

IN THE SUPREME COURT OF MISSOURI  
AT JEFFERSON CITY

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IN RE: Jonathan D. McDowell  
#SC96699

From the Disciplinary Hearing Panel

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RESPONDENT'S BRIEF

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/s/ Jonathan D. McDowell  
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## ARGUMENT

**I. THE DISCIPLINARY HEARING PANEL ERRED IN FINDING RESPONDENT VIOLATED MISSOURI RULE OF PROFESSIONAL CONDUCT 4-1.1 BECAUSE RESPONDENT USED LEGAL KNOWLEDGE AND SKILL IN THAT RESPONDENT FILED A MISSOURI CLAIM WITH A FEDERAL CLAIM IN FEDERAL COURT PURSUANT TO STATUTORY LAW AND ARGUED THE REVIVAL OF EXPIRED CLAIMS PURSUANT TO FEDERAL CASELAW.**

Rule 4-1.1 states: “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

Informant will attempt to prove that McDowell violated Rule 4-1.1 because he filed Missouri Human Rights Act (“MHRA”) claims and Title VII claims in federal court instead of filing these claims in Missouri State Court.

Comment [1] of Rule 4-1.3 states a lawyer is not bound to press for every advantage that might be realized for a client and that a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. Additionally, comment [3] states a lawyer’s duty to act with reasonable promptness does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer’s client. Rule 4-1.3, comment [3].

The Panel erred by finding McDowell violated Rule 4-1.1 by filing a lawsuit in Federal Court instead of Missouri State Court. In lieu of drafting a treatise on the interplay of federal and state claims pursuant to 28 U.S.C. § 1331, stated simply, filing employment claims in Federal Court instead of Missouri State court does not violate the Rules of Professional Conduct. Mr. Almoghrabi had state claims against GoJet Airlines,

LLC (“GoJet”), and International Brotherhood of Teamsters Local 618 (“Teamsters”). Mr. Almoghrabi also had federal claims against GoJet and the Teamsters. If McDowell had filed all claims in state court, Defendants could have removed all of the claims to federal court based on original federal jurisdiction. However, the state claims can be filed and heard in federal court through supplemental jurisdiction. If McDowell would have filed only the state claims in Missouri State Court, Mr. Almoghrabi would never have been able to pursue the federal claims. McDowell filed all state claims and federal claims in federal court to ensure Mr. Almoghrabi could pursue both the Title VII (federal) claims and the MHRA (state) claims. There are no set of facts or bodies of law that prove the McDowell violated Rule 4-1.1 for filing a MHRA claim in federal court. This Court should determine that McDowell did not violate Rule 4-1.1 for filing both state and federal claims in Federal Court.

The Panel also erred by finding McDowell violated Rule 4-1.1 by filing a Missouri Human Rights Act claim beyond the 90-Day filing deadline when filing timely with a Federal claim. McDowell relied on Federal case law analyzed in a Missouri Appellate decision that allowed a plaintiff to file a lawsuit based on the most recent Right-to-Sue letters although previous RTS letters had expired. Hammond v. Municipal Correction Institute, 117 S.W.3d 130, 135 (Mo. Ct. App. 2003).

The Missouri Court of Appeals analyzed Brown v. Continental Can Co., 765 F.2d 810 (9th Cir. 1985) in Hammond. The Court of Appeals relayed the facts of that case in which a plaintiff received more than one RTS letter. Hammond, 117 S.W.3d at 134. The plaintiff filed timely based on the last RTS letter received, but after the first RTS expired.

Brown, 765 F.2d at 812. The Ninth Circuit determined the timely filed claim would be allowed so long as the claims were related. Id. at 813.

McDowell analogized that his client's claims were related and the most recent RTS letter would be used as the filing deadline instead of the earlier expired RTS letters. This was not a novel argument or an attempt to create new precedent but a good-faith reliance on federal case law with similar facts. Simply because the court ruled against his argument does not mean that McDowell violated the Professional Rules of Conduct in acting pursuant to federal case law.

The Panel erred in determining McDowell violated Rule 4-1.1 by filing a Missouri claim in federal court along with federal claims based on federal case law. Although McDowell's arguments were not taken by the federal court, his actions do not rise to the level of Professional Misconduct. This Court should disregard the Panel's decision and dismiss the Information.

