

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

**JAMES P. MORONEY
836 S. PICKWICK
SPRINGFIELD, MO 65802

MISSOURI BAR NO. 23377**

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SUPREME COURT NO. SC98739

RESPONDENT'S BRIEF

Respectfully submitted,

/s/ James Moroney
Missouri Bar # 23377
Respondent Pro Se
836 S. Pickwick
Springfield, MO 65802
Phone 417-831-0606
moroneylaw@hotmail.com

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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

Cynthia Kingsley Dissolution of Marriage

Respondent James Moroney represented Cynthia Kingsley in a dissolution of marriage proceeding in Lawrence County, Missouri (Cynthia Kingsley v. Kaleb Kingsley). Matters in dispute included custody and support for the two minor children and division of the marital property. After nearly three years of litigation, Judge David Munton issued his decree on September 30, 2016. **App. 836-866.** The dissolution decree awarded custody of the minor children to father, found that Cynthia had been untruthful and had deliberately and consistently violated the court's orders. The court gave mention that Cynthia's refusal to submit to court-ordered drug tests was of continuing concern after Cynthia tested positive for illicit drugs.

Kevin Kingsley Suit To Recover His Interest in Kingsley Farms

Kevin Kingsley filed suit against his three brothers and his sister for breach of contract. The fifth amended petition for that lawsuit was filed on September 4, 2015. **App 999-1033.** Kevin sought recovery of his ownership interest in the Kingsley Farms realty. This suit was subsequently consolidated and replaced with Kevin's petition to remove his siblings as trustees of the family trust. **App 512.** The lawsuit was settled by agreement which provided Kevin was to be paid \$786,600 for his interest in the realty. **App. 1066-1067.** Payment was to be made within 60

days of settlement agreement date. Respondent advised Kevin Kingsley against the proposed settlement the terms of which were dictated by Kevin Kingsley.

When payment of the \$786,600 was not timely paid, Kevin Kingsley terminated the services of Respondent and engaged the services of Attorney Shelly Dreyer.

Attorney Dreyer filed suit on behalf of Kevin Kingsley for breach of contract for failure to make the \$786,600 settlement payment. The suit was concluded within a settlement agreement wherein Kevin's realty interest was transferred to his siblings and Kevin was paid \$50,000. Kevin testified at the disciplinary hearing that he agreed to the \$50,000 payment because he believed his siblings were invincible and he did not want to pay additional attorney fees to Attorney Dreyer. **App. 173** .

During the disciplinary hearing, Respondent and Attorney Bruce Copeland (attorney for Kevin's siblings) testified that they believed the \$786,600 payment obligation was fully enforceable. Attorney Copeland also testified that from the outset of the collection suit filed by Attorney Dreyer, Attorney Erica Mynarich (attorney for Kevin Kingsley) informed him that Kevin did not want to receive the \$786,600 payment. **App. 220, 264-266**.

Malpractice Suits Filed By Kevin Kingsley And Cynthia Kingsley

Kevin Kingsley filed a malpractice suit against Respondent. **App. 484-485** That suit was dismissed. **App. 871**. Cynthia Kingsley filed a breach of fiduciary suit against Respondent. **App. 728**. That suit was dismissed. **App. 867**.

Civil Conspiracy, Racketeering Lawsuit Filed by Kevin's Siblings

Subsequent to Kevin and his siblings executing the above-mentioned \$786,600 settlement, Kevin's siblings filed suit in federal court for the Western District of Missouri. Kevin's siblings were represented by Bruce Copeland and Robert Ramsey. Named defendants included Kevin Kingsley, Lisa Kingsley (Kevin's spouse), Cynthia Kingsley and Misty Ozkus. On May 3, 2017, plaintiffs filed their first amended complaint and therein set forth a civil conspiracy against the Kingsley siblings. **App. 521-583**. Attorney Copeland testified during the disciplinary hearing that he and his co-counsel amended the petition on May 3, 2017, because of additional investigative materials they had received from their private investigator. Attorney Copeland further testified that the May 3, 2017 amended petition did not include any information acquired from Respondent James Moroney.

May 23, 2017 Statement of Respondent James Moroney

On May 23, 2017, Respondent appeared at the offices of Attorney Bruce Copeland pursuant to a notice of deposition. Notice of the deposition had been provided to Attorney Shelly Dreyer (attorney for Kevin Kingsley). **App 491**. Ms. Dreyer did not file a motion to quash the notice of deposition, did not appear on that date, but instead forwarded correspondence to Attorney Copeland objecting to the deposition. **App. 807**. In lieu of giving deposition testimony, Respondent

instead gave his statement. **App 584.** Respondent took the position during his statement that matters he learned from Lisa Kingsley, Cynthia Kingsley, and Misty Ozcus were not attorney-client confidences because statements made to him or in his presence by Lisa Kingsley, Cynthia Kingsley, Kevin Kingsley and Misty Ozcus which were made in the presence of two or more of those persons and served as a waiver of the rule proscribing disclosure of attorney client confidences. During the disciplinary hearing, Respondent stated that the statements made by Lisa Kingsley, Cynthia Kingsley, and Misty Ozcus were not protected by the rules protecting attorney-client confidences for the additional reason they were subject to the crime/fraud exception to the rules concerning attorney-client confidences, that he was rightfully defending his interest against the claims made in a racketeering lawsuit.

Judge Bough's Order In The Civil Conspiracy, Racketeering Lawsuit

Attorney Brett Schneider, as attorney for Cynthia Kingsley in the racketeering lawsuit, filed a motion for protective order. **App. 936-937.** Attorney Schneider requested that all communications between Cynthia Kingsley with her former attorney James Moroney which were had in the presence of Mizy Ozcus, Lisa Kingsley, Kevin Kingsley be held protected as attorney-client confidences. Within *Suggestions In Support*, Attorney Schneider argued that the communications were attorney-client protected confidences because there was a commonality of interest

between each of these individuals and that there had been no waiver of the attorney-client privilege. **App. 938-943.** James Moroney filed *Suggestions In Opposition*. **App. 951-953.** Attorney Copeland also filed **Suggestions In Opposition**. **App. 954-982.**

Federal District Court Judge Bough held that plaintiffs had established that Lisa Kingsley, Cynthia Kingsley, Misty Ozcus and Kevin Kingsley had engaged in conduct that met the requirements for application of the crime/fraud exception. **App. 984-998.**

Judge Bough held that the wrongful conduct of Cynthia Kingsley, Lisa Kingsley, Misty Ozcus, and Kevin Kingsley included: facilitating the filing of false felony charges, making false allegations of assault to a law enforcement official, submitting false regulatory complaints and falsified documentation to federal government agencies, providing false allegations and testimony in circuit court, providing false information to the Federal Bureau of Investigation, stealing documents, setting up an illegal wiretap, participating in a conspiracy to undermine plaintiffs' profitable business and defaming plaintiffs on numerous occasions. The court held that Cynthia Kingsley obtained legal advice from James Moroney to further a crime or fraud.

Judge Bough held that, as a general rule, communications made in the presence of third persons will not be deemed confidential. Judge Bough held that there was

no common claim or defense among Cynthia Kingsley, Lisa Kingsley, Kevin Kingsley and Misty Ozcus.

Respondent's Email To Attorney Dreyer

On June 19, 2017, Respondent forwarded an email to Attorney Shelly Dreyer proposing that Ms. Dreyer did the OCDC complaint and agree to dismissal of the malpractice suit. **App. 808.** Respondent testified at the disciplinary hearing that his purpose in sending the email was to avoid disclosure of Kevin Kingsley's hospitalizations for alcoholism which would jeopardize his FAA pilot license. Follow-up email correspondence to Attorney Dreyer on June 19, 2017, explained that the purpose of the settlement offer was to benefit Kevin Kingsley. **App. 481.**

Filing Of The Informations

Two informations were filed against Respondent, one by attorney Shelly Dreyer and the other by Kevin Kingsley. It was charged that Respondent had violated attorney-client confidences in giving his May 23, 2017 statement before attorney Bruce Copeland violating Rule 4-1.6. It was charged that Respondent violated Rule 4-1.1 (competence) by participating in a settlement agreement that did not include a release of all pending claims . It was also charged that Respondent engaged in conduct which was prejudicial to the administration of justice violating Rule 4-8.4(d) in forwarding his email to attorney Dreyer proposing settlement of the information. **App. 1.**

Hearing Panel Recommendation

The Disciplinary Hearing Panel held that Informant failed to prove by a preponderance of the evidence that Respondent violated ethical proscriptions in making his May 23, 2017. The Panel held that Informant failed to prove by a preponderance of the evidence that Respondent violated ethical proscriptions in participating in the \$786,600 settlement. The Panel held that Respondent violated ethical proscriptions in forwarding a proposed settlement to attorney Dreyer. The Panel recommend that Respondent's license be suspended indefinitely with no leave to reapply for a period of six months. **App. 1126-1137.**

POINTS RELIED ON
POINTS RELIED ON I.

RESPONDENT IS NOT GUILTY OF PROFESSIONAL MISCONDUCT FOR PROVIDING INFORMATION RELATING TO KEVIN KINGSLEY, LISA KINGSLEY, CINDY KINGSLEY AND MISTY OZKUS TO ATTORNEY COPELAND FOR THE REASONS THAT:

- A. RESPONDENT’S MAY 23, 2017 STATEMENT TO ATTORNEY COPELAND WAS MADE PURSUANT TO RULE 4-1.6(b)(3) AND COMMENT 8 TO RULE 4-1.6(b)(3) WHICH PERMITS AN ATTORNEY TO ESTABLISH A DEFENSE TO A RICO LAWSUIT PREVIOUSLY FILED IN FEDERAL COURT AND RESPONDENT WAS INFORMED BY ATTORNEY COPELAND THAT RESPONDENT WAS TO BE NAMED AS AN ADDITIONAL DEFENDANT;**
- B. THE MAY 23, 2017 STATEMENT MADE BY RESPONDENT TO ATTORNEY COPELAND CONCERNED STATEMENTS MADE BY KEVIN KINGSLEY, LISA KINGSLEY, CYNTHIA KINGSLEY, AND MISTY OZKUS WHICH WERE NOT PROTECTED ATTORNEY-CLIENT CONFIDENCES BECAUSE THOSE STATEMENTS WERE MADE IN THE PRESENCE OF THIRD PERSONS WHO DID NOT SHARE A COMMONALITY OF INTEREST OR WERE**

**STATEMENTS MADE BY THOSE INDIVIDUALS IN
FURTHERANCE OF PERPETRATING A CIVIL CONSPIRACY
AND FRAUD UPON THIRD PERSONS.**

RULE 4-1.6(b)(3)

COMMENT 8 TO RULE 4-1.6(b)(3)

POINTS RELIED ON II.

RESPONDENT VIOLATED RULES OF PROFESSIONAL RESPONSIBILITY IN FORWARDING AN EMAIL TO ATTORNEY SHELLY DREYER PROPOSING SETTLEMENT OF THE INSTANT BAR COMPLAINT AND PENDING CIVIL LITIGATION. REPRIMAND IS THE APPROPRIATE PENALTY FOR THE REASON THAT RESPONDENT'S CONDUCT DID NOT INVOLVE DISHONEST, FRAUDULENT, OR DECEITFUL CONDUCT.

In re Lim, 210 S.W.3d 199 (Mo. 2007)

LEGAL ARGUMENT

LEGAL ARGUMENT I

RESPONDENT IS NOT GUILTY OF PROFESSIONAL MISCONDUCT FOR PROVIDING INFORMATION RELATING TO KEVIN KINGSLEY, LISA KINGSLEY, CINDY KINGSLEY AND MISTY OZKUS TO ATTORNEY COPELAND FOR THE REASONS THAT:

- A. RESPONDENT’S MAY 23, 2017 STATEMENT TO ATTORNEY COPELAND WAS MADE PURSUANT TO RULE 4-1.6(b)(3) AND COMMENT 8 TO RULE 4-1.6(b)(3) WHICH PERMITS AN ATTORNEY TO ESTABLISH A DEFENSE TO A RICO LAWSUIT PREVIOUSLY FILED IN FEDERAL COURT AND RESPONDENT WAS INFORMED BY ATTORNEY COPELAND THAT RESPONDENT WAS TO BE NAMED AS AN ADDITIONAL DEFENDANT;**
- B. THE MAY 23, 2017 STATEMENT MADE BY RESPONDENT TO ATTORNEY COPELAND CONCERNED STATEMENTS MADE BY KEVIN KINGSLEY, LISA KINGSLEY, CYNTHIA KINGSLEY, AND MISTY OZKUS WHICH WERE NOT PROTECTED ATTORNEY-CLIENT CONFIDENCES BECAUSE THOSE STATEMENTS WERE MADE IN THE PRESENCE OF THIRD PERSONS WHO DID NOT**

**SHARE A COMMONALITY OF INTEREST OR WERE
STATEMENTS MADE BY THOSE INDIVIDUALS IN
FURTHERANCE OF PERPETRATING A CIVIL CONSPIRACY
AND FRAUD UPON THIRD PERSONS.**

Prior to May 23, 2107, attorney Bruce Copeland informed Respondent that he would be named as an additional defendant in the civil conspiracy and racketeering lawsuit already filed in federal court. **App. 239.** Respondent knew, because of statements made in his presence by Lisa Kingsley, Cynthia Kingsley, and Misty Ozkus, that there was merit in the several allegations set forth in the federal complaint. Respondent made his May 23, 2017, statement for the purpose of disassociating himself from the wrongful conduct of these individuals. Subsequent to May 23, 2017, Respondent was in fact joined as a defendant in the federal suit at a later date and then dismissed as a defendant in that suit.

Rule 4-1.6 provides that an attorney may make statements that serve as a defense to claims or charges made against him. Comment 8 to Rule 4-1.6 provides that those statements may be made without awaiting commencement of legal proceedings against him. The Disciplinary Hearing Panel noted that attorney-client issues between Respondent and his clients had been fully briefed and argued before Judge Bough and the Panel saw no reason to challenge the judge's rulings. **App. 1134.** Judge Bough held that (1) statements made by a client in the presence

of third persons are not protected attorney-client confidences unless there is a commonality of interest among those persons; (2) there was no commonality of interest among Lisa Kingsley, Cynthia Kingsley, or Misty Ozkus; and (3) plaintiffs in the federal suit had established that the crime/fraud exception applied to the communications which were made in the presence of Respondent. **App. 984, 993-994.**

Informant argues that Respondent violated his ethical obligations to his clients ignoring the Disciplinary Panel finding that there was no violation of Rule 4-1.6. Additionally, Informant gives no mention to Comment 8 to Rule 4-1.6.

LEGAL ARGUMENT II

RESPONDENT VIOLATED RULES OF PROFESSIONAL RESPONSIBILITY IN FORWARDING AN EMAIL TO ATTORNEY SHELLY DREYER PROPOSING SETTLEMENT OF THE INSTANT BAR COMPLAINT AND PENDING CIVIL LITIGATION. REPRIMAND IS THE APPROPRIATE PENALTY FOR THE REASON THAT RESPONDENT'S CONDUCT DID NOT INVOLVE DISHONEST, FRAUDULENT, OR DECEITFUL CONDUCT.

Respondent acknowledges that his email to attorney Dreyer violated the rules of professional responsibility. Mitigating factors include (1) the fact that the email was sent to an attorney and not to the client Kevin Kingsley; and (2) Respondent's intent was to protect the interest of his client and avoid disclosure of Kevin's alcoholism and hospitalizations to the Federal Aviation Administration. **App. 481.**

The appropriate penalty to be applied is admonishment, and not suspension of Respondent's law license. Respondent's conduct was not dishonest, fraudulent, or deceitful. There is no evidence in the record to suggest that Respondent was aware of the proscription against suggesting dismissal of a bar complaint. The appropriate penalty is set forth in *In re Lim*, 210 S.W.3d 199, 202 (Mo. 2007), namely admonishment.

Respectfully submitted,
/s/ James Moroney, MoBar 23377
836 S. Pickwick
Springfield, MO 65802
Ph. 417-831-0606
moroneylaw@hotmail.com
Respondent

CERTIFICATE OF SERVICE

I certify that on this 20th day of November, 2020, Respondent's Brief was served via the Missouri Supreme Court e-filing system to all parties of record

/s/ James P. Moroney

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. The brief was served on Informant through the Missouri electronic filing system pursuant to Rule 103.08;
3. Complies with the limitations contained in Rule 84.06(b);
4. Contains 2,479 words according to Microsoft Word, which is the word processing system used to prepare this brief.

/s/ James Moroney