No. SC97784

In the
Supreme Court of Missouri

In Re: Allan H. Bell
Missouri Bar No. 19459

Respondent.

RESPONDENT'S BRIEF

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ATTORNEYS FOR RESPONDENT

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JURISDICTIONAL STATEMENT

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 §484.040, RSMo. This is a case of original jurisdiction by this Court which originated herein by the filing of a Motion by the Informant.

LEGAL STANDARD

The purpose of a criminal contempt action is to seek to punish the Respondent for his or her actions, due to their alleged disregard for a Court or an order or directive of the Court. *Mechanic v. Gruensfelder*, 461 S.W.2d 309 (Mo.App.1970). "A proceeding for criminal contempt is *sui generis*, and as such is controlled by its own rules…". *Id.* Criminal contempt actions are generally viewed as being criminal or quasi-criminal in nature. *Teefy v. Teefy*, 533 S.W.2d 563 (Mo.banc.1976). "One charged with criminal contempt is entitled to essentially the same rights of procedural due process as a defendant in a criminal case." *Ryan v. Moreland*, 653 S.W.2d 244, 247 (Mo.App.E.D.1983).

The Informant "has the burden of proving the elements of criminal contempt beyond a reasonable doubt just as in a criminal prosecution." *State ex rel. Wendt v. Journey*, 492 S.W.2d 861 (Mo.App.1973). The elements of a criminal contempt action are "actual knowledge of the …order, and willful conduct in violation of its terms". *State ex rel. Girard v. Percich*, 557 S.W.2d 25 (Mo.App.1977). "The scienter requirement of the second element is traditionally the most difficult to establish, but its proof is essential, as the existence of contempt is measured largely by the intent with which the contested conduct was committed. Where there is no intent to defy and degrade the order of the court, there is no contempt even in the face of seemingly contumacious conduct". *Girard* at 36.

STATEMENT OF FACTS

NOTE: All citing references are to the numbered pages from the six (6) volume Appendix prepared and filed by Informant on April 10, 2020.

1. Respondent is a resident of Jackson County, Missouri, who was formerly licensed to practice law in the State of Missouri. **A866**.

2. Respondent was licensed as an attorney in Missouri on or about September 2, 1967, and has practiced law in Missouri for 52 years, focusing on immigration law and workers' compensation claimant's representation. **A7**.

3. Respondent held Missouri Bar number 19459 until the Supreme Court of Missouri accepted the voluntary surrender of his license on or about September 21, 2019. As a result of the acceptance of Respondent's license, he was disbarred, and remains disbarred and unable to legally practice law. **A866 -A867**.

4. On or about April 1, 2019, Respondent's license to practice law was suspended by the Missouri Supreme Court in Case No. SC97784. **A4.**

5. Informant filed its Motion for Criminal Contempt and Sanctions on or about June 12, 2019, therein alleging that, despite the suspension of his license on April 1, 2019, Respondent continued "to hold himself out as a lawyer authorized to practice law…to take client funds…and …engaged in deceptive practices to hide his continued violation of the Court's Order". **A6**. A Show Cause Order was issued by the Missouri Supreme Court to Respondent that same day, directing that Respondent show cause why he should not be held in criminal contempt for the actions alleged by Informant to have occurred following the suspension of Respondent's bar license. **A14.**

6. On or about July 8, 2019, the Honorable Mary Weir, Sixteenth Judicial Circuit of Missouri was appointed as Special Master by the Missouri Supreme Court to hear evidence on Informant's Motion for Contempt and Sanctions. **A22**. A hearing was set for August 16, 2019. **A26**.

7. At trial, Informant first called William T. Blessing, PhD as an expert witness and as a treating provider for Respondent. **A43, et seq**. Dr. Blessing's opinion testimony was that Respondent had cognitive defects which would interfere with his practice of law. **A57**. Dr. Blessing opined that it was unlikely that Respondent would have forgotten that he was suspended from the practice of law, **A58, A75** but that he was certain that Respondent's functional capacity was such that he should no longer be practicing law. **A57**.