**II. THE DISCIPLINARY HEARING PANEL ERRED IN FINDING RESPONDENT VIOLATED MISSOURI RULE OF PROFESSIONAL CONDUCT 4-1.3 BECAUSE THE PANEL IGNORED THE EVIDENCE OF RECORD IN THAT RESPONDENT ARGUED THE REVIVAL OF EXPIRED CLAIMS PURSUANT TO FEDERAL CASELAW, TIMELY FILED THE CLIENTS CLAIM IN FEDERAL COURT, AND TIMELY FILED OBJECTIONS AND DISCOVERY RESPONSES; NONE OF WHICH RISES TO THE LEVEL OF VIOLATION OF PROFESSIONAL RULES OF CONDUCT.**

Rule 4-1.3 states: "A lawyer shall act with reasonable diligence and promptness in representing a client."

The Panel erred in determining McDowell violated Rule 4-1.3 by not filing a state claim in federal court within the state time period, in that he was not admitted in the

Federal District Court of the Eastern District of Missouri (“EDMO”) in time to protect his client’s interests, did not respond to GoJet’s discovery timely, and did not have a dismissed claim “reinstated.”

Informant will not be able to prove McDowell violated Rule 4-1.3 because of filing a MHRA claim in federal court within 90 days of the state claim. McDowell brought all claims against the two parties in federal court. McDowell relied on good case law from the Ninth Circuit Court of Appeals which provides that a claim can be filed pursuant to an expired RTS letter when the claims in pursuant to a later RTS letter are timely filed. Brown 765 F.2d at 813. This is clearly set forth in McDowell’s response to defendant’s motion to dismiss the MHRA claim. The state and federal claims are nearly identical and related. The district court ignored McDowell’s argument in dismissing the MHRA claim. Additionally, McDowell filed the federal claims in federal court timely and those claims were pursued by Mr. Almoghrabi.

The Panel incorrectly found that McDowell’s delay in obtaining admission to the EDMO failed to protect his client’s interest.

The Panel does not rely on any of the evidence taken at the hearing nor does it explain how McDowell’s delayed admission to the EDMO violated Rule 4-1.3. The Panel simply says the rule was violated. The evidence shows that the federal lawsuit was timely filed in spite of McDowell’s admission and Almoghrabi’s case was preserved up to and through McDowell’s admission. Even by Almoghrabi’s own admission, McDowell did not miss deadlines in his case. Although not best practices, McDowell’s delay in being admitted to federal court does not violate the rule on diligence and promptness.

McDowell, upon his admittance, filed the necessary pleadings to move the case forward without missing deadlines.

The complaint was considered to be filed timely. McDowell's admission in federal court did not delay any filing. To become admitted, McDowell was required to have two other attorneys submit a character reference as well as receive certificates of good standing from the 8th Circuit Court of Appeals, the Eastern and Western District Courts of Arkansas, the Western District of Missouri, the District of Kansas, and the Missouri Supreme Court. Compiling these documents took time and effort that caused some of the difference in time from filing to formal appearance.

McDowell was not admitted until after the complaint was filed. Once admitted, McDowell entered his appearance and continued to pursue Mr. Almoghrabi's claims in federal court. Even by Mr. Almoghrabi's own admission, McDowell did not miss a single deadline in the case. From the time that the Complaint was filed, to the time McDowell entered his appearance; there was not one instance in which the client's interests were forfeited.

The Panel also failed to rely on any evidence or explain how McDowell violated Rule 4-1.3 in responding to GoJet's discovery. Again the Panel simply says McDowell violated it.

The evidence presented at the hearing shows inexplicably that McDowell filed responses and objections to GoJet's discovery in a timely manner. Had McDowell's objections not been served timely, the court would never have sustained some of his McDowell's objections. If objections are not made timely, they are waived. The fact that



the court heard argument on the objections shows that the objections were timely. The evidence shows that GoJet undertook the common practice of filing a motion to compel discovery over McDowell's objections. The evidence also shows that McDowell produced responses to the discovery. Some of the objections that McDowell continued to assert were sustained and some were overruled at a motion's hearing. The partial award of attorney's fees was for GoJet's time spent in drafting the motion to compel not for McDowell's conduct. Determining a violation of the professional rules of conduct for objection to discovery requests or for awards of attorney's fees is a dangerous precedent to set in our age of vitriolic litigation.

Even if the Panel's slight brush at determining that McDowell violated Rule 4-1.3 could be supported by facts, the allegations do not rise to the level of Professional Misconduct. This Court should find that McDowell did not violate the Rules of Professional Conduct and recommend no discipline.

