

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

**JOHN F. WASHINGTON,
3115 South Grand, Suite 100
St. Louis, MO 63118**

Missouri Bar No. 53286

Respondent.

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Supreme Court #SC97715

INFORMANT'S REPLY BRIEF

**OFFICE OF
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INFORMANT

TABLE OF CONTENTS

COVER PAGE	1
TABLE OF CONTENTS	2
TABLE OF AUTHORITIES	3
ARGUMENT	
I.	4
CONCLUSION	9
CERTIFICATE OF SERVICE	10
CERTIFICATION OF COMPLIANCE: RULE 84.06(c)	11

TABLE OF AUTHORITIES

CASES

<i>Family Support Division v. Douglas Pipes</i> , Cause Number 1622-FC00833	5, 6
<i>John Washington v. The Honorable Bryan Hettenbach</i> , Case No. SC94825	5
<i>Mosley v. General Motors Corp.</i> , 497 F.2d 1330, 1332 (8 th Cir. 1974)	8
<i>Travelers Insurance Company v. Intraco, Inc.</i> , 163 F.R.D. 554, 556 (S.D. Iowa 1995)	8
<i>United Mine Workers of America v. Gibbs</i> , 383 U.S. 715, 724, 16 L.Ed.2d 218 (1966)	8

STATUTES

§452.747.1, R.S.Mo.	6
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OTHER AUTHORITIES

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)	9
Rule 20(b) Federal Rules of Civil Procedure	8

RULES

Rule 4-3.1	6, 7, 9
Rule 4-8.4(d)	6, 7, 9

ARGUMENT

I.

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 THEREBY 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.

Respondent's Brief is Unsupported by the Record

Respondent attempts to defend against the serious charges in this discipline case by positing a series of spurious factual and legal arguments and by assertions that cannot be supported by the record. The claims have not been and cannot be verified; they should be summarily rejected by the Court at this point.

Thus, for example, at pages 8-9 of his brief, Respondent references a Petition for a Writ of Prohibition filed in this Court in a case captioned, *John Washington v. The*

Honorable Bryan Hettenbach, Case No. SC94825, wherein Respondent claims that he is owed in excess of \$500,000 in account receivables and states that “a culture and environment was created where defendants were aware of judges not allowing private counsel to withdraw as attorney for none [sic] payment. As a result of said knowledge, defendants refused to pay counsel for legal services.” Respondent includes his Petition for a Writ of Prohibition as a purported exhibit to his Appendix, even though the document was not offered or admitted into evidence by the Disciplinary Hearing Panel and is not part of the record in this discipline case.

The assertions have no relevance to the facts and misconduct in this case, are unsupported by the record and should be ignored by this Court. There can be no conceivable relationship between the financial condition of Respondent’s law practice and his misguided decision to sue Judge Stelzer and Judge Frawley in their respective individual and official capacities.

Respondent again referenced matters outside the record at pages 11-12 of his brief, where he cites to a St. Louis City Circuit Court case captioned *Family Support Division v. Douglas Pipes*, Cause Number 1622-FC00833, another case where Respondent sought to file a motion to modify child support obligations within a contempt proceeding filed by the FSD. Respondent includes pleadings and related documents as purported exhibits B, C and D to his Appendix, even though the documents were not offered or admitted into evidence by the Disciplinary Hearing Panel and are not part of the record in this discipline case.

The fact that Respondent attempted the same procedurally incorrect tactic (i.e., filing a motion to modify child support within a contempt proceeding brought by the State to collect child support arrearages) on behalf of a client in an unrelated case does not justify or explain the ethical violations in this case. Right or wrong, a judge's ruling on a motion to dismiss does not expose that judge to personal or official liability and certainly does not support the outlandish and unsupported claim that the judge conspired with the assistant circuit attorney who filed the motion to dismiss. The Respondent's references to matters outside the record should be ignored and his request that this Court take judicial notice of such matters should be rejected.

Respondent's Failed Attempt to Justify Suing Judges Stelzer and Frawley

Respondent asserts that "an inference can be drawn that [Assistant Circuit Attorney] James Michael and Judge Michael Stelzer conspired to prevent Respondent and others from filing modifications" in contempt proceedings brought by the State for child support arrearages. Respondent's brief at 25. The assertion is false and unsupported by any record evidence. When combined with the Respondent's subsequent lawsuit that he filed against Judge Stelzer in his official and individual capacity, the violations of Rule 4-3.1 and Rule 4-8.4(d) are proven.

There is no record evidence supporting Respondent's claim that the Missouri Family Support Division was representing Angela Darden, Respondent's ex-spouse, when it filed a motion to dismiss Respondent's motion to modify in the Contempt Proceeding. The motion to dismiss was consistent with §452.747.1, R.S.Mo., which provides in pertinent part as follows:

“Any petition for modification of child custody decrees filed under the provisions of section 452.410 or sections 452.700 to 452.930 shall be verified and, if the original proceeding originated in the state of Missouri, shall be filed in that original case....” (emphasis supplied). **App. 273.**

The fact that the motion to dismiss was filed by the FSD and granted by Judge Stelzer does not support an inference that a conspiracy existed between the judge and the Assistant Circuit Attorney representing FSD. By making this illogical inference and then reacting with a lawsuit against the judge in his individual and official capacity without any basis in law or fact, Respondent abused the legal process, filed a frivolous claim and violated Rule 4-3.1. The injuries to the legal system that resulted from the Respondent’s misconduct were fully explained by Judge Stelzer at the DHP hearing [**App. 111-112**] and supported a conclusion that Respondent also engaged in conduct prejudicial to the administration of justice in violation of Rule 4-8.4(d).

Throughout this disciplinary proceeding, Respondent has argued that District Court Judge Henry Autrey’s order permitting the joinder of Judge Thomas Frawley¹ to the Lawsuit demonstrated that his claims against Judge Stelzer were not frivolous. As stated by Respondent, “Actually, I believed Judge Autry [sic] decision to allow me to add

¹ Respondent joined Judge Frawley as a defendant in the Lawsuit after Judge Frawley denied Respondent’s Motion to Set Aside Judge Stelzer’s order dismissing Respondent’s motion to modify in the Contempt Proceeding.

Judge Frawley was a validation of my legal conclusion.” Respondent’s Brief at 33. Respondent’s assertions are misplaced.

Rule 20(b) of the Federal Rules of Civil Procedure addresses the joinder of parties in a single lawsuit and provides as follows:

“Persons...may be joined in one action as defendants if: (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any questions of law or fact common to all defendants will arise in the action.”

Courts have consistently held that under the rules, the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties and, consequently, the joinder of parties and claims is strongly encouraged. *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 724, 16 L.Ed.2d 218 (1966). *See also, Mosley v. General Motors Corp.*, 497 F.2d 1330, 1332 (8th Cir. 1974) (the purpose of Rule 20 is to promote trial convenience and expedite the final determination of disputes, thereby preventing multiple lawsuits); *Travelers Insurance Company v. Intraco, Inc.*, 163 F.R.D. 554, 556 (S.D. Iowa 1995) (Rule 20 joinder is to be liberally construed and should be read as broadly as possible whenever doing so is likely to promote judicial economy).

The fact that Judge Autrey granted Respondent’s motion to join Judge Frawley to the Lawsuit was in keeping with the objectives of judicial economy reflected in Rule 20 of the Federal Rules of Civil Procedure and does not constitute a validation of Respondent’s clearly frivolous claims. To the contrary, Judge Autrey ultimately

dismissed the Lawsuit on a finding that Judge Stelzer and Judge Frawley were “completely and absolutely immune from civil lawsuits based on claims of misconduct during the performance of their judicial duties.” **App. 239.** This subsequent Order is reflective of Judge Autrey’s conclusions regarding the merits of Respondent’s Lawsuit.

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 17th day of April, 2019, a copy of Informant's Reply
Brief is being sent through the Missouri Supreme Court e-filing system to:

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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 1,704 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



Alan D. Pratzel