8. The Court then continued the case for additional testimony. **A77**

9. Respondent failed to appear personally for the second day of trial in this matter, October 18, 2019, due to his hospitalization. **A78, et seq**. The Court elected to proceed with the second day of testimony in Respondent's absence at the request of Informant and over the objection of Counsel for Respondent. **A84.** Respondent later presented medical records to the Court indicating his actual hospitalization on the date of the hearing. **A768-A779**.

10. Informant's second witness, Angela Williams, is an attorney who, along with her three office mates, was appointed as Co or Joint Trustees to take over the practice of Respondent on June 18, 2019 **A92-A94**. Ms. Williams's first interaction with Respondent was in June of 2019, **A95**, at least 60 days post suspension. Ms. Williams

testified that she was unable to locate any recent files of Respondent following her entry to and securing of Respondent's law office **A97**. The condition of said office was "horrendous", with evidence of mouse infestation, maggots, and filing that she considered not unlike that of a hoarder. **A58**. Respondent informed Ms. Williams that a number of his more recent files were in one of two storage lockers, but that after being provided access to both lockers, one was empty and the other contained only four boxes of files, as opposed to the fifty (50) to sixty (60) boxes Respondent had opined were located therein **A98-A100**. Ms. Williams was unable to form an opinion as to whether Respondent was clear or cogent enough to recognize his actions related to the practice of law **A110**. Ms. Williams testified that a non-lawyer could legally fill out USCIS immigration forms **A108-A109**.

11. Respondent's former secretary, Kandace Denny, testified that Respondent was unable to operate any of the electronics in his office, including his computer or basic e-mail **A116 et seq**. Respondent or Respondent's wife, Ruth Bell, collected and dealt with all of the payments in the office, and Ruth Bell opened all of the office mail **A118**. Ms. Denny testified that she had typed several different versions of a letter to Respondent's clients informing them that he was closing his office, but did not know to whom they were sent **A123**. Ms. Denny testified that she observed Respondent providing advice to clients following April 15, 2019, which was the last day that he was authorized to practice law pursuant to the suspension of his license by the Missouri Supreme Court **A120**. Ms. Denny testified that Respondent would continue to assist clients with filling out their USCIS paperwork and continued to accept fees from clients after April 15, 2019

A120. Ms. Denny alleged that several Fee Agreements between Respondent and new clients were back-dated, so as to appear that they were entered into prior to April 1, 2019. On or about June 13, investigators from OCDC appeared at Respondent's office, and Ms. Denny witnessed a heated exchange between Respondent and those investigators, in which the OCDC staff informed Mr. Bell what he was doing was wrong, and set forth exactly what he was allowed to do and what he was not allowed to do **A126 et seq**. Shortly thereafter, Respondent was removed from his office and it was turned over to the four Co-Trustees **A131**.

12. Informant called Raj Patel as a witness **A144**. Mr. Patel was a client of Respondent's prior to Respondent's suspension **A146**. Mr. Patel received a letter from Respondent's office indicating he would no longer be practicing law **A151,** but Mr. Patel did not know if the letter mentioned suspension from the practice of law **A160.** Mr. Patel testified that on May 23, 2019 (53 days post-suspension), Mr. Bell attempted to set up a conference call to counsel Mr. Patel about an upcoming USCIS interview **A154**. Mr. Patel further testified that he sent Mr. Bell all of the information needed to complete his USCIS forms, and Mr. Bell filled the responses in on the appropriate forms **A198**.

13. Respondent's former client, Alan Olivas-Herdiz, testified that he first retained Respondent in March or April of 2018 for assistance with a removal hearing related to Mr. Olivas-Herdiz' status as a DACA recipient **A166,** and for a criminal case in Warrensburg, Missouri **A170**. On April 12, 2019 Mr. Olivas-Herdiz deposited $1,000.00 into Mr. Bell's bank account to finalize the fee agreement made between the two parties back in March or April of 2018 **A217-A218**. In June, 2019, (at least 60 days post-

suspension) Respondent, according to Mr. Olivas-Herdiz, attempted to persuade Mr. Olivas-Herdiz to pay him $6,000.00 to file a USCIS application **A223-A225**.

