

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:)
)
JOHN F. WASHINGTON,) **Supreme Court #SC97715**
3115 South Grand, Suite 100)
St. Louis, MO 63118)
)
Missouri Bar No. 53286)
)
Respondent.)

INFORMANT'S BRIEF

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INFORMANT

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STATEMENT OF JURISDICTION

Jurisdiction over attorney discipline matters is established by Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040 RS Mo 2000.

STATEMENT OF FACTS

PROCEDURAL HISTORY

March 28, 2018	Information
June 11, 2018	Respondent's Answer to Information
June 20, 2018	Appointment of Disciplinary Hearing Panel (DHP)
August 24, 2018	DHP Member Replacement Appointed
September 14, 2018	DHP Hearing
December 17, 2018	DHP Decision
January 16, 2019	Rejection of DHP decision by Informant
February 19, 2019	Record Submitted

BACKGROUND AND DISCIPLINARY HISTORY

Respondent John Washington was admitted to The Missouri Bar on September 17, 2003. **App. 5, 51.**¹ Respondent's license is in good standing in the State of Missouri. He has a prior disciplinary history as follows:

¹ The facts contained herein are drawn from the testimony elicited and the exhibits admitted into evidence at the hearing in this matter conducted on August 8, 2018. Citations to the hearing testimony before the Disciplinary Hearing Panel are denoted by the appropriate Appendix page reference followed by the specific transcript page reference in parentheses, for example "**App. ____ (Tr. ____)**". Citations to the Information, Respondent's Answer to the Information and the trial exhibits are denoted by the appropriate Appendix page reference.

- Respondent entered the Bar under a Monitoring Agreement between the Respondent, the Board of Law Examiners and the Informant in order to allow Respondent three years to improve his debt situation. Specifically, the Monitoring Agreement required that Respondent bring his financial debt deficiencies to a current payment status and not incur any new financial debt deficiencies. Failure to comply with the Monitoring Agreement constituted a violation of Rule 4-8.4(d) involving conduct prejudicial to the administration of justice. Even though Respondent was given extra time to get his debt deficiencies into current status, he failed to do so and was admonished in 2007 for violating Rule 4-8.4(d). **App. 248-249.**
- By Order dated February 2, 2009, Respondent was tax suspended pursuant to Rule 5.245 for failure to pay or file his state income tax. He was reinstated by Order of this Court dated March 19, 2009. **App. 250-255.**
- By Order dated January 12, 2011, Respondent was again tax suspended pursuant to Rule 5.245 for failure to pay or file his state income tax. He was reinstated by Order of this Court dated February 24, 2011. **App. 256-260.**
- By Order dated March 5, 2012, Respondent was tax suspended a third time pursuant to Rule 5.245 for failure to pay or file his state income tax. He was reinstated by Order of this Court on July 3, 2012; however, he was placed on probation for one year so that Informant could monitor Respondent's law practice and financial deficiencies. The Court issued an Order of successful completion of probation on August 7, 2014. **App. 261-272.**

THE CHILD SUPPORT PROCEEDINGS

On September 11, 2007, in connection with the dissolution of Respondent's marriage to Angela Ginger Darden in Cause No. 0722-FC0115, Respondent was ordered to pay child support to Ms. Darden in the monthly amount of \$504.00 for the support of two children of the marriage. **App. 232.**

On or about July 25, 2012, the Missouri Family Support Division ("FSD") filed a Motion for Contempt and for Order to Show cause against Respondent for child support arrearages in the St. Louis City Circuit Court, being captioned *Missouri Family Support Division, et al. v. John Washington*, Cause No. 1222-FC02196 (the "Contempt Proceeding"). **App. 232.** On January 23, 2013, Respondent filed an unverified Motion to Modify Child Support in the Contempt Proceeding which alleged, in pertinent part, that Respondent is "required to pay support to Angela Ginger Darden under Cause No. 0722-FC0115." **App. 232.** On March 6, 2013, the FSD, by and through its counsel, the Office of Circuit Attorney of the City of St. Louis, filed a Motion to Dismiss Respondent's Motion to Modify alleging that the Contempt Proceeding is a separate proceeding in which Respondent may not request modification of his child support obligation. **App. 232-233.** On June 10, 2013, Judge Michael Stelzer entered the following order in the Contempt Proceeding: "Petitioner's Motion to Strike Respondent's Motion to Modify Support within this proceeding is hereby granted." **App. 233.**