Once again, The Panel does a drive-by determination that McDowell violated the Rules of Professional Conduct because he did not attempt to reinstate an incorrectly dismissed claim during the trial proceedings. However, McDowell was planning on appealing to the 8th Circuit Court of Appeals as the trial court made other errors in the case. Upon appeal, all appealable errors would have been subject to appeal. Choosing to appeal over attempting reinstatement is a strategy that would serve the same purpose which is to have the lower court reversed on an appealable error. Furthermore, McDowell resigned nearly a year before Mr. Almoghrabi would have had a chance to appeal. Brown & James, P.C. appealed the case anyway, preserving all appealable errors.

Again, although not necessarily best practices, McDowell's actions do not rise to the level of Professional Misconduct. This Court should disregard the Panel's decision and dismiss the Information.

**III. THE DISCIPLINARY HEARING PANEL ERRED IN FINDING RESPONDENT VIOLATED MISSOURI RULE OF PROFESSIONAL CONDUCT 4-1.4 BECAUSE RESPONDENT KEPT HIS CLIENT INFORMED THROUGHOUT THE CASE IN THAT HIS CLIENT WAS TOLD THE STATUS OF THE FILING, WAS TOLD ABOUT THE DISMISSAL OF ONE OF THE CLAIMS, AND INFORMED HIS CLIENT HE WAS NO LONGER REPRESENTING HIM.**

Rule 4-1.4 states:

(a) A lawyer shall:

- (1) keep the client reasonably informed about the status of the matter;
- (2) promptly comply with reasonable requests for information; and
- (3) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

McDowell brought all claims against the two parties in federal court. As stated above, McDowell relied on good case law from the Ninth Circuit Court of Appeals that allows related employment claims be filed as timely as long as the most recent claims are filed timely. Because McDowell believed a court would follow controlling case law on the topic of timeliness, McDowell did not believe the MHRA claim to be untimely filed, and therefore would have not advised Mr. Almoghrabi that the statute of limitations was missed. The fact that the district court disregarded McDowell's argument in dismissing the MHRA claim merely provided an avenue of appeal. The MHRA claim was not

considered untimely filed under federal court precedent and was thus filed timely with the federal claims. McDowell did not fail to advise Mr. Almoghrabi.

McDowell did inform Mr. Almoghrabi that the state claims were dismissed. McDowell called Mr. Almoghrabi on the telephone to inform him of the dismissal because he did not want to email that information. McDowell informed him that the case could proceed with only the Title VII claims, and even prepared a new settlement offer that Mr. Almoghrabi reviewed. At that point, Mr. Almoghrabi and McDowell worked diligently to prepare answers and objections to GoJet and the Teamsters' discovery requests.

The Panel incorrectly determined that the trial court's dismissal of Mr. Almoghrabi's MHRA claim against GoJet was "very detrimental to the Client's chance of recovery." This is a subjective statement that cannot be proven. In fact, Mr. Almoghrabi had a state claim that was dismissed because Brown & James, P.C. could not prove a single instance of direct discrimination in their response to Defendants' motions for summary judgment. The MHRA claim against GoJet would have been dismissed at the same time and therefore, the chances of recovery were likely the same before and after dismissal.

The Panel ignores Almoghrabi's testimony by finding that McDowell did not communicate with Mr. Almoghrabi, the facts show that that value of Mr. Almoghrabi's case increased through the filing in federal court in spite of the MHRA claim. Mr. Almoghrabi testified that before any lawsuits were filed, GoJet offered him \$2,500.00 to settle the case because they thought his case was weak. Mr. Almoghrabi testified that

when the case was mediated after the cases were filed in federal court, and after McDowell left Brown & James, P.C., GoJet offered Mr. Almoghrabi \$20,000.00 to settle the case. At some point, the complainant advised Mr. Almoghrabi to decline that offer, presumably because she valued the case higher or expected a better outcome through trial. If Mr. Almoghrabi's chances of recovery were damaged by the MHRA claim against GoJet being dismissed 1) GoJet would not have offered 4 times as much as before, and 2) the complainant would have recommended that Mr. Almoghrabi take the \$20,000.00 offer. If the case were weakened, GoJet would not have offered more money to settle the claims.

The Panel also ignores the evidence by finding that McDowell failed to advise Mr. Almoghrabi that discovery responses were not timely served. Again, the facts McDowell responded to Defendants' discovery timely with objections. Because the responses and objections were timely filed, McDowell would not have advised Mr. Almoghrabi that responses were not. Had McDowell's objections not been served timely, the court would never have sustained some of his McDowell's objections. If objections are not made timely, they are waived. The fact that the court heard argument on the objections and sustained those objections shows that the objections were timely.