14. Taylor Sloan, a Missouri licensed attorney since 2014, testified that he was counsel in a dissolution action for Melissa Poore and George Githere **A192**. Mr. Githere had been represented by Respondent on an immigration matter. **A232, et seq**. On May 17, 2019 (47 days post-suspension), Mr. Sloan and Respondent exchanged e-mails about immigration-related language that Mr. Sloan needed to place in a dissolution judgment to protect the immigration status of George Githere **A240**.

15. Jeffrey Bennett, a Missouri attorney specializing in immigration law **A245** testified that he met with Respondent on May 13, 2019 (43 days post-suspension) for Respondent to attempt to refer two immigration clients to Mr. Bennett **A249**. Mr. Bennett alleged that he did not discover Mr. Bell was suspended until June of 2019 **A252**.

16. OCDC investigator Kelly Dillon testified as to the condition of Respondent's bank accounts, and provided testimony that Respondent was not keeping an IOLTA Trust account **A259**, as mandated by the OCDC **A260**, and was deep in debt throughout 2019 prior to his suspension **A263 et seq**. Respondent's bank account was overdrawn, and he did not have funds to offer repayment to clients **A263**. Ms. Dillon testified that she was involved in a meeting with Respondent on June 13, 2019 (74 days post-suspension), which resulted in a "heated discussion" where she informed Respondent that he could no longer accept funds from clients; could no longer interact with clients; and needed to "quit practicing law" **A268-A278**. Ms. Dillon described Respondent's office as "dirty, unkempt and disorganized", and described conversations

with Respondent on June 13, 2019, in which Respondent denied having receipt books, then presented several to her moments later **A278**. Ms. Dillon presented summary spreadsheets showing fees collected and charged by Mr. Bell beginning in "late April of 2019" **A280** and continuing into June, 2019 **A284**.

17. Respondent was given the opportunity to appear before the Court on Friday, October 25, 2019, to present testimony, **A289** but exercised his right to not testify on his own behalf. **A781**.

18. Findings of Fact and Conclusions of Law were issued by the Honorable Mary Weir on December 19, 2019 **A817– A842**. Following the submission of proposed exceptions thereto, an amended version of said pleading was filed with this Court on February 13, 2020 **A894**.

ARGUMENT

I. THE ACTS ALLEGED TO HAVE BEEN PERFORMED BY RESPONDENT ALLAN H. BELL DO NOT MEET THE ELEMENTS OF CRIMINAL CONTEMPT, SUCH THAT THIS COURT IS UNABLE TO PRONOUNCE PUNISHMENT UPON THE RESPONDENT, EVEN IF ALL OF THE ALLEGATIONS MADE BY THE INFORMANT ARE FOUND TO HAVE OCCURRED.

What Respondent is alleged to have done is to have practiced law without a valid license. Criminalization of such an act has been codified by the legislature of the State of Missouri at §484.020. Punishment for such an act has also been codified therein, with the legislature finding that an act of practicing law without a license is a general misdemeanor, punishable by a fine of up to $100.00 per occurrence. *Id.* In the matter at bar, Informant seeks to have a completely different, and significantly expanded penalty be levied upon the Respondent, under the guise of a claim of criminal contempt. However, the evidence presented before the Honorable Mary Weir of the 16th Judicial Circuit as Special Master, fails to establish the elements of criminal contempt. While the unauthorized practice of law may arguably have been established – a point that Respondent does not concede – such a finding is not equivalent to that of criminal contempt.

The Supreme Court of Missouri cannot hold Respondent in contempt for the actions described in Judge Weir's Findings of Fact, because the essential elements of contempt have not been met. Even assuming, *arguendo*, that the findings of fact

contained therein are accurate, what would have been shown are instances of the unauthorized practice of law, as defined in §484.020, RSMo. That Statute reads as follows:

> 1. No person shall engage in the practice of law or do law business, as defined in section 484.010, or both, unless he shall have been duly licensed therefor and while his license therefor is in full force and effect, nor shall any association, partnership, limited liability company or corporation, except a professional corporation organized pursuant to the provisions of chapter 356, a limited liability company organized and registered pursuant to the provisions of chapter 347, or a limited liability partnership organized or registered pursuant to the provisions of chapter 358, engage in the practice of the law or do law business as defined in section 484.020, or both.
>
> 2. Any person, association, partnership, limited liability company or corporation who shall violate the foregoing prohibition of this section shall be guilty of a misdemeanor and upon conviction therefor shall be punished by a fine not exceeding one hundred dollars and costs of prosecution and shall be subject to be sued for treble the amount which shall have been paid him or it for any service rendered in violation hereof by the person, firm, association, partnership, limited liability company or corporation paying the same within two years from the date the same shall have been paid and if within said time such person, firm, association, partnership, limited liability company or corporation shall neglect and fail to sue for or recover such treble amount, then the State of Missouri shall have

the right to and shall sue for such treble amount and recover the same and upon the recovery thereof such treble amount shall be paid into the treasury of the state of Missouri.

3. It is hereby made the duty of the attorney general of the state of Missouri or the prosecuting attorney of any county or city in which service of process may be had upon the person, firm, association, partnership, limited liability company or corporation liable hereunder, to institute all suits necessary for the recovery by the state of Missouri of such amounts in the name and on behalf of the state.

As set out in §476.110, RSMo., the elements of contempt such as Respondent is accused are:

1. Disorderly, contemptuous or insolent behavior committed during its session, in its immediate view and presence, and directly tending to interrupt its proceeding or to impair the respect due to its authority;

2. Any breach of the peace, noise or other disturbance directly tending to interrupt its proceedings;

3. Willful disobedience of any process or order lawfully issued or made by it;

4. Resistance willfully offered by any person to the lawful order or process of the court;

5. The contumacious and unlawful refusal of any person to be sworn as a witness, or, when so sworn, to refuse to answer any legal and proper

interrogatory.

Here, the Judgment in question is the April 1, 2019 Order of the Supreme Court. That Order specifically: 1) Informed Respondent that he was suspended from the practice of law; 2) directed Respondent to comply with the terms of Supreme Court Rule 5.27, and 3) assessed costs against Respondent. Of note, the Order did not specifically state that Respondent shall not practice law; it suspended his license to do so, thus, placing him in a position when any such practice of law would place Respondent in violation of §484.020. Informant will certainly argue that the intention and unwritten meaning of this Court's order was to direct Respondent to cease practicing law. However, violation of the spirit or intent of a court's order does not equate to criminal contempt; only a violation of a specific directive can constitute an element of criminal contempt. *State of Missouri ex rel. Euclid Plaza Associates, LLC v. Honorable David C. Mason*, 81 S.W.3d 573 (Mo.App.E.D.2002).

The next step of the analysis must then be: can it be found that Respondent violated the terms of Supreme Court Rule 5.27, with which he was ordered to comply? Supreme Court Rule 5.27 states that an order suspending a lawyer's bar license will become effective fifteen (15) days after its issuance. It directs a person similarly situated to Respondent not to accept any new cases **during those fifteen days**, as well as to withdraw representation in pending matters in a manner that will minimize any material adverse effect on the clients' interests. After the order becomes effective, Rule 5.27 grants Respondent fifteen (15) days to do the following:

1. Deliver the lawyer's license to practice law to the clerk of this

Court or file an affidavit that the license has been lost or destroyed;

2. Notify all clients in writing and any counsel in pending matters that the lawyer has been disbarred or suspended if such notice was not made pursuant to Rule 5.27(a)(2);

3. In the absence of co-counsel, notify all clients, if such notice was not made pursuant to Rule 5.27(a)(2), to make arrangements for other representation, calling attention to any urgency in seeking the substitution of another lawyer;

4. Deliver to all clients being represented in pending matters any papers or other property to which they are entitled or notify them and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property;

5. Refund any part of any fees paid in advance that have not been earned;

6. Notify opposing counsel in pending litigation or, in the absence of such counsel, the adverse parties, if such notice was not made pursuant to Rule 5.27(a)(2), of the lawyer's disbarment or suspension and consequent disqualification to act as a lawyer after the effective date of such discipline;

7. File with the court, agency or tribunal before which the litigation is pending a copy of the notice to the opposing counsel or adverse parties;

8. Keep and maintain a record of the steps taken to accomplish the foregoing; and

9. File proof with this Court and the chief disciplinary counsel of complete performance of the foregoing.

In order to be in contempt, Respondent must be found to have intentionally and willfully violated one or more of the terms thereof.

The record is clear that Mr. Bell attempted to contact his clients (Tr at 84, A122, Tr at 86, A124), and to return files to active clients (Tr. at 84, a122). Further, Mr. Bell notified those clients to whom he owed money that he was unable to return it as he did not have those funds (Tr at 85, A123). Depending on which version of his client letter is to be assumed, Respondent's notification to his clients occurred on either April 10, 2019 or April 8, 2019, well within the fifteen (15) days mandated by Rule 5.27. Respondent submitted his law license to the Supreme Court, as verified by the June 4, 2019 docket entry in Case No. SC97925, to wit: "PETITIONER'S LAW LICENSE WAS RECEIVED ON APRIL 18, 2019 AND PLACED IN BIN #1033." (All caps in original). These actions show significant and meaningful compliance with Rule 5.27, and none are specifically prohibited by the terms of the Court's Order, with the exception that Rule 5.27 directs him to return the money owed to clients who had issued prepayment or a retainer. Respondent could not do this, due to his financial situation, which was the very reason he was initially suspended. Again, Rule 5.27 deals with actions to be taken by a person similarly situated to Respondent **within 15 days of suspension**. Rule 5.27 makes no mention of obligations upon a suspended or disbarred party beyond the mention of the inclusive fifteen (15) days (in Respondent's case, beyond April 15,2019). The Findings of Fact place none of the complained of actions of Respondent within that time period,

while the steps described above show substantial compliance with Rule 5.27.

"Contempt is only available where a party has been ordered to perform or not to perform a specific act, and yet refuses to do so." *Zweifel v. Zweifel*, 2020 WL 424603 (Mo.App.E.D.2020).quoting *Euclid*. The Eastern District opined that "clarity in the order itself is essential so the process may comport with fundamental principles of fairness. To support a charge of contempt for disobedience of a judgment, decree or order, the court's pronouncement may not be expanded by implication in the contempt proceeding and must be so definite and specific as to leave no reasonable basis for doubt of its meaning. Before a court may impose sanctions on a party for disobeying a court order, the court order itself must precisely advise the individual of what conduct is forbidden". *Wuebbeling v. Wuebbeling*, 574 S.W.3d 317, 328 (Mo.App.E.D.2019). While a reasonable and likely intended meaning behind the April 1, 2019 Order was to tell Respondent he could not practice law any longer, to reach that, one must expand on what was actually said, to wit: we are suspending your license, and you have to comply with Rule 5.27.

The legislature of Missouri has created statutory definitions, elements, and punishment to define when a person is practicing law without a license. Section 484.020 makes clear that the punishment for someone who "shall engage in the practice of law or do law business, as defined in section 484.010, or both, unless he shall have been duly licensed therefor and while his license therefor is in full force and effect" is a fine of up to $100.00 per occurrence, plus costs. The unlicensed practice of law is not punishable by incarceration, but this is one of the penalties sought by Informant.

In *State of Missouri ex rel. Lepper v. Brown*, 14 S.W.3d 674 (Mo.App.W.D.2000) the Relator challenged a finding that she was in direct contempt for committing perjury in a Court-tried case in front of the Honorable Byron Kinder. The Honorable Thomas J. Brown, III found that Ms. Lepper's perjury constituted contempt, as it was willful and occurred in open court. The Western District found that while Ms. Lepper may have been guilty of the criminal charge of perjury, that was different than her being in contempt. "[T]he court [cannot] make contempt of that which is not contempt, and every attempt to do so would be in excess of authority or jurisdiction…there must be contempt in order to justify punishment for that offense." *Lepper*, quoting *Ex parte Creasy*, 148 S.W. 914, 920 (1912). Much as Judge Kinder intended to order Ms. Lepper to tell the truth, the Court clearly intended Mr. Bell to not practice law. This notwithstanding, criminal contempt only stands when there is a violation of a specific directive, and not an implied or intended directive.

"[I]nsistence of the law for strict procedure in criminal contempt is to counterpoise the imbalances of this punitive, albeit *sui generis*, proceeding." *State ex rel. Tannebaum v. Clark*, 838 S.W.2d, 26, 28 (Mo.banc 1976). Punishment of Respondent for contempt when the facts actually show a violation of a statute is improper, and outside of the authority of even this Court. Much as the Court found in reference to Judge Brown's attempt to find Rebecca Lepper in contempt for perjury, "[T]he judgment of contempt and attendant fine exceeded its jurisdiction and was not the proper vehicle for addressing the issue" *Lepper* at 678. In other words, Allan Bell has been mis-charged: assuming, *arguendo*, that Mr. Bell practiced law following this Court's suspension of his license, so

long as he did so more than fifteen (15) days after his license was suspended, he would not be guilty of contempt. Those presumed facts would subject him to a charge for violating §484.020 for practicing law without a license.

If this Court follows the factual findings of Judge Weir, the determination must be that Mr. Bell acted in contravention of §484.020 on the occasions concerning the clients for whom he provided legal services that would require the possession of a bar license. Again, these actions are not contempt; these **may** be the commission of one or more misdemeanor acts of practicing law without a license. In this action, Respondent is not charged with the commission of misdemeanor crimes, and the appropriate methodology for alleging the commission of misdemeanor crimes has not occurred. *See* MRCP 21.

Respondent is charged specifically and only with Contempt under the Show Cause Order of this Court. However, absent a showing that Respondent willfully and intentionally violated a *specific term or directive* of the Court's order, contempt cannot lie. *State of Missouri ex rel. Euclid Plaza associates, LLC v. Honorable David C. Mason*, 81 S.W.3d 573 (Mo.App.E.D.2002). (The Eastern District found that since Judge Mason's order did not specifically prohibit relator's actions, no action for contempt could lie. The judge exceeded his authority by finding relator in contempt.)

Lest the argument be made that practicing law, if believed to have occurred, is a violation of the Court's order because the Supreme Court suspended Respondent's license, thus, creating contempt, the law does not support such a tertiary connection. The specific terms of the Order must be what is violated or contradicted, as opposed to the spirit of the Order. *Euclid*. The Supreme Court did not specifically order Respondent to

not practice law. They suspended Respondent's license, and ordered him to comply with Rule 5.27, and those are the only things they ordered. If this Court finds that sufficient facts exist to find that Respondent practiced law without a license, then Respondent should, arguably, be charged with one or more misdemeanors for violation of §484.020, RSMo. If a Prosecuting Attorney (the correct party to pursue such charges) were to file the appropriate information(s) against Respondent, the range of punishment would be a fine of up to $100.00 per occurrence. This is a far cry from the proposed punishment suggested by the OCDC and Judge Weir: same being incarceration of thirty (30) days in jail and a fine of $21,000.00.

Informant is attempting to protect the integrity of the practice of law in the State of Missouri, and this is a noble and necessary goal. However, the legislature has enacted the methodology of punishment for an individual found to have practiced without a license. Each and every person found to be in violation of §484.020 has undertaken to defy the authority of the entire State of Missouri, as the statutes thereof require a license to practice law. But, practicing law without a license in violation of State statute, the acts alleged to have committed by Respondent, do not equate to contempt. They equate to violations of §484.020, RSMo. which constitute misdemeanors for which the punishment is set in place by the legislature. This Court lacks the power to augment the punishment for the commission of misdemeanors, no matter how flagrant or intentional Judge Weir found them to be. Neither intent, lack of remorse, nor any other contributing factor may raise the specific acts found to have been committed by Respondent from violations of §484.020, RSMo. to contemptuous acts.

These facts are somewhat analogous to a criminal defendant who is placed on a term of probation following a plea or trial, and who then is accused of violating the terms of the probation by committing a similar crime. That hypothetical individual is not charged with contempt; they are charged with the newly committed crime, and with violation of the order of probation. The correct charging tool is an essential element, and the wrong tool has been selected for addressing Mr. Bell's alleged actions.

It would constitute clear error for a finding of contempt of the Order dated April 1, 2019 to be found based upon the factual findings of the Special Master. The specific language and directives of that Order have not been violated. If Judge Weir's Findings of Fact (as opposed to her Conclusions of Law) are to be adopted and accepted *en toto* by this Court, then Respondent's actions would be found to have violated the spirit and intent of the Order, but such a violation may not be twisted or augmented to meet the elements necessary under *Euclid* to be found to find contempt has occurred. The Court must find that the factual allegations and findings do not rise to the level of meeting the elements of Criminal Contempt, such that this Court may not punish Respondent under the theory raised by Informant.

II.

THE REQUISITE SHOWING OF AN INTENT TO DEFY OR DEGRADE AN ORDER OF THIS COURT HAS NOT BEEN SHOWN OR DEMONSTRATED TO THE APPROPRIATE STANDARD.

Based on all of the credible testimony, Respondent's actions in violation of the Supreme Court's suspension ceased following the "heated discussion" between respondent and the OCDC investigators on June 13, 2019. Prior to that heated discussion, even knowing that Kelly Dillon was a member of the OCDC staff, Respondent told Vivian Huang that he would be able to assist her, while in Ms. Dillon's presence. Further, Respondent led Co-Trustee Williams to two different storage lockers, and voluntarily provided access thereto, after telling her that his files were contained inside, only to produce an empty storage locker and four boxes of files that were several years old. These are not the actions of a person acting in a knowing or intelligent manner, and do not demonstrate the *mens rea* needed to uphold a finding of knowing or intentional actions. These actions, coupled with the physical condition of Respondent's office; the state of Respondent's finances; and the testimony of Dr. Blessing cast sufficient doubt upon the knowing or intelligent nature of Respondent's actions between April 15, 2019 and June 13, 2019, which is the only period in which Respondent is alleged to have committed criminal contempt.

Judge Weir, in her role as Special Master took great umbrage at Respondent failing to appear for the second day of the hearing. She presumed that Mr. Bell's absence was nefarious, based in large part due to the inactions of a third party, to wit the hospital,

being able to provide immediate verification of Respondent's status as in-patient. This presumption, however, is tenuous at best. The truth is that whether or not Respondent appeared in Court on the second day has little connection to whether or not his actions following the April 1, 2019 order of this Court amounted to contempt. They are a red herring seized upon by the Informant to further the image of a man willing to take any steps to get what he wants. However, those other "bad acts" are far too remote from the charged crime, contempt, to have a meaningful impact on the determination of whether or not those wrongful acts were committed with the requisite *mens rea* required to arrive at a conviction. See, e.g., *State v. Frezzell*, 251 S.W.3d 380 (Mo.App.E.D.2008). Coupled with the testimony of Dr. Blessing, who admitted to serious cognitive deficiencies for Mr. Bell, there is a significant question of fact as to the willing or intentional nature of the acts alleged. Mr. Bell is in the proverbial Catch-22 where he is cognitively unable to practice law, yet is accused on cunningly defying this Court. These incongruous positions cannot stand.

Even if it were found that certain actions of Respondent did rise to the level of the unauthorized practice of law, there is insufficient evidence available to the Court, and sufficient evidence and doubt to the contrary, that Respondent's actions were knowing and voluntary, or taken with a contemptuous intent. The *actus reas* has been shown, while the *mens rea* has not, and each is required for a finding of criminal contempt to be entered or found by this Court. As this is not a strict liability action, the requisite *mens rea* is a necessary and crucial element of the cause of action.

III.

RESPONDENT DID NOT NEED A MISSOURI BAR LICENSE TO LAWFULLY COMPLETE UNITED STATES CUSTOMS AND IMMIGRATION SERVICES (USCIS) PAPERWORK FOR CERTAIN CLIENTS.

Informant raises a number of claims alleging that Respondent's work for immigration clients constituted the unauthorized practice of law. However, not all USCIS related activities alleged to be performed by Respondent require a valid state-issued bar license.

At hearing, Angela Williams, a lawyer who focuses her practice on immigration and federal criminal defense (A89), conceded that an individual who was not a practicing lawyer could lawfully and legally fill out USCIS forms for a client.

Q. Okay. Can a non-lawyer fill out USCIS immigration forms?

A. Yes.

Q. But I'm correct that a non-lawyer cannot appear in, obviously federal court, correct?

A. Correct.

Q. And can a non-lawyer appear then before the USCIS as part of another person's case?

A. No, unless they're appearing as an interpreter, in which case they would act solely as an interpreter.

Q. Or unless they've been appointed by one of certain approved groups, correct?

A. Right. There are – there are such things as something called a BIA representative. It's the Board of Immigration Appeal. They don't have to be lawyers and they are – but they're limited in what they can do. They can fill out forms. I don't think they're allowed to appear in court or even go to interviews, but they're allowed to give slightly more legal advice than a non-lawyer but not as much legal advice and help as a lawyer. And they have to be supervised by lawyers, too".

(Tr. 70-71, A108-A109)

This view is supported by the United States Department of Homeland Security, who states on the web site:

Q. Can a person who is not an attorney or accredited representative help me?

A. Yes. As explained above, someone who is not an authorized immigration service provider may provide limited help such as reading a form or translating and writing down information you provide. In addition, generally speaking, you may bring a relative, neighbor, member of the clergy, business associate or personal friend to help you at an interview or other appearance in a USCIS office. This person is known as a "reputable individual. (https://www.uscis.gov/avoid-scams/find-legal-services)

Without significant additional information as to what exactly Respondent was alleged to have done for his immigration clients, there is a paucity of evidence available to determine if Mr. Bell actually needed a bar license to perform such work.

If, in fact, Mr. Bell took information from the client, and transposed it on to the applicable form, then had the client sign and submitted the documents to the USCIS for processing, he has arguably not practiced law without a license. Respondent's secretary, Kandace Denney, testified that she was instructed to remove Mr. Bell's Missouri Bar number and the attorney signature block the USCIS forms to be submitted to the Department of Homeland Security prior to them being sent in for processing (TR. at 119, A157). These acts indicate a knowing attempt by Respondent to stay within the rules of the USCIS, which constituted the primary focus of his law practice immediately prior to his suspension.

The record contains sufficient evidence to show that Mr. Bell did more than completing USCIS documents for certain of these individuals, and further that he charged a fee for doing so. These findings, if made, are not definitive proof of the practice of law, unauthorized or otherwise. Further evidence would have needed to be provided to show that Respondent's involvement with those select clients went beyond the filling out of forms and submitting them to the USCIS, and the record is insufficient to make such a finding. Kandace Denney was clear that when Mr. Bell met with immigration clients, he hand-wrote their responses to the questions on the USCIS forms, then submitted them to Ms. Denney for typing in the information (Tr at 77, A115, Tr at 90-91, A128, 129), as Mr. Bell didn't even know how to turn on a computer (Tr. at 78, A116). Such acts do not constitute the practice of law, be it licensed or unlicensed.

Insofar as certain clients' immigration cases are to be claimed as the unauthorized practice of law, insufficient evidence has been presented to the trier of fact to arrive at the

conclusion, to the proper legal burden of proof of beyond a reasonable doubt, that Mr. Bell's actions extended beyond those for which a law license is required.

CONCLUSION

Insufficient evidence was presented to show actions of Respondent which were in violation of the actual terms of this Court's order dated April 1, 2019, such as would be necessary to find Respondent in criminal contempt. This cause is the improper forum for a misdemeanor charge or charges of practicing law without a license, as described in §484.020, RSMo. Further, the necessary element of willful intent was not shown to the appropriate legal standard for a finding of guilt to the charge of criminal contempt. Finally, Respondent was legally able to offer certain services to clients without a law license.

WHEREFORE, Respondent prays for an Order of this Court denying the relief sought by the Chief Disciplinary Counsel; finding that Respondent, Allan H. Bell is not guilty of contempt as prayed by the Informant, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF COMPLIANCE

I hereby certify:

1. That the attached brief complies with the limitations contained in Supreme Court Rule 84.06, and contains 6,263 words as calculated pursuant to the requirements of Supreme Court Rule 84.06, as determined by Microsoft Word software;

2. That a copy of this notification was sent through the eFiling system on this 6 day of May, 2020, to Alan D. Pratzel and Sam S. Phillips, counsel for Informant.

3. Includes the information mandated by Rule 55.03.

/s/ David G. Bandré
David G. Bandré