

**IN THE SUPREME COURT  
STATE OF MISSOURI**

**IN RE:**

**GAYLARD T. WILLIAMS,**

P.O. Box

St. Louis, MO 63108-0542

Missouri Bar No. 33289

Respondent.

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**Supreme Court No. SC98245**

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**RESPONDENT'S BRIEF**

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**GAYLARD T. WILLIAMS #33289  
RESPONDENT PRO SE**

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## **STATEMENT OF JURISDICTION**

This action is one in which Informant, the Chief Disciplinary Counsel, is seeking to discipline an attorney licensed in the State of Missouri for alleged violations of the Missouri Rules of Professional Conduct. 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 2016.

## **STATEMENT OF FACTS**

### **1.Introduction**

The Information herein charged Respondent, Gaylard T. Williams with violations of Rules 1.7(a)(2), 1.8(j) and 8.4(d) for engaging in sexual relations with his client, A.B., during the course of the legal representation in question.

Respondent and A.B. have known each other for over thirty years, during which time Respondent alleges that A.B. and Respondent had an off and on consensual sexual relationship from time-to-time. However, Respondent denies any sexual relationship existed between them when the client-lawyer relationship commenced regarding the legal representation in question. Only two witnesses testified at the disciplinary hearing, A.B. and Respondent, her word against his. Following the hearing and presentation of all the evidence, but before the decision, the Chair of the Disciplinary Hearing Panel became ill and was unable to participate in the decision. Consequently, the panel's unanimous decision was rendered by the two remaining members.

The panel determined, after two days of hearing, listening to the testimony of the only two witnesses, questioning the witnesses, reviewing of all the submitted documents submitted by both sides, that A.B. was not a credible witness, the Informant had not met its burden and recommended dismissal of the Information.

Informant rejected the panel's findings and recommendations. The Respondent accepted the panel's findings and recommendation. The Informant

seeks the Court's review, while the Respondent seek this Court to adopt the findings and recommendation of the panel and dismiss the Information.

## **2. Preliminary Facts**

Informant is the Chief Disciplinary Counsel appointed by this Court pursuant to Rule 5.06. (Ex.10).

Informant has determined, pursuant to Rule 5.11, that probable cause exists to believe that Respondent is guilty of professional misconduct. (Ex. 10).

Informant has the burden of proof/persuasion and must prove his case by the preponderance of the evidence.

Respondent was licensed as an attorney in Missouri on October 10, 1986. His bar number is 33289. (Ex. 10).

Respondent's disciplinary history consists of a letter of admonition dated May 10, 2000 for violating Rule 1.4 on communication by failing to timely notify his client of court judgment entries and failing to affirmatively inform his client of the time limitations to file Applications for Trial De Novo which precluded his client from filing said Applications within the specified time allowed. (Ex. 12).

The address Respondent designated in his most recent registrations with The Missouri Bar is: P.O. Box 4542 St. Louis, MO 63108-0542. (Ex. 10).

During the relevant times regarding this matter, Respondent practices law out of his personal residence located at 2543 Ada Avenue Jennings, MO 63136. (Tr. Vol. 1, pg. 18<sup>1</sup>).

Both Respondent and A.B. were called to testify at Respondent's disciplinary hearing. No other witnesses testified. Informant failed to call any expert or medical witnesses.

### **3.Complainant's Personal Life**

The complainant ("AB") was born in 1962 and grew up in St. Louis. Her parents are still alive. She graduated Southwest High School in 1980, and then attended some college at UMSL, SLU, and in Tacoma, Washington. (Tr. Vol. 1, pg. 61-62).

A.B. worked at Boeing in Washington, the Office of Administration, and then from 2002-2012 at the U.S. Record Center in St. Louis. (Tr. Vol. 1, pg. 62-63).

A.B. has four children: Andis, Armanti (deceased), Adrion, and Edward. (Tr. Vol. 1, pg. 63).

During her marriage between 1988-1995, A.B.'s alleges her husband was physically abusive to her and her sons. (Tr. Vol. 1, pg. 64-65).

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<sup>1</sup>. All reference to page numbers in the hearing transcript Vol. 1. (Tr. Vol. 1) can be found in Respondent's Appendix Volume -1. To go to a specific referenced page here in the Appendix just add 2 to the referred to page number. (e.g. page 18 become page 20).

A.B. divorced her husband in 1995. (Tr. Vol. 1, pg. 65).

A.B.'s son, Armanti, was murdered with an AK-47 in drug-related activity on August 6, 2009. She saw him dead on the ground. (Tr. Vol. 1, pg. 63).

A.B. verified that her cell phone number at the relevant times herein is/was 314-243-1419. (Tr. Vol 1, pg. 46).