The motion to compel filed by GoJet's attorneys only seeks to have the federal court overrule McDowell's objections. The motion was granted in part and denied in part. The sole reason for awarding attorney's fees was because GoJet had already written the motion and the court awarded attorney's fees for time spent drafting the motion. Additionally, Mr. Almoghrabi was not sanctioned, but McDowell and Brown & James,

P.C. were assessed GoJet's attorney's fees. Again, McDowell would not have needed to advise Mr. Almoghrabi that McDowell was paying GoJet's attorney's fees.

Even if the Panel considered the facts, the allegations do not rise to the level of Professional Misconduct. This Court should find that McDowell did not violate the Rules of Professional Conduct and dismiss the Information.

The Panel also determined that McDowell did not inform Mr. Almoghrabi that he had left the firm. This is factually untrue. As the record shows McDowell resigned on a Friday and contacted Mr. Almoghrabi on the Tuesday after. As the record shows, McDowell emailed Mr. Almoghrabi and advised that he could stay with Brown & James, P.C. There was no lapse in representation as T. Michael Ward entered his appearance the day McDowell resigned from the firm. Ward also filed documents on Mr. Almoghrabi's behalf that very day. Brown & James, P.C. was listed in the signature block from January 2015 through March 2016. At no time was McDowell able to take his own cases. As an associate, the firm required McDowell get executive committee approval for Brown & James, P.C. to take the case on, including running a conflicts check. McDowell, as an employee of Brown & James, P.C. only represented clients as Brown & James, P.C. associate. Informant's claim is frivolous.

This Court should determine McDowell did not violate 4-1.4 and should dismiss the information.

**IV. THE DISCIPLINARY HEARING PANEL ERRED IN FINDING RESPONDENT VIOLATED MISSOURI RULE OF PROFESSIONAL CONDUCT 4-1.16(d) BECAUSE RESPONDENT COMPLIED WITH THE RULE IN THAT RESPONDENT CLIENT INFORMED HIS CLIENT OF HIS DEPARTURE FROM THE FIRM AND THAT HE**

**COULD STAY WITH THE FIRM THAT HAD HIS FILE AND HAD AGREED TO TAKE ON HIS CASE.**

Rule 4-1.16 (d) states:

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

The evidence does not show that McDowell abandoned his client. Mr. Almoghrabi was not abandoned. Even the attorneys for GoJet recognize that McDowell's representation of Mr. Almoghrabi while an attorney at Brown & James, P.C. constituted representation by Brown & James, P.C. and any attorney that represented him at Brown & James, P.C. resulted in merely a change in attorney. If the Panel's faulty logic is taken, it would mean that anytime an associate leaves a law firm, they abandon all of their clients unless that attorney contact each client and asks if that client wants to leave the firm and hire the attorney. Not only is this not required, the law firms would denominate this as client stealing.

If McDowell abandoned Mr. Almoghrabi, did he also abandon Wal-Mart, Gilster-Mary Lee, State Farm, IHOP, and Walgreens?

Furthermore, the testimony presented by Mr. Almoghrabi shows there was no lapse in time between the date McDowell left the firm and other Brown & James, P.C. attorneys entered and filed on Mr. Almoghrabi's case. In fact, a Brown & James, P.C. attorney filed documents on Mr. Almoghrabi's case the day after the date of McDowell's

resignation letter. Brown & James, P.C. was listed in the signature block from January 2015 through March 2016. At no time was McDowell able to take his own cases. As an associate, the firm required McDowell get executive committee approval for Brown & James, P.C. to take the case on, including running a conflicts check. McDowell, as an employee of Brown & James, P.C. only represented clients as Brown & James, P.C. associate.

The Panel incorrectly determined that Rule of Professional Conduct 4-1.16(d) was violated. This Court should disregard the Panel's decision and find that McDowell did not violate Professional Rule of Conduct 4-1.16(d).

**V. THE DISCIPLINARY HEARING PANEL ERRED IN FINDING RESPONDENT VIOLATED MISSOURI RULE OF PROFESSIONAL CONDUCT 4-3.3(a) BECAUSE RESPONDENT DID NOT INTENTIONALLY OR KNOWINGLY MAKE FALSE STATEMENTS TO A TRIBUNAL IN THAT RESPONDENT MADE THE ASSERTION THAT PRO SE PLAINTIFF USED THE ASSISTANCE OF COUNSEL WHEN FILING THE COMPLAINT, DID IN FACT NEED TIME TO REVIEW THE ARGUMENTS PRESENTED BY OPPOSING COUNSEL UPON ENTRY OF APPEARANCE, AND DID SIGN HIS OWN NAME AND INITIALS ON THE INITIAL FILINGS.**

It is factually incorrect to state that McDowell lied to the Federal District Court for the Eastern District of Missouri. The Information states that McDowell lied by stating, "Plaintiff was confused." The Panel relies on the fact that McDowell's argument states "Plaintiff was confused." However, whether or not Plaintiff was actually confused or not confused does not matter. McDowell never stated that "Plaintiff was confused."

Judge Audrey Flessig made a ruling on GoJet's Motion to Dismiss without argument. GoJet filed a Motion to Dismiss and McDowell filed Suggestions in

Opposition to GoJet's Motion on behalf of Mr. Almoghrabi. The only statement that comes close to Informant's allegation that "Plaintiff was confused," in the response filed by McDowell was in explaining a case used to support Mr. Almoghrabi's position.

Plaintiffs in employment discrimination suits may get a Right-to-Sue ("RTS") letter from both the Equal Employment Opportunity Commission and the Missouri Commission on Human Rights for each defendant in the case. If the Plaintiff is charging multiple entities with discrimination, the Plaintiff will get two RTS letters per defendant. Each RTS letter states that the Plaintiff has 90 days from the date of the letter to file a lawsuit in state or federal court. In describing that, McDowell stated, "it is easy to see how a Plaintiff *could* get confused" as when to file. Ultimately, that point did not matter in the Suggestions in Opposition because McDowell used other case law to substantiate Plaintiff's position, which was that Mr. Almoghrabi had assistance of counsel and state claims can be filed after the date on the MCHR letter if they file in federal court pursuant to the EEOC letter, which was exactly what happened in Mr. Almoghrabi's case.

Furthermore, Mr. Almoghrabi testified that McDowell's practice was to submit all filings to Mr. Almoghrabi for him to approve. If Mr. Almoghrabi approved the wording of the pleading, then McDowell's statements of Mr. Almoghrabi's mental state could not be dishonest. McDowell did not lie to the court explicitly or by omission.

In McDowell's request for additional time to review the case, he was going to have to prepare a response to an argument he had not seen in employment cases. McDowell did need to review the case to determine how to handle that motion to dismiss and what law could be used to counter the argument.



The testimony by both Almoghrabi and McDowell corroborate that McDowell signed his initials on the original filing sheet and his name on the attorney block of the cover sheet. The Panel states that the signatures did not look like McDowell's (Tr. 1290). The Panel had five different signatures of McDowell's. Not one looked like the other signature. But for some reason, the Panel determined McDowell tried to make his signature look like someone else's. The Panel never makes a determination of who's signature it's supposed to look like either. Either none of the signatures that look alike are McDowell's or all of them are his. Even the first line of the Complaint says McDowell's name. There would be no reason to sign as anyone else. He was not concealing the fact he was on the case.

Informant did not prove beyond a preponderance of the evidence that McDowell lied to the court, especially with the document Informant has in its own file that shows McDowell did not assert what Informant alleges. Because McDowell did not lie to the court, this panel should recommend that McDowell did not violate Rule of Professional Conduct 4-3.3(a) and that McDowell should not be disciplined. This Court should rule that McDowell did not violate the Professional Rules of Conduct.

**VI. THE DISCIPLINARY HEARING PANEL ERRED IN ALLOWING ALMOGRHABI AND VAPOREAN TO TESTIFY BECAUSE BOTH INTERFERED WITH THE ADMINISTRATION OF JUSTICE IN THAT VAPOREAN INSTRUCTION ALMOGHRABI TO DISREGARD AND INGORE A SUBPOENA AND ALMOGRHABI DID DISREGARD AND IGNORE THE SUBPOEAN**

Respondent timely served a Subpoena Duces Tecum and Notice of Deposition on Alaa Almoghrabi on March 21, 2017, pursuant to a deposition. Tr. 1139. Attached to the

subpoena was a notice and listing of documents the deponent is required to bring to the deposition. On March 30, 2017, Respondent and Mr. Almoghrabi attended the deposition. Mr. Almoghrabi did not bring any of the documents as commanded by the subpoena duces tecum. Tr. 1145. Mr. Almoghrabi did not object to producing the documents in advance of the deposition and did not notify Respondent he was not bringing the documents. Nancy Ripperger, Staff Counsel for the Office of Chief Disciplinary Counsel (“OCDC”) stated off the record during the deposition that before the deposition she knew that Mr. Almoghrabi planned on not bringing the documents. Tr. 1146. Mr. Almoghrabi testified under oath that Christine Vaporean advised him to not bring the documents. Tr. 1148-49. Mr. Almoghrabi testified that he and Vaporean are not in an attorney-client relationship. However, he testified under oath that the two spoke before the deposition and she advised him not to bring the documents.

Missouri Supreme Court Rule 57.09(f) states: “Any person who without adequate excuse **fails to obey a subpoena** served upon the person may be held in contempt of the court in which the civil action is pending.” As the Missouri Supreme Court stated, “The disobedience of a lawful order of a court is such an interference with the **administration of justice** as to constitute a contempt” (emphasis added). Twenty-First Judicial Circuit, Bar Committee v. Fahey, 583 S.W.2d 171, 172 (Mo. Banc 1979).

#### **A. Alaa Almoghrabi should have been held in Contempt and Sanctioned**

There is no question that Mr. Almoghrabi failed to obey a subpoena. He testified under oath at his deposition that Vaporean spoke to him on March 30, 2017, the day before his deposition. He testified under oath that Vaporean told him that he did not need

to comply with a lawful order of the Court and that he did not need to bring the documents. He testified that Vaporean did not inform him of the requirements of complying with subpoenas under Rule 57.09. Mr. Almoghrabi also testified that Vaporean does not represent him in an attorney-client relationship. It is clear that both Mr. Almoghrabi and Vaporean have interfered with the administration of justice and should be held in contempt and sanctioned. Mr. Almoghrabi should be held in contempt and fined \$200.00.

### **B. Christine Vaporean should have been held in Contempt and Sanctioned**

It is egregious that Vaporean, an attorney, advised a lay person to ignore this Court's order. This Court holds lawyers to a higher standard specifically on complying with subpoenas. In Twenty-First Judicial Circuit, Bar Committee v. Fahey, an attorney was commanded to appear pursuant to a subpoena and failed to do so. Id. at 172. In ruling that the attorney be held in contempt and fined, this Court stated:

West, as a lawyer, must know this well established rule. His failure to obey our subpoena was highly improper, even more so because he is an officer of this court in his capacity as lawyer. The obligation upon a lawyer to respect the process of the court is certainly greater than that of a layman. **Even a layman is under the strongest public duty**, whenever he is properly summoned, to aid as a witness in the administration of justice. Blair v. United States, 250 U.S. 273, 39 S.Ct. 468, 63 L.Ed. 979. Furthermore, **West violated his professional obligation of fairness to this court.** Id. at 71 (emphasis added).

Id. at 173. Vaporean knew the rules that Almoghrabi would need to comply with in order to refrain from producing the documents. In fact, she complied with the rules in regards to a subpoena duces tecum that was directed to her. And she complied with the rule for herself before she deceived Mr. Almoghrabi by telling him he did not need to bring the

documents. Not only did she violate her “professional obligation of fairness to this [C]ourt,” she violated the Missouri Rules of Professional Conduct.

It is egregious that an attorney would advise a client to disobey a court order. It is even more egregious that an attorney would advise an **unrepresented** layman to disobey this Court’s order. Rule 4-4.3: Dealing With Unrepresented Person states:

When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer’s role in the matter, the **lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel**, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client (emphasis added).

Vaporean deceptively advised Mr. Almoghrabi to disobey this Court’s order when she knew the requirements and how to object to the subpoena duces tecum. In doing so, she violated the Rules of Professional Conduct. Not only that, but she committed the crime of Witness Tampering. Section 270 of Chapter 575, Revised Statutes of Missouri (“RSMo”), **Offenses Against the Administration of Justice** states, in pertinent part:

A person commits the offense of tampering with a witness or victim if:

- (1) With the purpose to induce a witness or a prospective witness to **disobey a subpoena** or other legal process, absent himself or herself, avoid subpoena or other legal process, **withhold evidence**, information, or **documents**, or testify falsely, he or she:
  - (a) Threatens or causes harm to any person or property; or
  - (b) Uses force, threats or **deception** (emphasis added).

Vaporean did not tell Mr. Almoghrabi the truth when she told him that he did not need to obey the subpoena duces tecum. She knew he was required to bring the documents. She even knew how to object to bringing the commanded documents. But she deceived him into refusing to produce the documents. She committed the crime of witness tampering.

Because she committed a crime involving dishonesty, she engaged in Misconduct pursuant to the Rules of Professional Conduct.

Rule 4-8.4: Misconduct states, in pertinent part:

It is professional misconduct for a lawyer to:

- (b) **commit a criminal** act that reflects adversely on the **lawyer's honesty**, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in **conduct involving dishonesty**, fraud, **deceit**, or misrepresentation [...]; [or]
- (d) engage in conduct that is **prejudicial to the administration of justice**.

A lawyer could violate any **one** of the three above wrongdoings and it be considered Misconduct. In deceptively advising Mr. Almoghrabi to ignore this Court's order, Vaporean violated **ALL THREE** provisions of the Rule on Misconduct.

It is clear that Vaporean was the cause of Mr. Almoghrabi's failure to obey the subpoena. Vaporean should be held in contempt and sanctioned. She should be fined \$500.00 and committed to jail; Vaporean should have be prohibited from participating in the investigation and should have been restrained from testifying at the Disciplinary Panel Hearing. Vaporean should be required to pay for Mr. Almoghrabi's witness fees, Respondent's traveling expenses from Columbia, MO, to Olathe, KS, where the deposition was held, and half of the deposition costs; and this Court should file a formal complaint to the Office of Chief Disciplinary Counsel for her violations of the Rules of Professional Conduct. Additionally, this Court should strike Vaporean's testimony from the record.

**VII. THE DISCIPLINARY HEARING PANEL ERRED IN DETERMINING RESPONDENT SHOULD BE SUSPENDED FOR VIOLATING THE PROFESSIONAL RULES OF CONDUCT BECAUSE IT DID NOT CORRECTLY FOLLOW THE ABA STANDARDS OF DISCIPLINE IN**

**THAT MCDOWELL HAD NOT BE DISCIPLINED BY A COURT, INCORRECTLY FOUND ALMOGHRABI WAS A VULNERABLE VICTIM, AND MCDOWELL WAS NOT DECEPTIVE DURING THE DISCIPLINARY PROCESS**

The Panel determined an aggravating factor in determining discipline was McDowell's prior disciplinary history of his acceptance of an admonition from the OCDC. Tr. 1290. However, as footnoted by the Panel, McDowell has not had court imposed discipline. Tr. 1293. The Panel also determined that Almoghrabi was a vulnerable victim. A vulnerable victim is not someone that has lost their employment and is in financial distress. If this were the standard then many clients would be considered vulnerable. Under our State's law, the vulnerable person is someone who "lacks the mental capacity to consent" because of impaired intelligence or a psychiatric disorder. State v. Chandler, 429 S.W.3d 503, 506 (Mo. Ct. App. 2014). Almoghrabi was not a vulnerable victim. He was a 37 year old professional pilot with a bachelor's degree. Tr. 1152.

The allegations are that McDowell violated a duty to a client, not to the public, legal system, or the profession. Any alleged violation is of narrow scope;

1. McDowell did not intentionally or knowingly violate a duty to his client or any other entity or person;
2. McDowell's client was minimally injured, if at all, by the allegations in this matter. His client had representation through his case, there was heavy client communication between McDowell and his client throughout the entirety of the case, and all claims that could be brought were brought. In addition, all deadlines in federal court

were met. Brown & James, P. C. even filed an appeal on his behalf. Almoghrabi ever testified GoJet offered him \$20,000 to settle the case. Tr. 1159. Almoghrabi testified he would have been happy with that settlement.

3. The following mitigation factors should be considered:

a. McDowell did not act with a dishonest or selfish motive as Mr. Almoghrabi's case was the only case McDowell asked the Firm to take on upon his employment with the Firm so that Mr. Almoghrabi could have a reputable firm representing him on his case;

b. McDowell and his wife had two sets of twins (without fertility treatments). The first set was born in May of 2013 and the second set was born in August of 2014. This was a very big personal stress for both McDowell and his wife. McDowell and his wife did not have family to help and had to care for all four babies while trying to maintain and close down a practice.

c. McDowell was timely in all efforts to continue to protect his client's interests;

d. McDowell has given full and free disclosure to this disciplinary investigation and has been corporative with all OCDC staff and inquiries;

e. The allegations contained herein occurred when McDowell had only been practicing from 3 ½ years to 4 ½ years, and still considered a young attorney.

f. McDowell's character and reputation in the legal community was good. McDowell has taught the following CLE's for the Missouri Bar and the Kansas City Metropolitan Bar Association: "Advising and Representing Not-for-Profit

Corporations,” The Missouri Bar, September 17, 2014; “Hanging Out Your Shingle: How to Start and Build a Successful Law Practice,” The Missouri Bar, November 2013; “Stepping Up & Stepping Out: The New Lawyer Experience – Choice of Entity, Formation, and Liability Concerns,” The Missouri Bar, November 2013; “The Gold Standard: Backing Your Law Practice with the Golden Rule,” Evangel University, October 2013; “Setting Up & Marketing your Law Firm,” The Missouri Bar Solo and Small Firm Conference, June 2013; Practical Evidence for Civil Litigators: Real World Applications,” The Missouri Bar, May 2013 (Moderator); “Stepping Up & Stepping Out: The New Lawyer Experience – Choice of Entity, Formation, and Liability Concerns,” The Missouri Bar, November 2012; “Too Legit to Quit: Employment Litigation Before, During and After the Relationship Ends,” Kansas City Metropolitan Bar Association, May 2012; and “Practical Evidence for Civil Litigators: Real World Applications,” The Missouri Bar, May 2012 (Moderator).

g. McDowell has published the following article for the ABA: *What to Do When You’re Removed to Federal Court*. GPSolo eReport, American Bar Association, 2 no. 11 (June 2013). McDowell has also published the following book from the ABA: *From Law School to Lawyer*. American Bar Association, 2015. Both are vocational education for new or young attorneys and outline best practices for successful lawyering.

h. McDowell was a member or chair of the following organizations:

**American Bar Association (ABA):** Author; GP Solo Committee (Fmr. Co-Chair to the Business Opportunities and Commercial Law Committee) 2012-2013, GP Solo



Committee (Litigation Committee), Young Lawyers Division (Fmr. Vice-Chair to the Committee on Business Law) 2012-2013; **Missouri Bar Association**: Business Law Committee (Fmr. Co-Chair) 2011-2013, Solo and Small Firm Practice Committee (Solo and Small Firm Conference Planning Committee); **Missouri Organization of Defense Lawyers**: Member; **Defense Research Institute**: Member; **Kansas City Metropolitan Bar Association** (KCMBA): Civil Litigation Section (Nominating Committee), Business Litigation Committee (Fmr. Chair) 2013-2014; and **Ross T. Roberts Inn of Court**: District Court for the Western District of Missouri at Kansas City Trial Academy.

McDowell was named to *Super Lawyers Rising Stars* list in 2012, 2013, 2014, and 2015. This award is first nominated by fellow attorneys and the recipients are chosen based on their community reputation and standing;

At the suggestion of Federal Magistrate Robert Larsen, McDowell joined the Criminal Justice Act panel and took criminal appointments while maintaining a practice and raising four babies two years and under.

McDowell's only other prior disciplinary action was dismissed by the Regional Committee as they found no cause to discipline. However, it was appealed by complainant and McDowell then received an admonition. McDowell's prior admonition does not relate to the allegations set forth in this Information. The allegations in this Information are new alleged violations.

The Panel incorrectly applied In Re. Krigel, 480 S.W.3d 294 (Mo. banc 2016) in determining McDowell should be suspended. In Krigel, the attorney purposely questioned his client in a manner to elicit testimony in which he knew to be false. 480

S.W.3d at 299. In the same scope of representation, the attorney made intentional false statements to a third party about the case. The attorney also engaged in conduct that was prejudicial to the administration of justice. Id. at 300. The attorney was suspended for not taking remedial action when he knew false statements were made to the court. Id.

In the case at hand, McDowell did not intend to, nor did he, deceive the District Court for the Federal District of Eastern Missouri. This Court should not find that McDowell's conduct rises to a level that requires suspension.

### **CONCLUSION**

The Disciplinary Hearing Panel erred in determining McDowell violated the Professional Rules of Conduct and that McDowell's license should be suspended. This Court should dismiss the Information and award McDowell the costs expended in this investigation by the Office of Chief Disciplinary Council.

Respectfully Submitted,

/s/ Jonathan D. McDowell  
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**CERTIFICATE COMPLIANCE AND SERVICE**

I hereby certify that a copy of the foregoing instrument has been sent this March 2, 2018, via electronic delivery to all parties to be served by Missouri E-Filing service.

/s/ Jonathan D. McDowell  
Jonathan D. McDowell

**CERTIFICATION: RULE 84.06(c)**

I certify to the best of my knowledge, information and belief, that this brief: includes the information required by Rule 55.03; complies with the limitations contained in Rule 84.06(b); contains 6,606 words, according to Microsoft Word, which is the word processing system used to prepare this brief.

/s/ Jonathan D. McDowell  
Jonathan D. McDowell