Three years later, on June 3, 2016, Respondent filed a "Motion to Set Aside Judgment or Order" in the Contempt Proceeding which alleged in pertinent part that counsel for the FSD (i.e., the Circuit Attorney's Office) exceeded its jurisdiction when it

filed the motion to dismiss, that Judge Stelzer exceeded his jurisdiction when he heard the motion and that the court order granting the motion to dismiss dated June 10, 2013 was void. On August 17, 2016, Judge Thomas Frawley, who was then assigned to the Court's domestic docket, denied Respondent's Motion to Set Aside Judgment or Order because (1) Respondent's support obligation arose in the dissolution case (Cause No. 0722-FC0115) and not in the Contempt Proceeding (Cause No. 1222-FC02196) initiated by the FSD, (b) any motion to modify Respondent's support obligation must be filed in the dissolution case (Cause No. 0722-FC0115), and (c) Respondent's motion to modify was not verified and, therefore, failed to state a claim upon which relief can be granted. **App. 233-234.**

**RESPONDENT'S LAWSUIT AGAINST JUDGE MICHAEL STELZER, JUDGE
THOMAS FRAWLEY, CIRCUIT ATTORNEY JENNIFER JOYCE AND
ASSISTANT CIRCUIT ATTORNEY JIM MICHAELS**

On August 5, 2016 in a case captioned *John Washington v. Michael F. Stelzer, et al.*, Cause No. 1622-CC09937, in the Circuit Court of the City of St. Louis, Respondent filed a lawsuit on his own behalf against St. Louis City Circuit Judge Michael Stelzer, in Judge Stelzer's individual and official capacity, against Circuit Attorney Jennifer Joyce, in her individual and official capacity, against Assistant Circuit Attorney Jim Michaels ("ACA Michaels"), in his individual and official capacity, and against his ex-wife Angela Darden (the "Lawsuit"). **App. 12-29.**

The allegations against Judge Stelzer in the Lawsuit related to the judicial rulings that Judge Stelzer issued in the Contempt Proceeding and included the following:

- That Judge Stelzer, without jurisdiction, allowed ACA Michaels to file a motion to dismiss on behalf of Darden and ruled on the motion. **App. 16.**
- That Judge Stelzer conspired by acting together with Circuit Attorney Joyce, ACA Michaels and Darden to interfere with Respondent’s right to receive support for the two minor children of the marriage, whom he alleged were in his physical custody. **App. 22-23.**
- That Judge Stelzer conspired with ACA Michaels to violate Respondent’s federal constitutional right to a modification of child support in violation of 42 U.S.C. §1983. **App. 23.**
- That Judge Stelzer engaged in an abuse of process by conspiring with ACA Michaels to allow ACA Michael to file a pleading on behalf of Darden in the Contempt Proceeding. **App. 26.**
- That Judge Stelzer conspired with Circuit Attorney Joyce, ACA Michaels and Darden and “acting together made use of an illegal, improper, and/or perverted use of process that was not neither warranted nor authorized by process.” **App. 27.**

Respondent alleged in the Lawsuit that Judge Stelzer was not entitled to judicial immunity. **App. 15.** Respondent sought damages and attorney’s fees against Judge Stelzer in both his individual and official capacity. **App. 24-25, 27.**

Respondent’s Lawsuit made similar factual allegations and legal claims against Circuit Attorney Jennifer Joyce and ACA Jim Michaels. Respondent also sought damages and attorney’s fees against Joyce and ACA Michaels, in both their individual and official capacities. **App. 12-29.**

On September 16, 2016, Judge Stelzer, represented by the Office of the Attorney General of the State of Missouri, removed the Lawsuit to the United States District Court for the Eastern District of Missouri, being Case No. 4:16CV1466 HEA. **App. 100-101.**

After Judge Frawley denied Respondent's Motion to Set Aside Judgment or Order, Respondent moved and was granted leave by United States District Judge Henry E. Autry to add Judge Frawley to the Lawsuit. **App. 101.**

In due course, Judge Stelzer and the other defendants in the Lawsuit filed motions to dismiss Plaintiff's Amended Complaint for failure to state a claim upon which relief can be granted under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

In an Opinion, Memorandum and Order filed December 19, 2017, Judge Autry dismissed the Lawsuit. **App. 235-245.** Judge Autry made the following relevant findings:

- Judges are completely and absolutely immune from civil lawsuits based on claims of misconduct during the performance of their judicial duties. This immunity applies to claims brought under 42 U.S.C. §1983. **App. 239.**
- Judicial immunity is "immunity from suit, not just from ultimate assessment of damages" and accordingly cannot be "overcome by allegations of bad faith or malice." (citation omitted)...Judicial immunity exists "not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, [in] whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences." (citation omitted). **App. 239-240.**

- In Plaintiff’s Amended Complaint, “every factual allegation against Defendants Stelzer and Frawley involve actions they took within their judicial capacities. Because the allegations entail actions taken by Defendants Stelzer and Frawley in their judicial capacities, they are immune from suit and the Amended Complaint fails to state a cause of action.” **App. 240.**
- With regard to Respondent’s abuse of process claims against Judge Stelzer and Judge Frawley, Judge Autrey held that Respondent failed to state a plausible claim for relief because he merely recited the elements of the claim. Respondent’s “allegations are mere formulaic recitation of the elements of abuse of process.” Judge Autrey dismissed the abuse of process claims for failure to state a claim for which relief may be granted. **App. 244-245.**
- Similarly, Judge Autrey dismissed Respondent’s claims against Circuit Attorney Joyce and ACA Michaels, noting that Joyce and Michaels were “absolutely immune from liability for all claims” under applicable case law because they were “acting within the scope of their duties as prosecutors when they filed a motion for contempt against Respondent and filed a motion to dismiss Respondent’s motion to modify child support” in the Contempt Proceeding. **App. 244.**

HARM CAUSED BY RESPONDENT’S LAWSUIT

At the Disciplinary Hearing Panel hearing in this matter, Judge Stelzer testified as follows regarding the harm that resulted from Respondent filing a lawsuit against him in both his individual and official capacities:

“Well, if he has a pending lawsuit against me, it is very difficult, if not impossible, for me to rule on any case that he has pending in front of me. So for example, last year, when I was the criminal assignment judge, we had to make arrangements for all of his cases on our bulk central docket to get sent to a different division to be dealt with instead of being dealt with in my division where I’m the judge that’s supposed to be in charge of sending these cases out and making sure this docket gets moved in an expeditious manner. And instead, his cases all get sent to a different division where I don’t have any ability to control where and when they go out to trial or when the pretrial motions get heard.

“And then this year, while he has not been in front of me very often, I have had to recuse myself, rather reluctantly, on a case recently because it was a case that needed a ruling, but as much as I wanted to hear the case and give it a ruling, I decided that was not what I should do while all this is pending. So that case had to get sent up to Judge Mullen, our presiding judge, to have him rule on.

“So it does disrupt the flow of the cases. I’m not saying that our courthouse is a model of efficiency, but we have divisions set up to rule on specific types of cases, and that’s where you’re assigned for a year. And if those cases don’t get heard there, sometimes they have a way of going off to other divisions and not getting heard as quickly as they might otherwise get heard, in my opinion.” **App. 111-112.**

RESPONDENT’S TESTIMONY BEFORE THE DHP

Respondent testified as follows at the hearing before the Disciplinary Hearing

Panel:

- Respondent is a criminal law attorney who represents clients even if they cannot afford it. **App. 157.**
- As to why he sued Judge Stelzer in his individual capacity, “[b]ecause I believe that Jim Michaels and Judge Stelzer had a meeting in the back room. Originally, when I filed – originally, when he filed a motion, we had a hearing, I presented my case, presented the statute, and he told me I’ll take a look at this. The next time we came to court, he’s like, I don’t want to see that. When he say, I don’t want to see that, it became clear what probably happened. I can’t say whether it happened or not, and that’s what the discovery process is for you to determine that’s what happened, what I believe wholeheartedly that’s pretty much what happened....” **App. 184.**
- As to the law, “if there is a need for the law to be changed or modified, that’s my duty as an attorney, as long as it’s not frivolous...[l]aws and institutions, like clocks, must be occasionally cleaned, wound up, and set to the truth.” **App. 158.**
- With regard to judicial immunity as applied to Judge Stelzer, Respondent testified that “the law is judges tend to be absolute immune unless he see clear jurisdiction. I believe under these circumstances after doing my investigation, I believe he was not protected because I believe he exceeded his jurisdiction.” **App. 159.**

- Respondent testified that he had a right to file a motion to modify in the Contempt Proceeding because Judge Stelzer lacked jurisdiction to rule on Respondent’s motion to modify. **App. 159-161.**
- Citing Missouri Statute §454.513, Respondent argued that the Circuit Attorney’s Office, as the attorneys for the FSD, had no jurisdiction to file a motion to dismiss Respondent’s motion to modify within the Contempt Proceeding and consequently, Judge Stelzer had no jurisdiction to rule on the FSD’s motion to dismiss. **App. 161-163, 275.**
- In explaining why he sued Judge Stelzer, Respondent testified as follows:

“I believe Judge Stelzer was not immune because I believe he heard a motion that he didn’t have jurisdiction over. I believe the statute removed his specific jurisdiction to hear any motion with the circuit attorney representing anyone other than a – the Missouri Division of Child Support. So since the circuit attorney filed a motion on behalf of Ms. Darden, I believe Judge didn’t have jurisdiction to hear that motion. That’s it.” **App. 164.**

DISCIPLINARY HEARING PANEL DECISION

The Disciplinary Hearing Panel issued its decision on December 17, 2018. **App. 303-307.** Based on the record evidence as set forth above, the Panel found that Respondent violated Rule 4-3.1 “by filing a lawsuit without a basis in law or fact because during his testimony and exhibits presented, he failed to demonstrate that he maintained a

good faith argument for an extension, modification or reversal of existing law.” The Panel did not find a violation of Rule 4-8.4(d) “because there was insufficient proof from the witness or counsel for Informant that the actions of Respondent materially affected the day to day operations of the court.” **App. 305.** The Panel found no aggravators or mitigators applicable to the Respondent’s misconduct. Specifically, the Panel considered Respondent’s prior discipline, however “some Panel members distinguished the prior violations with the facts and testimony in this instance, and thus decided that the prior violations did not warrant a more severe recommendation.” **App. 306.**

The Panel recommended that the Respondent be reprimanded without conditions. **App. 306.** Informant rejected the Panel’s decision and recommendation on January 16, 2019. **App. 308.**

POINT RELIED ON

I.

RESPONDENT IS SUBJECT TO DISCIPLINE BY THE SUPREME COURT BECAUSE:

- A. HE VIOLATED RULE 4-3.1 OF THE RULES OF PROFESSIONAL CONDUCT BY FILING A FRIVOLOUS LAWSUIT AGAINST JUDGE MICHAEL STELZER AND JUDGE THOMAS FRAWLEY IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES WITHOUT A BASIS IN LAW OR FACT TO DO SO; AND**
- B. HE VIOLATED RULE 4-8.4(d) OF THE RULES OF PROFESSIONAL CONDUCT BY ENGAGING IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE BY FILING A LAWSUIT AGAINST JUDGE MICHAEL STELZER AND JUDGE THOMAS FRAWLEY IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES WITHOUT A BASIS IN LAW OR FACT TO DO SO.**

RULE 4-3.1, Rules of Professional Conduct

RULE 4-8.4(d), Rules of Professional Conduct

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

POINT RELIED ON

II.

**THE SUPREME COURT SHOULD INDEFINITELY SUSPEND
RESPONDENT'S LAW LICENSE BECAUSE:**

- A. HE ENGAGED IN PROFESSIONAL MISCONDUCT BY
KNOWINGLY FILING A FRIVOLOUS LAWSUIT
AGAINST JUDGE MICHAEL STELZER AND JUDGE
THOMAS FRAWLEY IN THEIR INDIVIDUAL AND
OFFICIAL CAPACITIES WITHOUT A BASIS IN LAW
OR FACT TO DO SO AND THERBY ENGAGING IN
CONDUCT PREJUDICIAL TO THE ADMINISTRATION
OF JUSTICE; AND**
- B. THIS COURT'S DECISIONS, THE ABA SANCTION
STANDARDS AND THE PRESENCE OF SIGNIFICANT
AGGRAVATING CIRCUMSTANCES SUPPORT AN
INDEFINITE SUSPENSION OF RESPONDENT'S LAW
LICENSE.**

In re Hess, 406 S.W.3d 37 (Mo. banc 2013)

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

ABA Standards for Imposing Lawyer Sanctions (2015 ed.)

ARGUMENT

I.

RESPONDENT IS SUBJECT TO DISCIPLINE BY THE SUPREME COURT BECAUSE:

- A. HE VIOLATED RULE 4-3.1 OF THE RULES OF PROFESSIONAL CONDUCT BY FILING A FRIVOLOUS LAWSUIT AGAINST JUDGE MICHAEL STELZER AND JUDGE THOMAS FRAWLEY IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES WITHOUT A BASIS IN LAW OR FACT TO DO SO; AND**
- B. HE VIOLATED RULE 4-8.4(d) OF THE RULES OF PROFESSIONAL CONDUCT BY ENGAGING IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE BY FILING A LAWSUIT AGAINST JUDGE MICHAEL STELZER AND JUDGE THOMAS FRAWLEY IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES WITHOUT A BASIS IN LAW OR FACT TO DO SO.**

The Rule 4-3.1 Violation. Respondent sought to modify his child support obligation to his ex-spouse by filing a motion to modify within the Contempt Proceeding filed by the FSD to collect child support arrearages owed by Respondent. The FSD, acting through its counsel, the Office of the Circuit Attorney of the City of St. Louis, sought to dismiss Respondent's motion based on the assertion that the Contempt

Proceeding is a separate proceeding in which Respondent may not request a modification of his child support obligation. Judge Stelzer granted the FSD's motion to dismiss. Three years later, Respondent filed a motion to set aside Judge Stelzer's order granting the motion to dismiss. Judge Frawley denied Respondent's Motion to Set Aside, explicitly agreeing with Judge Stelzer that a motion to modify must be filed in the underlying dissolution action.

Undeterred, Respondent reacted to these rulings by suing Judge Stelzer and Judge Frawley in both their individual and official capacities.² In so doing, he made the following false and unsupported factual assertions and legal arguments:

- That Judge Stelzer conspired by acting together with Joyce, ACA Michaels and Darden to interfere with Respondent's right to receive support for the two minor children of the marriage, whom he alleged were in his physical custody. **App. 22-23.**
- That Judge Stelzer conspired with ACA Michaels to violate Respondent's federal constitutional right to a modification of child support in violation of 42 U.S.C. §1983. **App. 23.**

² The Lawsuit also named Circuit Attorney Jennifer Joyce, ACA Jim Michaels and Respondent's ex-wife Angela Darden. Ms. Joyce and Mr. Michaels were sued in both their individual and official capacities.

- That Judge Stelzer engaged in an abuse of process by conspiring with ACA Michaels to allow ACA Michael to file a pleading on behalf of Darden in the Contempt Proceeding. **App. 26.**
- That Judge Stelzer conspired with Joyce, ACA Michaels and Darden and “acting together made use of an illegal, improper, and/or perverted use of process that was not neither warranted nor authorized by process.” **App. 27.**

Respondent’s claim that Judge Stelzer “conspired” with the Circuit Attorney’s Office to deny his motion to modify in the Contempt Proceeding was based on Respondent’s unsubstantiated, reckless and false assertion that Judge Stelzer and Assistant Circuit Attorney Michaels “had a meeting in the back room.” **App. 184.** The assertion is spurious *ab initio* and attests to the frivolous nature of the Lawsuit.

After the Lawsuit was removed to Federal Court, Judge Autrey dismissed the Lawsuit for failure to state a claim upon which relief can be granted. In so doing, Judge Autrey made the following relevant findings:

- Judges are completely and absolutely immune from civil lawsuits based on claims of misconduct during the performance of their judicial duties. This immunity applies to claims brought under 42 U.S.C. §1983. **App. 239.**
- Judicial immunity is “immunity from suit, not just from ultimate assessment of damages” and accordingly cannot be “overcome by allegations of bad faith or malice.” (citation omitted)...Judicial immunity exists “not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, [in] whose

interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences.” **App. 239-240.**

- All factual allegations against Judges Stelzer and Frawley involve actions they took within their judicial capacity. Because the allegations entail actions taken in their judicial capacities, Judges Stelzer and Frawley are immune from suit and the Amended Complaint fails to state a cause of action. **App. 240.**
- With regard to Respondent’s abuse of process claims against Judge Stelzer and Judge Frawley, Judge Autrey held that Respondent failed to state a plausible claim for relief because he merely recited the elements of the claim. Respondent’s “allegations are mere formulaic recitation of the elements of abuse of process.” **App. 244-245.**

The Preamble to the Missouri Rules of Professional Conduct expressly provides:

“A lawyer’s conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer’s business and personal affairs. A lawyer should use the law’s procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer’s duty, when necessary, to challenge the rectitude of official action, it is also a lawyer’s duty to uphold legal process.”

Rule 4-3.1 (Meritorious Claims and Contentions) states:

“A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law.”

By suing Judge Stelzer and Judge Frawley in their individual and official capacities, by alleging conspiratorial conduct by Judge Stelzer with the St. Louis Circuit Attorney, her office and the Respondent’s ex-spouse, and by asserting that Judge Stelzer engaged in an abuse of process, Respondent made specious arguments, claims and assertions that lacked any basis in law and fact. Instead of using appropriate procedural processes, such as appellate review, to challenge Judge Stelzer’s ruling, Respondent chose to attack Judge Stelzer personally, falsely and without a basis in law or fact and thereby violated Rule 4-3.1.

The Rule 4-8.4(d) Violation. By bringing multiple claims that lacked any basis in law and fact, Respondent also violated Rule 4-8.4(d) (a lawyer shall not engage in conduct prejudicial to the administration of justice). Frivolous litigation wastes judicial resources and has a deleterious effect on parties to the litigation. It reinforces public perception that attorneys promote frivolous litigation.

Here, Respondent filed claims against Judge Stelzer and Judge Frawley in their individual and official capacities, asserted that Judge Stelzer engaged in conspiratorial conduct without a scintilla of factual support and claimed an abuse of process without

any basis in law or fact. His false claim that Judge Stelzer and the Assistant Circuit Attorney Michaels had a meeting “in the back room”, standing alone, does great harm to the administration of justice. Respondent’s pattern of filing specious claims in an effort to modify his child support obligations in a lawsuit where he clearly was not entitled to such relief was conduct prejudicial to the administration of justice in violation of Rule 4-8.4(d). *Cf. In re Caranchini*, 956 S.W.2d 910 (Mo. banc 1997), *cert. denied* 524 U.S. 940 (lawyer violated Rule 4-8.4(d) by violating numerous rules, including Rule 4-3.1, by pursuing a client’s case after it had become apparent the claim was not well-founded in fact or law).

Additionally, Respondent’s frivolous claims against Judge Stelzer adversely impacted the efficient operation of the court system in the City of St. Louis. While acting as the criminal assignment judge, Judge Stelzer was responsible for assigning cases in order to ensure that pretrial motions were heard and that the criminal docket was expeditiously handled. After Respondent sued Judge Stelzer, the judge was required to reassign Respondent’s cases to a different division of the circuit court. In addition, Judge Stelzer had to recuse himself from handling criminal and civil cases in which Respondent appeared in a representative capacity. **App. 111-112.** As a result, cases were not heard as quickly as they could or should have been. Respondent’s conduct prejudiced the administration of justice and violated Rule 4-8.4(d).

ARGUMENT

II.

**THE SUPREME COURT SHOULD INDEFINITELY SUSPEND
RESPONDENT’S LAW LICENSE BECAUSE:**

- A. HE ENGAGED IN PROFESSIONAL MISCONDUCT BY KNOWINGLY FILING A FRIVOLOUS LAWSUIT AGAINST JUDGE MICHAEL STELZER AND JUDGE THOMAS FRAWLEY IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES WITHOUT A BASIS IN LAW OR FACT TO DO SO AND THERBY ENGAGING IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE; AND**
- B. THIS COURT’S DECISIONS, THE ABA SANCTION STANDARDS AND THE PRESENCE OF SIGNIFICANT AGGRAVATING CIRCUMSTANCES SUPPORT AN INDEFINITE SUSPENSION OF RESPONDENT’S LAW LICENSE.**

In determining the appropriate sanction for attorney misconduct, this Court historically relies on several sources. First and foremost, the Court applies its own standards to maintain consistency, fairness and ultimately, to accomplish the overriding goal of protecting the public and maintaining the integrity of the legal profession. Those

standards are written into law when the Court issues opinions in attorney discipline cases. *In re Kazanas*, 96 S.W.3d 803, 806 (Mo. banc 2003).

The Court also relies on the ABA's Standards for Imposing Lawyer Sanctions (1991 ed.). Those guidelines recommend baseline discipline for specific acts of misconduct, taking into consideration the duty violated, the lawyer's mental state (level of intent), and the extent of injury or potential injury. *In re Griffey*, 873 S.W.2d 600 (Mo. banc 1994). Once the baseline discipline is known, the ABA Standards allow consideration of aggravating and mitigating circumstances. ABA Standards for Imposing Lawyer Sanctions (1991 ed.).

The Court also considers as advisory the recommendation of the Disciplinary Hearing Panel that heard the case. In this instance, the Panel recommended a reprimand. **App. 306.**

The prior opinions of this Court in attorney discipline cases support a suspension in this case. In 2013, this Court indefinitely suspended the law license of an attorney who violated Rules 4-3.1 and 4-8.4(d) by filing a frivolous lawsuit against his former clients. *In re Hess*, 406 S.W.3d 37 (Mo. banc 2013). In *Hess*, clients retained a law firm to represent them in a medical malpractice lawsuit. Hess was assigned by the law firm to work on the case. When Hess's employment at the law firm was terminated, the clients chose to continue to have the law firm represent them. Hess responded by filing claims against the clients alleging breach of contract, breach of promise, interference with Hess's attorney's liens and unjust enrichment.

This Court found that Hess filed frivolous claims against his clients with the intent to use such claims to subvert the administration of justice in order to obtain attorney's fees to which he clearly was not entitled and to resolve a dispute with the law firm that formerly employed him rather than with the parties against whom he filed the frivolous claims. *Id.* at 46. The Court held that "any time an attorney participates in the filing of a frivolous claim in a court of law, ...such an action reflects badly on the legal profession as a whole." *Id.* The Court found violations of Rule 4-3.1 and 4-8.4(d) and suspended Hess indefinitely from the practice of law without leave to apply for reinstatement for six months. *See also: In re Caranchini*, 956 S.W.2d 910 (Mo. banc 1997), *cert. denied* 524 U.S. 940 (lawyer disbarred for violating, *inter alia*, Rule 4-3.1 and Rule 4-8.4(d) by pursuing clients' cases after it had become apparent the claims had no factual or legal support).

The Court's findings and conclusions in *Hess* apply in this case. Here, Respondent improperly sought to modify his child support obligations within the lawsuit brought by FSD to collect child support arrearages. When Judge Stelzer granted FSD's motion to dismiss in the Contempt Proceeding, Respondent, rather than pursue an appeal, sued the judge in his individual capacity and made unsupported factual assertions and legal arguments in an attempt to attack the Judge Stelzer's proper exercise of judicial authority. When Judge Frawley upheld Judge Stelzer's dismissal order, Respondent frivolously joined him in the Lawsuit. By pursuing specious claims against the judges without any factual or legal support, Respondent violated Rule 4-3.1 and Rule 4-8.4(d). The *Hess* case clearly supports an indefinite suspension of Respondent's law license.

The ABA Standards support an indefinite suspension. In assessing an appropriate sanction for professional misconduct, this Court routinely relies on sanction guidelines developed by the ABA's Center for Professional Responsibility. *In re Griffey*, 873 S.W.2d 600 (Mo. banc 1994). The guidelines, known as the *ABA Annotated Standards for Imposing Lawyer Sanctions* (2015 ed.), consider the following primary questions:

- (1) What ethical duty did the lawyer violate? (A duty to a client, the public, the legal system, or the profession?)
- (2) What was the lawyer's mental state? (Did the lawyer act intentionally, knowingly, or negligently?)
- (3) What was the extent of the actual or potential injury caused by the lawyer's misconduct? (Was there a serious or potentially serious injury?) and
- (4) Are there any aggravating or mitigating circumstances?

ABA Standards: Theoretical Framework.

Duty Violated and Mental State. By filing frivolous claims against Judge Stelzer and Judge Frawley, Respondent violated the duty he owed to the legal system, ABA *Standard* 6.0, and abused the legal process, ABA *Standard* 6.2. *Standard* 6.21 provides that disbarment is generally appropriate when:

...a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

Standard 6.22 provides that suspension is generally appropriate when:

...a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

Standard 6.23 provides that a reprimand is generally appropriate when:

...a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.

Suspension under ABA *Standard 6.22* is the baseline for evaluating Respondent's professional misconduct.³ The record evidence establishes that Respondent knew that the Lawsuit, with its baseless claims against Judge Stelzer, was legally and factually without

³ The *mens rea* under both the disbarment sanction of ABA *Standard 6.21* and the suspension sanction of ABA *Standard 6.22* is "knowing." Under *Standard 6.21*, however, there must be an intent to benefit the lawyer. Such intent is not included in *Standard 6.22*. While Respondent arguably abused the legal process for his own benefit, Informant believes that the suspension standard of *Standard 6.22* is appropriately applied in the case at bar.

merit.⁴ Judge Stelzer’s order striking Respondent’s motion to modify in the Contempt Proceeding stated: “Petitioner’s Motion to Strike Respondent’s Motion to Modify Support *within this proceeding* is hereby granted. (*emphasis added*)” **App. 233**. In so ruling, Judge Stelzer explained to Respondent the jurisdictional limitations of his authority to grant Respondent’s motion to modify his child support obligations within the Contempt Proceeding:

“...I discussed with Mr. Washington that I was not telling him he could not file a Motion to Modify. What I was telling him was that this administrative proceeding [the Contempt Proceeding], which is only to attempt to collect what the State believes is unpaid child support from his divorce proceeding, is not the proper place to file it. I made that very clear to him that I was not telling him that he could not file a Motion to Modify.” **App. 110**.

Likewise, Judge Frawley, in denying Respondent’s Motion to Set Aside Judgment or Order three years later, again explained in detail that any motion to modify must be filed in the dissolution action and could not be filed in the Contempt Proceeding. **App. 233-234**. For Respondent to file a frivolous lawsuit against Judge Stelzer and Judge Frawley

⁴ The ABA *Standards* define “knowledge” as the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. ABA *Standards, Section III, Definitions*.

under these circumstances was a knowing violation of Rule 4-3.1 and Rule 4-8.4(d). The suspension standard of ABA *Standard* 6.22 applies to Respondent's misconduct.

Harm Caused. Respondent's misconduct interfered with and caused harm to the administration of justice by disrupting the flow of criminal cases in the St. Louis City Circuit Court. Thus, Judge Stelzer testified that as the criminal assignment judge, he was required to send Respondent's cases to a different court division for handling because he was being sued in his official and individual capacity by the Respondent. Judge Stelzer was thereby unable to exercise appropriate control over the circuit court criminal docket in order to ensure that motions and trials in criminal cases were handled expeditiously. He was also required to recuse himself from a case in which Respondent was involved in a representative capacity due to the pending lawsuit filed by Respondent against Judge Stelzer. **App. 111-112.**

Aggravating and Mitigating Circumstances. Under the ABA *Standards*, once a baseline is established, aggravating and mitigating circumstances are considered. The Disciplinary Hearing Panel found no aggravating or mitigating circumstances.⁵ **App. 306-307.** Informant disagrees.

The following aggravators are present:

⁵ The DHP "considered" Respondent's prior discipline, but "some Panel members distinguished the prior violations with the facts and testimony in this instance, and thus decided that the prior violations did not warrant a more severe recommendation." **App. 307.**

- **Prior Disciplinary Offenses** [ABA *Standard* 9.22(a)]: Respondent was admonished in 2007 under Rule 4-8.4(d) (conduct prejudicial to the administration of justice) for violating the terms of his Monitoring Agreement. He was suspended pursuant to Rule 5.245 in 2009, 2011 and 2012 for a failure to pay state income taxes. **App. 246-264.**
- **Multiple Offenses** [ABA *Standard* 9.22(d)]: By filing the frivolous Lawsuit, Respondent violated both Rule 4-3.1 and 4-8.4(d).
- **Refusal to Acknowledge Wrongful Nature of Conduct** [ABA *Standard* 9.22(g)]: Throughout these disciplinary proceedings, Respondent has failed to recognize or acknowledge the specious nature of the Lawsuit and the harm thereby caused.
- **Substantial Experience in the Practice of Law** [ABA *Standard* 9.22(i)]: Respondent was licensed in 2003.

There are no applicable mitigating factors in this case.

Cases from Other Jurisdictions. Courts in other jurisdictions have suspended lawyers who filed frivolous lawsuits in violation of Missouri's Rule 4-3.1 and Rule 4-8.4(d).

- *In re Miller*, 147 P.3d 150 (Kan. 2006). After learning that he would no longer be receiving worker's compensation cases from the Kansas Insurance Department, lawyer sued the Department for \$375,900 for loss of future earnings. Among other violations, lawyer was found to have filed a frivolous lawsuit in violation of Rule 3.1 and was suspended for two years.

- *In re Levine*, 847 P.2d 1093 (Ariz. 1993). Lawyer who frivolously sued his former law firm on multiple occasions without a good faith basis in law or fact to do so abused the legal process, violated Rule 3.1 and was suspended for six months, followed by two years of probation.
- *Dodrill v. Executive Director, Committee on Professional Conduct*, 824 S.W.2d 383 (Ark. 1992). Dodrill, the lawyer for a debtor in a bankruptcy case, sued the debtor's former law firm and the bankruptcy trustee, alleging fraud and waste. The trial court dismissed the lawsuit as frivolous. In the subsequent discipline case, the Arkansas Supreme Court found that the lawyer violated Rule 3.1 and Rule 8.4(d) and suspended Dodrill for one-year from the practice of law.
- *In re Straw*, 68 N.E.3d 1070 (Ind. 2017). Lawyer filed a series of meritless lawsuits, including a *pro se* lawsuit against a publishing company seeking \$15,000,000 in damages and a lawsuit against the American Bar Association and 50 law schools alleging violations of the Americans with Disabilities Act. Both lawsuits were dismissed by the courts as frivolous. In the subsequent discipline case, the lawyer was found to have violated Rule 3.1 and was suspended for six months.

CONCLUSION

Respondent engaged in serious professional misconduct by filing a frivolous lawsuit against Judge Stelzer and Judge Frawley without any basis in law or fact. He thereby violated Rule 4-3.1 and Rule 4-8.4(d). Based upon an analysis of this Court’s decisions, the *ABA Standards*, the record evidence, and after considering relevant aggravating circumstances, Informant submits that the Court should indefinitely suspend Respondent from the practice of law with not leave to apply for reinstatement for at least six months.

Respectfully submitted,

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ATTORNEY FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of March, 2019, a true and correct copy of the Informant's foregoing Brief was served on Respondent via the Missouri Supreme Court electronic filing system pursuant to Rule 103.08:

John Washington
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St. Louis, MO 63118

Respondent



Alan D. Pratzel

CERTIFICATION OF COMPLIANCE: 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. Brief served upon Respondent by the Supreme Court e-filing system pursuant to Rule 103.08;
3. Complies with the limitations contained in Rule 84.06(b);
4. Contains 6,727 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



Alan D. Pratzel