A.B. verified that her mailing address at the relevant times herein was 4233 McPherson Ave., St. Louis, MO 63108. (Tr. Vol 1, pg. 92).

A.B. has pre-existing depression, but following Armanti's murder was diagnosed with PTSD, bipolar<sup>2</sup>, and anxiety. (Tr. Vol. 1, pg. 64, Respondent Exhibit J<sup>3</sup>).

A.B. has stated that she is disabled mentally and suffers a mental illness. (Respondent's Exhibit I).

A.B. has sought psychological treatment from Augusta Lee Cox and psychiatric treatment from Doctor Anderson. (Respondent's Exhibit I, Exhibits 5 and 6). ***However, A.B. never mentioned the alleged sexual assault that allegedly occurred in 2005*** (emphasis added).

A.B. has been prescribed Alprazolam, Xanax, Percocet, Oxycodone, and Olanzapine to treat her mental illness. (Respondent's Exhibits L, K, and Exhibit 7).

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<sup>2</sup> . Bi-polar disorder, formerly called manic depression, is a mental health condition that cause extreme mood swings. These mood swings can affect sleep, energy, activity, judgment, behavior and the ability to think clearly. 1998-2018 Mayo Foundation for Medical Education and Research (MRMER). Respondent's Exhibit J.

<sup>3</sup> . All Respondent's Exhibits can be found in Respondent's Appendix 3.



#### **4. Complainant and Respondent History**

A.B. recalled meeting Respondent for the first time in 1984 or 1985. She was at a party where students studying to be lawyers, doctors, and businesspeople got together. She exchanged numbers with Respondent. (Tr. Vol. 1, pg. 66).

A.B. said Respondent invited her to his house once where she stayed no more than five minutes. “His place was messy, junky. He just had books around, he didn’t have any furniture, and I just wasn’t feeling the vibe, so I said I’m going to leave, and I left. And I didn’t see him anymore.” (Tr. Vol. 1, pg. 66).

A.B. specifically denied any dating relationship or consensual sexual relations with Respondent. (Tr. Vol. 1, pg. 67).

Respondent testified that he and AB had known each other for 30 years, dated and had a prior consensual sexual relation prior to his 2015 representation of A.B. (Tr. Vol 1, pg. 21-22).

In February 2005, A.B. retained Respondent regarding a financial dispute over A.B.’s purchase of a house. Ex. 15 (Agreement to Provide Legal Services) and Ex. 16 (receipt for legal fees paid) are the operative documents. (Tr. Vol. 1, pgs. 26-27).

In March 2005, according to A.B. testimony, Respondent called her at her work at the Record Center on Page saying he needed her to sign some paperwork before he could go to court on her legal matter. (Tr. Vol. 1, pg. 69):

A.B. testified that went back into her job “and did my job and just stood there and sat there. She testified that she went home, and I drank, and I just - - I didn’t talk, didn’t do anything.” A.B. did not go to the police (Tr. Vol. 1, pg. 70-71).

A.B. never sought any medical attention. A.B. never disclosed this alleged incident with either Augusta Cox or Dr. Dale Anderson. A.B. did not file a complaint with the OCDC. A.B. never disclosed this incident as part of these proceedings until the hearing date of December 3, 2018. (Respondent’s Exhibit I, Tr. Vol.1, pg. 70).

Respondent denied in March 2005 picking A.B. up at work, driving her to a field and sexually assaulting her. (Tr. Vol. 1, pg. 43), although Respondent did state that he had sexual relations with A.B. when she “was working at the place on Page.” Respondent claimed the sexual relations were consensual. (Tr. Vol. 1, pg. 21-24).

Respondent never denied that a sexual incident with A.B. occurred while he was legally represented AB in the 2005 legal matter, but denied sexually assaulting A.B. (“You have to understand the rule changed.”) (Tr. Vol. 1, pgs. 24-25, 43).

Respondent was never charged with a Rule violation for the alleged incident in 2005. As stated earlier, said incident/testimony/documentation were never disclosed to the Respondent as part of this matter until the time for the hearing on

December 3, 2018. (Tr Vol. 1, pg. 25). It should be further noted again, that A.B. at the time in question, or at any other time, thereafter, never reported the alleged incident to the police, her doctors or OCDC. Nor did she ever seek medical attention for the alleged sexual assault. (Tr. Vol. 1, pg. 101, 104, Tr. Vol 2, pgs. 260, 264, 267, 268).

Respondent successfully provided AB with competent legal services, obtaining A.B. favorable results, and that said prior sexual relationship did not create a significant risk that his representation of A.B. would be materially limited by his relationship with A.B.

