive in the rendering state. (See Restatement (second) if Conflict of Laws § 110 (1969) (noting that a judgment not on the merits will be recognized in other states only for issues actually decided). There was no

meritorious Judgment in this case.

In this original proceeding by Information, before the Supreme Court, no facts may be found, based on any introduction of evidence admissible under the rules of evidence, since no trial was ever held, no testimony taken, and the Respondent has neither admitted to or stipulated to any facts in this case, but rather has vigorously opposed and objected to the introduction into evidence in this original proceeding of evidence that is not admissible in evidence under the rules of evidence. To reiterate, no admissible facts, in this original proceeding, were ever established under the rules of evidence. The attempt by the Informant to establish any facts by unsworn affidavits, uncertified documents, documents that have no foundation for their introduction into evidence, hearsay, incompetent affidavits, cannot now conclusively establish facts which under Missouri law are unsupported by substantial and competent evidence. Unsubstantiated and incompetent evidence, cannot be given Full Faith and Credit by the Missouri Supreme Court to deem the Respondent guilty of ethical violations. That the Respondent may have been sanctioned for violation of discovery orders does not mean that Respondent was guilty of professional misconduct. That Respondent asserted both his and his client's rights under the rules and law and tested these issues by filing motions and seeking appellate review does

not warrant disciplinary action, and certainly not any reciprocal disciplinary action, when the sanctions were issued by a judicial officer akin to a court commissioner. *Chrysler Corp v Carey*, 186 F 3d at 1022

INFORMANT SEEKS TO RAISE FAILURE TO ABIDE BY AN ORDER MANDATING DISCOVERY TO BE AN ETHICAL VIOLATION; IT IS NOT.

See in *Chrysler Corp v Carey*, 186 F 3d at 1022

"*In this case, the district court found that the defendants repeatedly lied during the discovery process, denying the existence of conversations and documents which had in fact occurred and did exist.* ***This is far more egregious conduct than simple foot-dragging or even making unfounded challenges to discovery requests.*** *The defendants' flat denials that conversations had occurred and that documents existed precluded any follow-up discovery and thus denied Chrysler the ability to conduct effective discovery. And, as these statements were made under oath, they are a direct affront to the court.* "

In the case at bar, the Respondent simply did not produce documents that were ordered to be produced and litigated the issue on appeal.

STRIKING RESPONDENT'S DEFENSES AND CLAIMS UNDER FRCP 37 IS A PROCEDURAL MATTER, NOT AN ETHICAL

FAILURE, AND SHOULD NOT PRECLUDE RESPONDENT FROM BEING GRANTED A FULLBLOWN HEARING ON ANY ALLEGED ETHICAL VIOLATIONS UNDER THE RULES OF THE SUPREME COURT

The Respondent was sanctioned in the Bankruptcy Court, being fined and suspended from practicing before the bankruptcy court and unsuccessfully appealed that Judgment, , as noted in the cases cited by the Informant. Those sanctions were imposed pursuant to Rule FRCP 37 which is procedural under the civil rules, and is not a disciplinary proceeding in which a question of professional misconduct is litigated.

Conclusion

For all of the reasons discussed above, Respondent asserts that the Respondent has not been adjudged guilty of professional misconduct and disciplined by a sister jurisdiction or court which had admitted Respondent to practice law, and therefore is not subject to reciprocal discipline under Rule 5.20. The Informant has thus failed to state a claim upon which relief may be granted and has failed to present sufficient and substantial evidence that the Respondent is subject to reciprocal discipline under Rule 5.20.

Furthermore, the Respondent is not subject to discipline under Rule 5.19 in that no evidentiary hearing has been held by an Advisory Panel, no

claim against Respondent has asserted by Informant under Rule 5.19, nor was any evidence admissible under the rules of evidence been offered and received by the Court in support of any claim under Rule 5.19.

Therefore, this Honorable Supreme Court should dismiss the Information for failure to state a claim for relief under Rule 5.20 and failure to submit sufficient evidence, admissible under the rules of evidence, in support of a claim under Rule 5.20, nor in compliance with Rule.5.19.

Certification Under Rule 84.06(c)

This is the certify that the foregoing brief complies with the limitations contained in Rule 84.06(b); and that the number of words in the brief total 5,425 that the PDF file has been scanned and has been found to be free of any viruses and spy ware, and that the brief was prepared using Microsoft Word, word processing software.

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CERTIFICATE OF SERVICE: By signature below, I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, and that a copy will be served by the CM/ECF system upon those parties indicated by the CM/ECF system.

BY: