

IN THE SUPREME COURT
STATE OF MISSOURI

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

RESPONDENT’S BRIEF

/s/ John Washington. 53286

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RESPONDENT

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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 RSMo. 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.** Respondent's license is in good standing in the State of Missouri. Respondent has a prior disciplinary history as follows:

1. Respondent entered the Bar under a Monitoring Agreement between the Respondent, the Board of Law Examiner and the Informant in order to allow Respondent three years to improve his debt situation.

Respondent failed to get his debt deficiencies in current status and was admonished in 2007 for violating Rule 4-8.4(d). **App. 248-249.**

2. On 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.**
3. On January 12, 2011, 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 February 24, 2011. **App. 256-260.**
4. On March 5, 2012, 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 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.**

RESPONDENT REQUEST TO THE COURT TO WITHDRAW FROM CASES
HE'S NOT BEING PAID FOR.

Respondent request this court take judicial notice of the filed PETITION FOR A WRIT OF PROHIBITION filed on February 27, 2015. Respondent request the court allow him to withdraw from cases he was being paid and this Court denied the

writ. The title of the cause is *In Re John Washington v. The Honorable Bryan Hettenbach* and filed under Cause Number SC94825 and states the following:

1. In Respondent petition to the Missouri Supreme Court, he alleged in paragraph 2 that he had an excess of \$500,000.00 in account receivables over the last ten years at the time of filing of the writ.
2. In Respondent petition to the Missouri Supreme Court, he alleged in paragraph 3 that a culture and environment was created where defendants were aware of judges not allowing private counsel to withdraw as attorney for none payment. And, as a result of the said knowledge, defendants refused to pay counsel for legal services.
3. In Respondent petition to the Missouri Supreme Court, he alleged in paragraph 4 that in 2013 he had 7 separate jury trial and was paid for none.
4. In Respondent petition to the Missouri Supreme Court, he alleged in paragraph 5 that in 2012 he had 4 separate jury trial and was paid for none.
5. In Respondent petition to the Missouri Supreme Court, he alleged in paragraph 6 that in 2011 he had 3 separate jury trial and was paid for none.

See Respondent Exhibit A.

DISCIPLINARY HEARING PANEL DECISION

The Disciplinary Hearing Panel issued its decision on December 17, 2018.

App. 303-307. Based on the evidence as set forth, 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.” **App. 305.**

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. “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.**

Information rejected the Panel’s decision and recommendation on January 16, 2019. **App. 308.**

THE CHILD SUPPORT PROCEEDINGS

On September 11, 2007, in connection with the dissolution of Respondent's petition for paternity, custody, and child support in Cause No. 0722-FC0115, Respondent was given joint legal and physical custody and ordered to pay child support to Ms. Darden in the monthly amount of \$504.00 for the support of two children. **App. 232.** The Court completed a form 14 and calculated a support order in the amount of \$454.00. **App. 15.** The Court ordered Respondent to pay \$50.00 a month for summer childcare for both parents. **App. 15.** The Court ordered the custody arraignment as to the two minor children as follow, minor children reside with Respondent on Monday and Tuesday nights and with Angela Darden on Wednesday and Thursday nights; and the parents alternate three days weekend. **App. 48.**

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 Saint Louis City Circuit Court, being captioned *Missouri Family Support Division et. al. v. John Washington*, Cause No. 122-FC02196. **App. 232.**

The City of Saint Louis Circuit Attorney Office and the Twenty-Second Judicial Circuit has a policy that do not allow the filing of a compulsory claim pursuant to Missouri Supreme Court Rule 55.32(a) for the modification of child

support when “FSD” filed a Motion for Contempt and for Order to Show Cause. Respondent filed a motion to modify his client’s child support order in Missouri Family Support Division et. al. v. Douglas Pipes under Cause Number 1622-FC00833. On October 5, 2017 Respondent filed a motion to modify Mr. Pipes support order. **See Respondent Exhibit B.** On October 16, 2017 Mr. Pipes motion was accepted, however it never made it to the file. **See Respondent Exhibit C.** On October 10, 2017, “FSD” by and through its counsel filed a motion to strike Mr. Pipes motion to modify his support order. **See Respondent Exhibit D.** Respondent request this court take judicial notice of Missouri Family Support Division et. al. v. Douglas Pipes under Cause Number 1622-FC00833 and its contents within.

Missouri Revised Statute 454.513.2 (2000) states “an attorney representing the division in a proceeding in which a child support obligation may be established or modified shall, whenever possible, notify an applicate or recipient of child support enforcement services of such proceedings if such applicant or recipient is a party to such a proceeding but is not represented by an attorney.” **App 271.**

On January 23, 2013, Respondent filed a Motion to Modify Child Support in the Contempt Proceeding. **App. 232-233.**

On March 6, 2013, the FSD, by and through its counsel, the City of Saint Louis Circuit Attorney Office 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. **App. 232-233.**

The “FSD”, by and through its counsel, the City of Saint Louis Circuit Attorney Office filed a Motion to Dismiss Respondent’s Motion to Modify that was filed against the party of Angela Darden and not the party of “FSD” even though, Missouri Revised Statute 454.513.2 (2000) states “any attorney initiating any legal proceeding at the request of the Missouri division of child support enforcement shall represent the State of Missouri, department of social services, division of child support enforcement exclusively.” **App 271.**

The “FSD”, by and through its counsel, the City of Saint Louis Circuit Attorney Office filed a Motion to Dismiss Respondent’s Motion to Modify even though, Missouri Revised Statute 454.513.2 (2000) states an attorney representing the division in a proceeding in which a child support obligation may be established or modified shall, whenever possible, notify an applicant or recipient of child support enforcement services of such proceedings if such applicant or recipient is a party to such a proceeding but is not represented by an attorney. **App 271.**

During the DHP hearing Judge Michael Stelzer was asked the following, “And shall mean what?” **APP 117.** Judge Michael Stelzer replied, “It means you shall do it.” **APP 117.**

During the DHP hearing, Judge Michael Stelzer testified attorneys representing “FSD” cannot represent anyone else other than “FSD”. “Yeah, they represent those parties exclusively, that’s correct.” **TR 53 and App 138.**

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” exceeded its jurisdiction when it filed the motion to dismiss, that Judge Stelzer exceeded his jurisdiction when he heard the motion and the court order granting the motion to dismiss dated June 10, 2013 was void. **App. 233-234.** On August 17, 2016, Judge Thomas Frawley denied Respondent’s motion. **App. 233-234.**

RESPONDENT’S LAWSUIT

Respondent filed a lawsuit against Judge Michael Stelzer, Circuit Attorney Jennifer Joyce, Assistant Circuit Attorney Jim Michaels, Angela Darden, and John Doe. **App. 8-18.**

Respondent filed a lawsuit for a violation of his constitutional Rights as established by the Title IV-D of the Social Security Act. 42 U.S.C.A. §§ 651, 654,

the Fifth Amendment of the Constitution of the United States, and the Fourteenth Amendment of the Constitution of the United States. **App. 15.**

For a state to qualify for federal funds, “the State must certify that it will operate a child support enforcement program that conforms with the numerous requirements set forth in *Title IV-D of the Social Security Act*, 42 U.S. §§ 651-669b (1994 ed. And Supp. II) and will do so pursuant to a detailed plan that has been approved by the Secretary of Health and Human Services (Secretary). § 651, 654.” **App. 276** and *Blessing v. Freestone*, 520 US 329, 333 (1997). “The Federal Government underwrites roughly two-thirds of the cost of the State’s child support efforts.” **App. 276** and *Blessing v. Freestone*, 520 US 329, 333 (1997).

The State of Missouri participates in the federal aid programs to families, which provides subsistence welfare benefits to needy families.

To qualify for the federal funds, the State must certify that it will operate a child support enforcement program that conforms with the numerous requirements set forth in *Title IV-D of the Social Security Act*, 42 U.S. §§ 651-669b which includes a system to establish paternity, locate absent parents, and **help families obtain support orders**. **App. 276** and *Blessing v. Freestone*, 520 US 329, 333-34 (1997).

Respondent has joint physical and legal custody of the two minor children and their place of residence is equally divided between the two parents. **App. 14-15.**

During the hearing, Judge Michael Stelzer was asked, “Are you saying that Title IV-D – are you saying that lawsuits cannot come out of Title IV-D rights? **App. 131 and TR. 46.** Judge Michael Stelzer responded, “No, I’m saying that even if I got it wrong, I have judicial immunity.” **App. 131 and TR. 46.**

During the hearing, Judge Michael Stelzer was asked, “Can you turn to page 10, where it has paragraph 349? And if you go up to right above there, the third sentence from the bottom, it says, Title IV-D may give rise to individual rights; therefore, we agree with the Court of Appeals that the secretary oversight powers are not comprehensive enough to close the door on section 1983 liabilities.” **App. 132 and TR. 47** and *Blessing v. Freestone*, 520 US 329, 348 (1997). Judge Michael Stelzer responded, “Well, if you’re trying to sue the prosecutor or the secretary or somebody like that, I guess this is **good case law**, John. But if you’re trying to sue a judge who entered an order on a case that was property in front of you, I think it falls short by a mile.

During the DHP hearing Judge Michael Stelzer was asked, “But you agree that the judge in federal court allow Judge Frawley to be added as a defendant? **APP 129.** Judge Michael Stelzer replied, “Yeah, he let him be added as a defendant, that’s correct.” **APP 129.**

JUDGE STELZER’S OPINION AS TO HARM CAUSED BY
RESPONDENT’S LAWSUIT

At the Disciplinary Hearing Panel hearing in this matter, Judge Stelzer testified that “it is very difficult, if not impossible, for me to rule on any case that he has pending in front of me.” **App. 111-112 and TR. 26-27.** “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. **App. 111-112.**

RESPONDENT’S PETITION STATING JUDGE MICHAEL STELZER IS NOT
ENTITLED TO JUDICIAL IMMUNITY

“11. Any attorney initiating any legal proceedings at the request of the Missouri Division of Child Support Enforcement shall represent the State of Missouri and the Department of Social Services, Division of Child Support exclusively. Revised Statutes of Missouri 454.513 (2000). An attorney/client relationship shall not exist between the attorney and any applicant or recipient of child support enforcement services for and on behalf of a child or children. Revised Statutes of Missouri 454.513 (2000).”

“12. Under Missouri Law, any attorney initiating any legal proceedings at the request of the Missouri Division of Child Support Enforcement shall represent the state Missouri, Department of Social Services, Division of Child Support exclusively, and not represent any applicant or recipient of child support enforcement services for and on behalf of a child or children.”

“13. Defendant Michael Stelzer allowed Defendant Jim Michaels to file a motion on behalf of defendant Angela Darden, an applicant or recipient of child support enforcement services for and on behalf of children. Defendant Michael Stelzer ruled on the legal filing filed by Defendant Jim Michaels, an attorney that initiated legal proceedings at the requests of the Missouri Division of Child Support Enforcement. Such acts were done in the clear absence of all jurisdiction.”

App. 213.

RESPONDENT’S TESTIMONY BEFORE THE DHP

Respondent testified as follows at the hearing before the Disciplinary Hearing Panel:

1. “I believe under these circumstances after doing my investigation, I believe he was not protected because I believe he exceeded his jurisdiction.” **App. 159.**

2. “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.” **App. 164.**

POINT RELIED ON

I.

RESPONDENT IS SUBJECT NOT SUBJECT TO DISCIPLINE BY THE
SUMPREME COURT BECAUSE:

A. RESPONDENT DID NOT VIOLATE RULE 4-3.1 OF THE RULES OF
PROFESSIONAL CONDUCT BY FILING A FRIVOLOUS LAWSUIT
AGAINST JUDGE MICHAEL STELZER AND THOMAS FRAWLEY IN
THEIR INDIVIDUAL AND OFFICIAL CAPACITIES WITHOUT A
BASIS IN LAW OR FACT TO DO SO; AND

B. RESPONDNET DID NOT VIOLATE RULE 4-8.4(d) OF THE RULES OF
PROFESSIONAL CONDUCT BE ENGAGING IN CONDUCT
PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE BY FILEING
A LAWSUIT AGAINST JUDGE MICHAEL STELZER AND JUDGE
FRAWLEY IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES
WITHOUT A BASIS IN LAW OF FACT TO DO SO.

RULE 4-3.1, Rules of Professional Conduct.

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

POINT RELIED ON

II.

IF THE SUPREME COURT CONCLUDE RESPONDENT VIOLATED ANY RULES, THE SUPREME COURT SHOULD ISSUE A REPRIMAND WITH AN ORDER TO TAKE SPECIFIC CLE COURSES.

- A. RESPONDENT DID NOT KNOWINGLY ENGAGE 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
- B. RESPONDENT DID NOT KNOWINGLY ENGAGE IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE; AND
- C. THIS COURT’S DECISIONS AND THE ABA SANCTIONS STANDARDS SUPPORT A REPRIMAND WITH AN ORDER TO TAKE SPECIFIC CLE COURSES.

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 NOT SUBJECT TO DISCIPLINE BY THE SUPREME COURT BECAUSE:

A. HE DID NOT VIOLATE RULE 4-3.1 OF THE RULES OF PROFESSIONAL CONDUCT BY FILING A LAWSUIT AGAINST JUDGE MICHAEL STELZER AND JUDGE THOMAS FRAWLEY IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES BECAUSE THERE IS A BASIS IN LAW OR FACT TO DO SO; AND

B. HE DID NOT VIOLATE RULE 4-8.4(d) OF THE RULES OF PROFESSIONAL CONDUCT. RESPONDENT DID NOT ENGAGE 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.

Respondent did not violate Rule 4-3.1

In cases referred by “FSD” to a prosecuting attorney or circuit attorney, “FSD” is a party as a petitioner and the parent receiving the support is a party in their individual capacity and the next friend of the minor as a petitioner.

Judge Stelzer ruling was in 2013. Judge Frawley ruling was in 2016. At the time of Judge Frawley ruling Revised Statutes of Missouri 454.435.1 (2014) was the law. As of early 2018, the City of Saint Louis Circuit Attorney Office and the Twenty-Second Judicial Circuit wasn’t following the current law.

Each prosecuting attorney may enter into a cooperative agreement or may enter into a multiple county agreement to litigate or prosecute any action necessary to secure support for any person referred to such office by the family support division including, but not limited to, reciprocal actions under this chapter, actions to establish, modify and enforce support obligation. Revised Statutes of Missouri 454.435.1 (2014). Prosecuting attorneys are hereby authorized to initiate judicial or administrative modification proceedings on IV-D cases at the request of the division. RSMo. Revised Statutes of Missouri 454.435.4 (2014). According to RSMo. 454.435, judicial or administrative modification proceedings are allowed on IV-D cases. Therefore, Respondent had a right to file his motion to modify against Angela

Darden who was a party to in an IV-D case at the time of Judge Frawley decision. Further, there may have been an issue as to whether the law was retroactive.

An inference is a conclusion reached because of evidence and reasoning. On January 23, 2013, Respondent filed a motion to modify his support order and Assistant Circuit Attorney James Michael filed a motion to dismiss Respondent's motion. James Michael made it clear, the policy of Circuit Attorney Office was not to allow the filing of motion to modify in its cases it receives from "FSD". An inference can be drawn that James Michael and Jennifer Joyce conspired to prevent Respondent and others from filing modification of support order in an IV-D cases.

Revised Statutes of Missouri 454.513.2 (2000) states "an attorney representing the division in a proceeding in which a child support obligation may be established or modified shall, whenever possible, notify an applicate or recipient of child support enforcement services of such proceedings if such applicant or recipient is a party to such a proceeding but is not represented by an attorney." **App 271**. On January 23, 2013, Respondent filed a Motion to Modify Child Support in the Contempt Proceeding. **App. 232-233**. James Michael did not attempt to serve Angela Darden with the motion to modify. Instead of giving notice of the motion to modify to Angela Darden, James Michael filed a Motion to Dismiss Respondent's Motion to Modify. He alleged that the Contempt Proceeding (IV-D case) is a separate proceeding in which respondent may not request modification of his child

support. **App. 232-233.** James Michael filed a Motion to Dismiss Respondent's Motion to Modify that was filed against Angela Darden, a party. RSMo. Section 454.513.2 states "any attorney initiating any legal proceeding at the request of the Missouri division of child support enforcement shall represent the State of Missouri, department of social services, division of child support enforcement exclusively." **App 271.**

Judge Michael Stelzer was aware that James Michael was required to attempt to obtain service on Angela Darden. Instead, James Michael filed a motion to dismiss Respondent's motion to modify, although Revised Statutes of Missouri 454.513.2 (2000) states he shall represent "FSC" exclusively. Judge Michael Stelzer was aware that James Michael could only represent "FSC". An inference can be drawn that James Michael and Judge Michael Stelzer conspired to prevent Respondent and others from filing modification in an IV-D cases.

At the time Respondent filed his lawsuit, it was clear that Missouri Twenty-Second Judicial Circuit had a policy that didn't allow the filing of modification in an IV-D cases. Judge Thomas Frawley reinforce that fact with his ruling. On October 5, 2017 Respondent filed a motion to modify Mr. Pipes' support order in an IV-D case. See **Respondent Exhibit B and D.** The filing was accepted on October 16, 2017. See **Respondent Exhibit B.** The policy of not allowing the filing of modification in an IV-D case in the Missouri Twenty-Second Judicial Circuit was

substantiated on October 17, 2017 when the clerk returned an electronic note to Respondent that he could not file a motion to modify in an IV-D cases. See **Respondent Exhibit C**.

The basis for the lawsuit was about parties having obstacles in the way which made it difficult and impossible for some of them to modify their child support, which was a violation of their federal rights. The lawsuit was removed to Federal Court, Judge Autry dismissed the lawsuit. Respondent did not initiate the appeals process due to this disciplinary action. As soon as Respondent was notified of the Federal Court decision, he contacted OCDC and inform counsel of the status of the lawsuit. Respondent was informed that the OCDC proceeding would move forward. As a result, Respondent choose not to litigate any further on the matter.

Prior to Judge Autry dismissing the lawsuit, Respondent asked for permission to add Judge Frawley as a defendant. Judge Autry granted Respondent's motion to add Judge Frawley as a defendant. During the DHP hearing Judge Stelzer was asked, "But you agree that the judge in federal court allow Judge Frawley to be added as a defendant? **APP 129**. Judge Stelzer replied, "Yeah, he let him be added as a defendant, that's correct." **APP 129**. We can conclude Judge Autry didn't believe the lawsuit against Judge Frawley was frivolous. Therefore, we can conclude that he didn't believe the lawsuit against Judge Stelzer was frivolous.

During the DHP hearing, Judge Stelzer was asked, “Are you saying that Title IV-D – are you saying that lawsuits cannot come out of Title IV-D rights? **App. 131 and TR. 46.** Judge Michael Stelzer responded, “No, I’m saying that even if I got it wrong, I have judicial immunity.” **App. 131 and TR. 46.** Further, Judge Stelzer was asked, “Can you turn to page 10, where it has paragraph 349? And if you go up to right above there, the third sentence from the bottom, it says, Title IV-D may give rise to individual rights; therefore, we agree with the Court of Appeals that the secretary oversight powers are not comprehensive enough to close the door on section 1983 liabilities.” **App. 132 and TR. 47** and *Blessing v. Freestone*, 520 US 329, 348 (1997). Judge Stelzer responded, “Well, if you’re trying to sue the prosecutor or the secretary or somebody like that, I guess this is **good case law**, John. But if you’re trying to sue a judge who entered an order on a case that was properly in front of you, I think it falls short by a mile.

Respondent agrees, judges are entitled to judicial immunity unless they exceed their jurisdiction. Respondent agrees that under normal circumstances, a judge would be entitled to judicial immunity when the judge is acting in their capacity that was granted by law. Here, an attorney/client relationship shall not exist between the “FSD’s” attorney and any applicant or recipient of child support enforcement services. Revised Statutes of Missouri 454.513.2 (2000).

Angela Darden was a party to the IV-D case and was not represented by counsel at the time Respondent filed his motion to modify. The motion was filed against Angela Darden in her individual capacity. At the time of the filing, James Michael represented “FSD”. Pursuant to Revised Statutes of Missouri 454.513.2 (2000), James Michael could not represent Angela Darden. Therefore, James Michael could not have file any motions on her behalf. Missouri legislature made it clear, an attorney representing “FSD” could only represent “FSD”. Therefore, the Missouri legislature by statute revoked a judge jurisdiction to hear any motion, filed by an attorney that represent “FSD”, that is filed on behalf of someone other than “FSD”. Even if a court concludes, judges are entitled to judicial immunity under these circumstances, with these facts it’s reasonable for the Respondent to ask a court to modify judicial immunity and reverse it under these circumstances. Supreme Court Rule 55.03(c).

Respondent did not violate Rule 4-8.4(d)

At the Disciplinary Hearing Panel hearing in this matter, Judge Stelzer testified that “it is very difficult, if not impossible, for me to rule on any case that he has pending in front of me.” **App. 111-112 and TR. 26-27.** “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. **App. 111-112.**

That case Judge Stelzer refer to, was heard the same day by Judge Mullins. Parties to a lawsuit are entitled to an automatic change of judge upon request under certain circumstances. Further, parties to lawsuits may request a change of judge for cause. Lastly, a judge may recuse themselves because of a conflict. Like all other courts, the Twenty-Second Judicial Circuit Court has a built-in mechanism to deal with these issues. Currently, Judge Hogan is the criminal docket judge. Her spouse practice criminal law in the city and the court has assigned him to a different criminal docket judge. This is exactly what the court did with Respondent. Respondent was assigned to a different criminal docket judge. This place more burden on the court than if Respondent was to request a change of judge.

ARGUMENT

II.

IF THE SUPREME COURT CONCLUDE RESPONDENT VIOLATED ANY RULES, THE SUPREME COURT SHOULD ISSUE A REPRIMAND WITH AN ORDER TO TAKE SPECIFIC CLE COURSES.

A. RESPONDENT DID NOT KNOWINGLY ENGAGE 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

B. RESPONDENT DID NOT KNOWINGLY ENGAGE IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE; AND

C. THIS COURT'S DECISIONS AND THE ABA SANCTIONS STANDARDS SUPPORT A REPRIMAND WITH AN ORDER TO TAKE SPECIFIC CLE COURSES.

In determining the appropriate sanction for attorney misconduct, this Court historically relies on several sources. 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 which 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). Aggravating and mitigating circumstances are allowed. ABA Standards for Imposing Lawyer Sanctions (1991 ed.).

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

The Informant use a 2013 case, *In re Hess*, to support their request of suspension of Respondent's license. The case involves a frivolous lawsuit against his former clients. *In re Hess*, 406 S.W. 3d 37 (Mo. banc 2013). 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. *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.

INFORMANT refer to *In re Miller*, 147 P. 3d 150 (Kan. 2006). *In re Miller* the motivation for the lawyer to file the lawsuit was greed.

INFORMANT refer to *In re Straw*, 68 N.E. 3d 1070 (Ind. 2017). *In re Straw* the motivation for the lawyer to file the lawsuit was greed.

INFORMANT refer to *In re Levine*, 847 P. 2d. 1093 (Ariz. 1993). *In re Straw* the motivation for the lawyer to file the lawsuit was greed.

INFORMANT refer to *Dodrill v. Executive Director, Committee on Profession Conduct*, 824 S.W. 2d 383 (Ark. 1992). *Dodrill* motivation was for his personal financial gains

Here, the Federal Court request Respondent file a motion for a default judgment against Angela Darden on several occasion prior to it dismissing the case. Respondent did not file the lawsuit for financial gains. The lawsuit was filed for non-custodian parents who where in court on IV-D case with inappropriate Form 14.

There are many individuals who appear in court on the IV-D docket every few months with their arrearages increasing monthly and no means or knowledge to

modify. In October 2017, Respondent filed a motion to modify child support and the Circuit would not allow it to process under the IV-D case; even though Revised Statutes of Missouri 454.435.4 (2014) may allow it.

Prior to Judge Autry dismissing the lawsuit, Respondent asked for permission to add Judge Frawley as a defendant. Judge Autry granted Respondent's motion to add Judge Frawley as a defendant. During the DHP hearing Judge Stelzer was asked, "But you agree that the judge in federal court allow Judge Frawley to be added as a defendant? **APP 129**. Judge Stelzer replied, "Yeah, he let him be added as a defendant, that's correct." **APP 129**. We can conclude Judge Autry didn't believe the lawsuit against Judge Frawley was frivolous. Judge Autry was aware that respondent was requesting to add a sitting just as a party. Actually, I believed Judge Autry decision to allow me to add Judge Frawley was a validation of my legal conclusion.

And if you go up to right above there, the third sentence from the bottom, it says, Title IV-D may give rise to individual rights; therefore, we agree with the Court of Appeals that the secretary oversight powers are not comprehensive enough to close the door on section 1983 liabilities." **App. 132 and TR. 47** and *Blessing v. Freestone*, 520 US 329, 348 (1997). Judge Stelzer responded, "Well, if you're trying to sue the prosecutor or the secretary or somebody like that, I guess this is **good case**

law, John. But if you're trying to sue a judge who entered an order on a case that was properly in front of you, I think it falls short by a mile.

Judge Stelzer states he has a right to enter an order on a case that was properly in front of him. Respondent agree that Judge Stelzer has the right to enter an order on a case that was properly in front of him. At the time of the filing of the lawsuit, Respondent did not believe Judge Stelzer had the right to enter an order on a motion that was not allowed to be file according to the law. If this Court concludes Respondent legal conclusion was in error, he will take the necessary step to avoid this situation in the future. If this Court concludes Respondent legal conclusion was in err, he will apologize to all parties orally and in writing.

When this Court consider Respondent prior disciplinary offenses, he asked the Court take into consideration his Petition For A Writ of Prohibition. See Respondent Exhibit A.

CONCLUSION

Respondent did not engage in serious profession misconduct by filing lawsuits against Judge Stelzer and Judge Frawley. Therefore, Respondent did not violate Rule 4-3.1 and Rule 4-8.4(d). If this Court conclude Respondent engage in profession misconduct, Respondent submits that the Court should reprimand Respondent with an order to complete CLE course.

Respectfully submitted,

/s/ John Washington. 53286

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CERTIFICATE OF SERVICE

I hereby certify that on this 11 day of April, 2019, a true and correct copy of Respondent 's foregoing Brief was served on Informant via Missouri Supreme Court electronic filing system pursuant to Rule 103.08:

Alan D. Pratzel
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Jefferson City, MO 65109

Informant

/s/ John Washington. 53286

John Washington

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 Informant 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 6165 words , according to Microsoft Word, which is the word processing system used to prepare this brief.