A.B., after the alleged sexual assault in 2005, retained Respondent, without incident, as her lawyer on three subsequent occasions (1) to represent one of her sons in a drug possession case (~ 2011), (2) to represent her regarding an order of protection (2015), and (3) to obtain for her grandparent visitation rights with Arvon, the son of her deceased son, Armanti (2015), and the Respondent's prior sexual relationship did not create a significant risk that his representation of A.B., or her son, would be materially limited by his personal interest or any prior relationship with A.B. (Respondent's Exhibit A and B, respectively, Tr. Vol. 1, pg. 30, 71).

A.B. was asked why she hired Respondent on subsequent occasions if he had sexually assaulted her in 2005. A.B. testified: "I have low self-esteem. I don't

know why. I don't know why I married my husband after he beat me up right before we got married. I don't know why." (Tr. Vol. 1, pg. 115).

Given A.B. alleged claim that the Respondent sexually assaulted her in 2005, A.B. had access to the "Yellow Pages", the Bar Association and knew other attorneys such as Mark T. McClockey, Esq. who she could have sought out/consulted with for legal representation. (Respondent's Exhibit H and R, respectively, Tr. Vol. 1, pg. 97, Tr. Vol. 2, pgs. 275,276).

Respondent was aware that A.B. had issues due to the loss of her son and her abusive marriage, but never discussed it in detail with A.B. (Tr. Vol. 1, pg. 31-33, 87-88).

Respondent was unaware of any of A.B.'s medical diagnoses until they were disclosed by Wendy Kimple in her Answer to A.B.'s Petition for Grandparent's Rights, by her attorney McCloskey, and/or as disclosed as part of the discovery in this matter. (Tr. Vol. 1, pg. 32, Respondent's Exhibit D, Exhibit 7).

Respondent did not believe he needed to take any great caution in his legal representation of her since he was not aware of the extent of her abusive relationships or her medical conditions/history, or whether she was schizophrenic, detached from reality as suggested by Counsel for Informant, or Ms. Kimple's Answer. (Tr. Vol. 1, pg. 33, 35-36, 56, Respondent's Exhibit D).

Respondent's representation of A.B. regarding an order of protection arose from a dispute with her grandson Arvon's mother, Wendy over the unveiling of a billboard in a campaign to "stop the violence." The billboard had a picture of Armanti and Arvon on it. The resulting disagreement led to thrown liquids and loud words. (Tr. Vol. 1, pg. 73-74).

Again, Respondent successfully represented A.B. and was able to again obtain favorable legal results for A.B., and any prior sexual relationship did not create a significant risk that his representation of A.B. would be materially limited by his personal relationship with A.B. (Respondent's Exhibit B, Tr. Vol 1., pg.119).

### **5.The Grandparent Visitation Case**

At the order of protection hearing, with Respondent present, A.B. raised the issue of grandparent visitation. The judge told A.B. that if she wanted an order for grandparent visitation with Arvon, she needed to have a lawyer draw up an order. (Tr. Vol. 1, pg. 72-75).

Respondent agreed to a flat fee of \$700 to draw up the order and obtain AB her grandparent visitation. (Tr. Vol. 1, pg. 44-48; 76). A.B. alleged that she delivered the \$700 to Respondent in August 2015, the money was first to represent her regarding the Order of Protection matter. (Tr. Vol. 1, pg. 72-74).

Respondent does not recall exactly when A.B. paid the attorney's fees for the grandparent's, but believes it was later when he met with her and her son. (Tr. Vol 1, pg. 46, 124).

A.B. told Respondent that she would like to be able to visit her grandson on the weekends and go to his school to volunteer. She wanted to see him on the holidays. A.B. was very concerned for Arvon's safety. She testified of several instances of physical abuse suffered by Arvon while living with Wendy and "wanted to have visitation so he could be with me sometimes and be loved and not be beat up." (Tr. Vol. 1, pg. 73-34).

Respondent and A.B., along with her son Adrion, meet a couple times to discuss filing her Petition for Grandparents Visitation, receiving documents from A.B., such as her grandson's birth certificate. (Tr. Vol. 1, pg. 23, 124).

Respondent, behalf of A.B., filed her Petition For Grandparent's Visitation with the 22nd Judicial Circuit, Cause No. 1622-FC01057, on or about March 19, 2016. Wendy Kimple was served on March 30, 2016 and filed her Answer on April 29, 2016. (Respondent's Exhibit C and E, March 30, 2016, text).

#### **6. Alleged Misconduct by Respondent**

On February 27, 2016, Respondent texted A.B. to meet him to sign a petition for grandparent visitation. (Tr. Vol. 1, pg. 76; Ex. 13/Ex. E).

AB met Respondent at the McDonalds on West Florissant and Ferguson to sign the Petition for Grandparents Visitation. That was the last time Respondent met personally with A.B. (Ex. 13/Ex. E) (Tr. Vol. 1, pgs. 20 46).

Respondent denied A.B. came to his house, at that time, at any prior time, or any subsequent time thereafter by herself. (Tr. Vol. 1, pg. 23).

Respondent denied they engaged in any sexual relations at his house, either forced or consensual. "I never had sex with her on February 26th or 27th." (Tr. Vol. 1, pgs. 21, 23; 53-54).

Respondent denied any conversation where Respondent asked for sex from A.B. Upon disclosing to A.B. Ms. Kimple's Answer, where she alleges that A.B. "has been diagnosed as bi-polar and schizophrenic and would pose a danger to Aron if left unsupervised.", A.B. became upset and emotional. (Respondent 's Exhibit E).

Respondent did contact A.B. by text on May 3, 2016, at 9:14 am, about the Answer from Ms. Kimple, trying to "discuss our next steps/strategy. I don't want any misunderstanding between us that might cause a conflict of interest<sup>4</sup> ...." (Respondent's Exhibit E, text message om May 3, 2016, at 9:14 am, Tr. Vol 1, pg.

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<sup>4</sup> . Missouri Supreme Court Rule 4-1.7(a)(2) .. a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: ....(2) there is a risk that the representation ..... by a personal interest of the lawyer. Respondent's main concern was to maintain the attorney-client relationship in order to continue to represent AB.

54). Respondent's concern was for A.B. and not on words needed to deny A.B.'s allegations<sup>5</sup>.

Respondent then began texting A.B. asking her what evidence she had to build her case regarding her allegations against Ms. Kimple. (Respondent's Exhibit E).

A lengthy back and forth texting went on between the Respondent and A.B. on May 3, 2016, ending with A.B. stating, "Ok thanks. I appreciate you." (Respondent's Exhibit E, text message on May 3, 2016, at 5:54 pm).

At no time during the May 3, 2016, texting session did A.B. mention anything about a sexual encounter, consensual or otherwise, past or present. (Respondent's Exhibit E).

On May 4, 2016, at 5:5:45 am, A.B. texted the Respondent asking for a copy of the Answer which Respondent responded by saying "Yes". (Respondent's Exhibit E).

At this point A.B. texted Respondent, she wanted a refund and made her first allegation regarding an alleged sexual encounter, but never made any statement about a forced sexual encounter. (Respondent's Exhibit E, May 4, 2016). **Further,**

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<sup>5</sup> . RULE 4-1.3: DILIGENCE- A lawyer shall act with reasonable diligence and promptness in representing a client. [1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor.



***A.B. never mentioned the alleged sexual assault that allegedly occurred in 2005***  
(emphasis added).

Thereafter, A.B. texted that she worked for Judges and consult with them on occasions as well as with her civil attorney. (Respondent's Exhibit E, text message from A.B. on a sex act between A.B. and Respondent).

On May 7, 2016, after a lengthy text exchange between A.B. and Respondent, A.B. text Respondent that he owed her for sex, and to make sure it was part of her bill for legal services performed by Respondent on her behalf, which she requested. (Respondent's Exhibit E, May 7, 2016, text messages). ***A.B. never mentioned anything about and alleged sexual assault presently or that allegedly occurred in 2005*** (emphasis added).

Respondent denied the sexual incident in real time because he was concerned about maintaining the attorney-client relationship, and not creating a conflict of interest. Respondent denied "soliciting sex from [A.B.] in exchange for any legal services." (Ex. 13/Ex. E, May 7, 2016, text exchange).

A.B., even though she alleged that she had unprotected sex with the Respondent and was concerned about her health, waited over two (2) months, on or about May 9, 2016, to go see her doctor, where she was diagnosed with bacterial vaginosis, most likely caused by the overgrowth of bacteria naturally found in the

vagina. She was given pills and cream. (Ex. 5, and Respondent's Exhibits L and M, pg. 60; Tr. Vol. 1, pg. 81, 129, 130, 151).

A.B. testified feeling angry and mad. She was told by her doctor to go see a psychiatrist. (Tr. Vol. 1, pg. 81-82).

A.B. was not seen by a psychiatrist, Dr. Dale Anderson, until almost a year after the alleged incident, which occurred on or about February 16, 2017, at which time during her meeting with Dr. Anderson she mentioned the alleged 2016 incident. (Exhibit 5, Tr. Vol. 1, pg. 173, Tr. Vol. 2, pgs. 299,300). ***Further, A.B. never mentioned the alleged sexual assault that allegedly occurred in 2005*** (emphasis added). Exhibits 5-8 are true and accurate copies of A.B.'s medical records which contained limited dated and limited, if any, specific references to any sexual assault in her SLU CARE medical records, no dated or specific references to medical records or other treatment records from Ms. Cox regarding any sexual incident, and very limited psychological records from Dr. Anderson. There is no mention of the Respondent by name in A.B. medical records. (Exhibit 5-8, specially Exhibit 7, pgs. 8-10, 27, 30, 31, 38, 40, 60, 71, 102-103, 125, 136, 142-143, 148-149, 155-1160, 173, 183, 203). ***Further, AB never mentioned the alleged sexual assault that allegedly occurred in 2005*** (emphasis added).

On May 11, 2016, A.B. made out a criminal complaint against Respondent at the City of Jennings police department. However, they concluded that any

alleged sexual encounter was of a consensual nature. The police never contacted nor interviewed the Respondent regarding the alleged incident. (Respondent's Exhibit N, Tr. Vol. 1, pgs. 159-160). ***Further, A.B. never mentioned the alleged sexual assault that allegedly occurred in 2005*** (emphasis added).

A.B. alleges that in May or August 2016, she testified both dates, she met with a licensed psychologist Augusta Cox, with whom A.B. was being treated/counseled for her mental illness/mental disability. A.B. further alleges she was given a letter, Exhibit 6B, which Respondent has objected to, and continues to object to the admission of said letter on the grounds that it lacks of proper foundation, that said document was not authenticated, dated or signed by Ms. Cox, said document is self-serving, hear-say and highly prejudicial, and was only produced and given to Respondent on or about December, 3, 2018, the day of the hearings. Ms. Cox was served with subpoena to produce her records/testify but failed to do so (Tr. Vol. 1, pgs. 41, 83-85, Exhibit 6, Respondent's emailed, with an attached subpoena sent to the panel and the attorney for Informant on or about July 12, 2018, at 12:19 pm). Informant, although had the opportunity to do, never call Ms. Cox to testify. ***Further, A.B. never mentioned the alleged sexual assault that allegedly occurred in 2005*** (emphasis added).

Assuming Ms. Cox's gave A.B. said advise on or about August 2016, A.B. did not file her Bar Complaint until ten (10) month later, on or about June 9, 2017.

Said Complaint never mentioned, nor referred to the alleged 2005 sexual assault. Furthermore, A.B. never filed a Complaint with the Better Business Bureau or any other governmental agency. (Tr. Vol. 1, pg. 167, Tr. Vol. 2<sup>6</sup>, pgs., 295,296, Exhibit 1 and Respondent's Exhibit I).

Despite the allegations, Respondent attempted to continue to maintain the attorney-client relationship and represent A.B. regarding her case. Respondent made attempts to contact A.B. regarding her case. On or about November 27, 2016, sent A.B. letter to her last known address, informing her that her case was due to be dismissed by the Court. (Respondent's Exhibit E and F).

Respondent has suggested that as a motive, A.B. has falsely accused Respondent of sexual abuse/assault to extort money, and to assert a civil legal claim for money against Respondent in much the same manner as she did with Dr. M. (Tr. Vol. 1, pg. 236-37, Respondent's Exhibits E (text message on May 7, 2016, at 10:00 pm) H and R, Tr. Vol., pg. 172).

After their text message exchanges, A.B. never attempted to respond nor contact the Respondent regarding her case. (Respondent's Exhibit E and F, Tr. Vol. 1, pgs. 164-165, Tr. Vol. 2, pgs. 282-290).

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<sup>6</sup> . All reference to page numbers in the hearing transcript Vol. 2. (Tr. Vol. 2) can be found in Respondent's Appendix Volume -2. The page numbers refer to the actual page numbers in said transcript.

On December 5, 2016, the Court dismissed A.B. cause of action, without prejudice, terminating Respondent's representation of A.B. (Respondent's Exhibit G).

On or about December 19, 2016, Respondent received a demand letter from A.B.'s attorney, Mark T. McCloskey, Esq., demanding \$200,000 from Respondent. The same attorney who represented A.B. in her claim of sexual assault, allegedly occurring in 2010, against Dr. M. (Respondent's Exhibit H and R, Tr. Vol 1, pgs. 170, 172, Tr. Vol. 2, pg. 273).

In Attorney McCloskey's letter there was no reference to the alleged 2005 incident of sexual assault, or that the Respondent had presently, or at any other time, sexually assaulted/abused A.B. (Respondent's Exhibit H).

Respondent immediately responded to said demand letter denying all allegations made against him by A.B. (Respondent's Exhibit H).

A.B.'s testimony is the only evidence against Respondent. (Tr. Vol 1 and 2, pgs. 302-303).

A.B., by her own admission, is mentally disable and suffers from a mental illness, that she sought monetary civil action against Respondent, and that her medical records do not confirm or support her allegations against Respondent. (Tr. Vol. 1, pgs. 105, 145, 172, Exhibit 7 pgs. 8-10, 27, 30, 31, 38, 40, 60, 71, 102-103, 125, 136, 142-143, 148-149, 155-1160, 173, 183, 203, Respondent's Exhibit I).

Respondent has consistently denied any sexual encounter with A.B. during his legal representation of A.B. regarding her Grandparent case and denies ever assaulting/abusing AB. (Tr. Vol. 2, pgs. 305-320).

Respondent did testify he did have a consensual sexual relationship with A.B. prior to July 2015, when A.B. retained Respondent's legal services to obtain her grandparent visitation right.

### **7. The Disciplinary Hearing Panel's Decision**

The disciplinary hearing was held in this matter over two days, on December 3, 2018 and January 28, 2019. The Chair of the Disciplinary Hearing Panel, who was present for the hearing, subsequently became ill and could not participate in the decision. Consequently, the remaining two members of the panel issued a decision on October 9, 2019.

The Respondent incorporates by reference as if fully set forth herein and made a part hereof the findings of fact and recommendation of the DHP.

The Respondent accept the panel's findings that A.B. was not a creditable witness and the Informant has failed to meet its burden of proof by the preponderance of the evidence presented to the panel.

**POINT RELIED ON**

**I.**

**THE SUPREME COURT SHOULD ADOPT THE FINDINGS AND RECOMMENDATION OF THE DHP IN THAT THE INFORMANT FAILED TO MEET IT'S BURNDEN OF PROOF THAT RESONDENT ENGAGED IN A SEXUAL RELATIONSHIP WITH A.B. AT OR DURING THE TIME OF THE CLIENT-LAWER RELATIONSHIP REGARING A.B.'S GRANDPAFRENT RIGHTS CASE.**

In re Schuessler, 578 S.W.3d 762, 770-71 (Mo. banc 2019).

In re John D. Connaghan, 613 S.W.2d 626,629 (Mo., 1981).

In re Donald C. Littleton, 719 S.W.2d 772, 775 (Mo., 1986).

In re Ehler, 319 S.W.3d 442, 451 (Mo. banc 2010).

In re Gardner, 565 S.W.3d 670, 677 (Mo. banc 2019).

**POINTS RELIED ON**

**II.**

**THE SUPREME COURT SHOULD ADOPT THE FINDINGS AND RECOMMENDATION OF THE DHP IN THAT A.B. WAS NOT A CREDITABLE WITNESS.**

In re Schuessler, 578 S.W.3d 762, 770-71 (Mo. banc 2019).

Wilson v. Union Pac. R.R. Co., 509 S.W.3d 862 (Mo. App.2017).

Mitchell v. Kardesch, 331 S.W.3d 667,675 (Mo. 2010).

Newell Rubbermaid, Inc. v. Efficient Solutions, Inc., 252 S.W.3d 164,171-172 (Mo. App. 2007).

State v. Hunter, 544 S.W. 2d 58,60 (Mo. App. ,1976).



## ARGUMENT

### I.

**THE SUPREME COURT SHOULD ADOPT THE FINDINGS AND RECOMMENDATION OF THE DHP IN THAT THE INFORMANT FAILED TO MEET IT'S BURNDEN OF PROOF THAT RESONDENT ENGAGED IN A SEXUAL RELATIONSHIP WITH A.B. AT OR DURING THE TIME OF THE CLIENT-LAWER RELATIONSHIP REGARING A.B.'S GRANDPAFRENT RIGHTS CASE.**

#### Standard of Review

As in all attorney discipline cases, “[t]he DHP’s findings of fact and conclusions of law are advisory. The Court reviews the evidence de novo, independently determining all issues pertaining to credibility of witnesses and the weight of the evidence and draws its own conclusions of law. Professional misconduct must be proven by a preponderance of the evidence.” *In re Schuessler*, 578 S.W.3d 762, 770-71 (Mo. banc 2019).

According to Mo. Supreme Court Rule 5.15(d): “All [disciplinary] hearing shall be in accordance with the rules of this Court ... The rules of evidence for trials in circuit court apply. The burden of proof shall be on the Informant to establish a violation of Rule 4 by a preponderance of the of the evidence.

(emphasis added). In re John D. Connaghan, 613 S.W.2d 626,629 (MO., 1981); In re Donald C. Littleton, 719 S.W.2d 772, 775 (Mo., 1986).

The further purpose of these proceedings, if professional misconduct is proven by the preponderance of the evidence, is to determine the appropriate discipline, "this Court considers the ethical duty violated, the attorney's mental state, the extent of actual or potential injury caused by the attorney's misconduct, and any aggravating or mitigating factors." In re Ehler, 319 S.W.3d 442, 451 (Mo. banc 2010). When imposing discipline, this Court must be guided by the principle that the purpose of attorney disciplinary proceedings "is not to punish the attorney, but to protect the public and maintain the integrity of the legal profession." In re Gardner, 565 S.W.3d 670, 677 (Mo. banc 2019) (quoting In re Kazanas, 96 S.W.3d 803, 807-08 (Mo. banc 2003)).

The evidence against Respondent comes from one source, A.B. There is no forensic evidence against Respondent. There no creditable documents, not subject hearsay or other exclusionary rules of evidence, which support or corroborate A.B's testimony. There is no admission against interest made by the Respondent. Just the testimony of A.B. There is no expert testimony to support the Informant's contention that the DHP should "take in account the sexual trauma". Despite the fact the DHP were aware through A.B.'s own testimony that she is mentally disable and suffers from a mental illness (Tr. Vol. 1, pgs. 105, 145, 172, Exhibit 7

pgs. 8-10, 27, 30, 31, 38, 40, 60, 71, 102-103, 125, 136, 142-143, 148-149, 155-1160, 173, 183, 203, Respondent's Exhibit I).

Particularly, Informant now asserts that the DHP failed to recognize that trauma and victims of non-consensual relations are often repeat victims to justify her testimony. That the alleged trauma and fear caused by the painful events that occurred between A.B. and Respondent somehow negated all the other aspects of A.B.'s credibility and/or testimony. The problem is the Informant never introduced any expert evidence/testimony at the hearing to support such supposition. The DHP was never given the opportunity to consider and/or take into account such evidence/testimony. Nor was the Respondent ever given the opportunity to counter and/or challenge Informant's position on this issue.

The Informant could have called A.B.'s psychiatrist and/or psychologist to support its contention. A.B. testified and submitted in her complaint, and other documents provided to the Informant, that she had supportive evidenced from her doctors that could support her allegation(s). But Informant took no steps to produce said evidence or call said witnesses. In fact, the Informant did everything in their power to prevent Respondent from calling A.B.'s doctors or obtaining A.B.'s medical information/records. It would seem the Informant was more concerned in the ends and not the means they employed in their pursuit in obtaining the

favorable decision/outcome they sought, not justice, not fairness, or the protection of the public or the legal profession.

For these enumerated reasons, the Court should adopt the findings of the DHP that the Informant has filed to meet their burden of proof by the preponderance of the evidence that Respondent violated, during the course of his legal representation of A.B., the express prohibition contained in Rules 1.8(j) and 1.7(a)(2). That Informant has failed to meet its burden of proof by the preponderance of the evidence that Respondent's alleged misconduct involved the extortion for sex, in violation of Rule 8.4(d).

## ARGUMENT

### II.

#### **THE SUPREME COURT SHOULD ADOPT THE FINDINGS AND RECOMMENDATION OF THE DHP IN THAT A.B. WAS NOT A CREDITABLE WITNESS.**

As stated earlier, in Schuessler, it's the Court's duty to independently determining all issues pertaining to credibility of witnesses. Id.

Determination concerning the weight of the evidence and credibility of the witnesses are within the sole province of the [fact finder]. *Wilson v. Union Pac. R.R. Co.*, 509 S.W.3d 862 (Mo. App.2017).

Credibility of a witness is always relevant in a legal proceeding/hearing with respect to the witness character of the truthfulness and veracity of the witness. *Mitchell v. Kardesch*, 331 S.W.3d 667,675 (Mo. 2010).

Anything that has the tendency of throwing light on the accuracy, truthfulness, consistency, and sincerity of a witness is proper for the determination of the credibility of the witness. *Newell Rubbermaid, Inc. v. Efficient Solutions, Inc.*, 252 S.W.3d 164,171-172 (Mo. App. 2007).

Further, the matter of a witness motive is relevant and material, such as a witness expectation or hope of monetary or financial gain. *State v. Hunter*, 544 S.W. 2d 58,60 (Mo. App. ,1976).

This matter consisted of two (2) days of testimony. The only witnesses to be called to testify before the DHP were A.B., the complaining witness, and the Respondent.

The DHP, the fact finder, listen to the witness and considered the evidence and concluded “In addition to AMB’s (A.B.) conflicting and inconsistent statements as note above, the Disciplinary Hearing Panel find it difficult to impossible to reconcile the actions of AMB noted herein below and still consider her a creditable witness:”(Respondent’s Appendix Vol. 3 pages 153 through 155). The DHP then went on to list several more reasons for its findings (Respondent’s Appendix Vol. 3 page 155).

The Informant further opened the door regarding A.B.’s credibility when in its effort to paint Respondent as a predator<sup>7</sup>, introduced for the first time at the December 3, 2018<sup>8</sup>, hearing an alleged incident between A.B<sup>9</sup> and Respondent, which allegedly occurred in 2005, involving the alleged sexual assault of A.B. and the Respondent at the same time as Respondent was providing legal services to A.B. The problem with is alleged assault is that A.B. never reported to anyone or the authorities or never sought medical/psychological attention and/or treatment at the time. Furthermore, in the current matter, A.B. never mentioned the alleged

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<sup>7</sup>. Tr. Vol. 1, pg.12 line23-24.

<sup>8</sup>. Respondent’s Exhibit I, Tr. Vol. 1, page 70.

<sup>9</sup>. Informant’s Ex. 15 and 16.

assault in the text messages between her and the Respondent when she asked for a refund, then proceeded to claim that the Respondent owed her for sex<sup>10</sup>; with the police office a couple month after the alleged assault<sup>11</sup>; when she sought medical treatment several months after the alleged assault for a vaginal discharge; when she spoke to any of her medical doctors, psychiatrist and/or psychologist; her attorney when she decided to file a monetary claim against the Respondent<sup>12</sup>, or the OCDC<sup>13</sup> when she filed her complaint against the Respondent almost a year and a half after the alleged incident.

As to A.B's motive, it would seem that her clear motive was money. She had in 2010 accused her doctor of sexual assault, went to an attorney and filed a civil claim against said doctor and got a settlement. It worked once why not again? A.B., instead of filing a complaint with the Bar decided to go back to same attorney she hired for her case against the doctor and made a monetary claim/demand of \$200,000 to/from the Respondent.

Lastly, Respondent acknowledge and support the need for legal protection, in the back drop of the "Me Too" movement, for women who are victimized, sexually or otherwise, abuse of and neglected children, minorities, LGBTQIA+ people, immigrants, the weak, helpless and disenfranchised. However, not at the

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<sup>10</sup> . Respondent's Exhibit E.

<sup>11</sup> . Respondent's Exhibit N.

<sup>12</sup> . Respondent's Exhibit H.

<sup>13</sup> . Respondent's Exhibit I.

expense of destroying a person's reputation without sufficient evidence, threatening their livelihood without proper due process, justice and the rule of law.

For these enumerated reasons, the Court should adopt the findings of the DHP that A.B. was not a creditable witness and that the Informant has failed to meet their burden of proof by the preponderance of the evidence that Respondent violated, during the course of his legal representation of A.B., the express prohibition contained in Rules 1.8(j) and 1.7(a)(2). That Informant has failed to meet its burden of proof by the preponderance of the evidence that Respondent's alleged misconduct involved the extortion for sex from A.B, in violation of Rule 8.4(d).



**CONCLUSIONS OF LAW**

Informant has failed to prove by the preponderance of the evidenced that Respondent is guilty of professional misconduct in violation of Rule 4-1.7(a)(2), Rule 4-1.8(j) and/or Rule 4-8.4(d) by engaging in a sexual relationship with his client, A.B., during their lawyer-client relationship.

Respectfully submitted,

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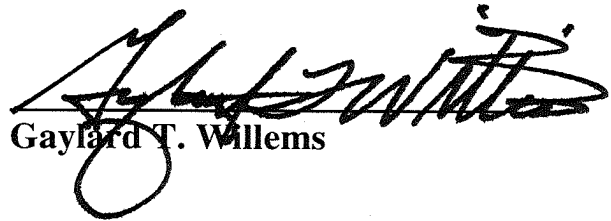
**CERTIFICATE OF SERVICE**

I hereby certify that on this 24th day of February 2020, the Respondent  
's Brief was sent through the Missouri Supreme Court e-filing system to

**Informant:**

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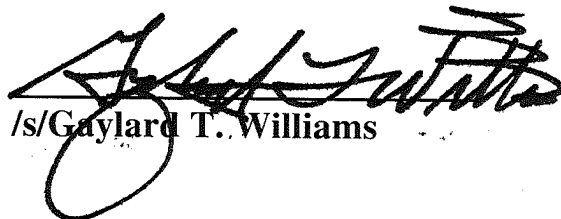
**ATTORNEYS FOR INFORMANT**

  
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**CERTIFICATION: RULE 84.06(c)**

I certify to the best of my knowledge, information and belief, that this reply brief:

1. Was served on Informant through the Missouri electronic filing system pursuant to Rule 103.08;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 6,253 words, according to Microsoft Word, which is the word processing system used to prepare this reply brief.

  
/s/Gaylard T. Williams