**IN THE SUPREME COURT**
**STATE OF MISSOURI**

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| **IN RE:** | ) | |
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| **LISA DAWN COATNEY,** | ) | **Supreme Court #SC91497** |
| | ) | |
| **Respondent.** | ) | |

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# INFORMANT'S BRIEF

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## STATEMENT OF JURISDICTION

Jurisdiction over this attorney discipline matter is established by Article V, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law and Mo. Rev. Stat. §484.040 (1994).

## STATEMENT OF FACTS

### I. Background and Disciplinary History

Respondent, Lisa Dawn Coatney, is a forty-two year old attorney who was licensed to practice law in the State of Missouri on April 16, 2003. **App. 4, 33.**[1] Respondent's Missouri Bar Number is 54794. **App. 4, 33, 1127 (Tr. 189).** The address designated in her most recent registration with the Missouri Bar is 1811 State Hwy Z, Sikeston, MO 63801. **App. 4, 33, 1127 (Tr. 189).** For the years 2008, 2009 and 2010, Respondent was granted a waiver of her Missouri Bar annual enrollment fee, pursuant to Supreme Court Rule 6.01(h), due to her alleged physical incapacity to practice law. **App. 197-204.**

Respondent has received no prior discipline.

The complaints in this case were received over a several month period in 2009-2010. The Chief Disciplinary Counsel ("Informant") investigated the matters, found

[1] The facts contained herein are drawn from the testimony elicited and the exhibits admitted into evidence at the hearing in this matter conducted on September 24, 2010. Citations to the hearing testimony before the Disciplinary Hearing Panel are denoted by the appropriate Appendix page reference followed by the specific transcript page reference in parentheses, for example, "**App.___ (Tr.___)**". Citations to the Information, Respondent's Answer to the Information and the trial exhibits are denoted by the appropriate Appendix page reference.

probable cause to believe that Respondent engaged in misconduct and, on May 21, 2010, filed an Information. **App. 4-32.** The Respondent filed her Answer on June 11, 2010. **App. 33-35.** The Advisory Committee appointed a Disciplinary Hearing Panel on June 29, 2010. **App. 39-40.** The Informant filed a Motion for Leave to File a First Amended Information, which was granted on August 20, 2010. **App. 47-57, 73-75.** The First Amended Information alleges Respondent's professional misconduct in 5 counts:

(1) Count I alleges violations of Rules 4-8.4(c) and (d) regarding false and incomplete representations to the Advisory Committee with the intent to obtain annual enrollment fee waivers from 2008-2010 pursuant to Rule 6.01(h). **App. 47-49.**

(2) Count II alleges violations of Rule 4-8.2(a) and Rule 4-8.4(d) regarding false or reckless statements of fact concerning the integrity of two judges. **App. 49-50.**

(3) Count III alleges violations of Rule 4-3.3(a)(1), Rule 4-3.5(d) and Rule 4-8.4(d) regarding false statements of fact to two tribunals with the intent to disrupt court proceedings. **App. 50-53.**

(4) Count IV alleges violations of Rule 4-4.2, Rule 4-3.4(b) and (f) and Rule 4-8.4(d) regarding conversations with a represented party without her lawyer's consent and making statements of intimidation. **App. 53-54.**

(5) Count V alleges violations of Rule 4-3.3(a)(1) and Rule 4-8.4(d) regarding false statements of fact to a tribunal and failing to correct the record. **App. 55-56.**

The Respondent failed to file an Answer to the First Amended Petition.[2] The Panel held its hearing on September 24, 2010 in Benton. **App. 938. (Tr. 1).** The Panel issued its final decision on December 10, 2010, recommending a reprimand as to Count II of the First Amended Information and the dismissal of the remaining counts. **App. 154-182.** The Informant filed a letter with the Advisory Committee on January 3, 2010 rejecting the decision. **App. 186.** On January 7 and January 8, 2010, Respondent sent emails to each Panel member, Informant, counsel for Informant and two unknown individuals. The emails contained Respondent's reaction to both the Panel's decision and the Informant's rejection of the Panel's decision. **App. 187-193.**

## II. The Hearing Before the Disciplinary Hearing Panel

### A. Representations to the Advisory Committee[3]

On or about April 1, 2008, the Advisory Committee received a letter from Respondent (dated March 5, 2007) (*sic*) seeking a waiver of payment of her annual

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[2] The only change in the First Amended Information was the addition of Count V. Informant was on notice of Respondent's defenses from her original Answer so chose not to file a motion for default.

[3] Each of headings (A)-(E) corresponds to its respective "Count" in the First Amended Information (I-V).

enrollment to the Missouri Bar for year 2008 because of her alleged physical incapacity to practice law. **App. 203-204.**

The Respondent set out in her letter the specifics of an ongoing major medical situation involving "hospital acquired MRSA in my cervical spine, blood and all my major organs, including heart, liver lungs, etc. I spent two and a half months in the hospital. The hospital did not feed me and I refused to eat due to extreme fevers. When I was out of the hospital about three months, I fell five feet and broke my hip and leg due to the malnutrition and high fevers. The surgeon that operated on my leg left me with one leg an inch longer than the other." Respondent further stated: "The infection and subsequent surgeries took 75% of my cervical vertebras." "I have ruptured discs from C-2─T-2" and "nerve damage all through my lower back and tail bone." **App. 203-204**.

Respondent further stated that she has "pain through my femur with every step and now my left lower back and tailbone throb continuously because I compensate with my left leg and there is nothing I can do about it." "[S]itting or standing for more than ten minutes [is] extremely painful." "If my upper extremities aren't in constant pain my lower back and leg kicks in." "This and no support in my neck…makes typing impossible for more than a few minutes due to muscle spasms (which) has forced me to realize I can't work right now." **App. 203-204.**

"[T]he reason that I am forced to ask for a waiver is because I can not work and am forced to receive welfare and food stamps while I await my disability hearing." "I hope to return to work within the next 5 years." "Please consider me for your waiver. I do not have the money to pay the dues." (*sic*) **App. 203-204.**

The waiver for 2008 was granted by Sara Rittman, Legal Ethics Counsel for the State of Missouri, on behalf of the Advisory Committee, pursuant to Rule 6.01(h). **App. 957** (**Tr. 20**).

On or about February 26, 2009, the Advisory Committee received a second letter from Respondent seeking a waiver of payment of her annual enrollment fee to the Missouri Bar for year 2009 because of her alleged physical incapacity to practice law. The letter contained identical text from her 2008 letter, with the addition of information concerning her trouble with expenses while awaiting her disability hearing. She then stated: "MY physical limitations are still the same." (*sic*) **App. 200-201**.

The waiver for 2009 was granted by Ms. Rittman on behalf of the Advisory Committee, pursuant to Rule 6.01(h). **App. 958-959 (Tr. 21-22)**.

On or about February 1, 2010, the Advisory Committee received a third letter from Respondent, dated January 29, 2010, seeking a waiver of payment of her annual enrollment fee to the Missouri Bar for year 2010 because of her alleged physical incapacity to practice law. **App. 959-960 (Tr. 22-23)**.

The letter contained identical text from her 2008 letter, with the following update: "I tried to return to work and took around ten cases in six months. These were simple cases that had me work maybe two hours a week. Even doing this little I was on six rounds of antibiotics in five months, ten day cycles, three autoimmune breakouts with swollen joints and mouth ulcers and an 11 day inpatient hospital stay. I worked these cases for gas money only. Further, a girl backed her car directly into my lower back, knocking me to the ground, and now my left leg has sciatic damage where I fall with little

to no warning." **App. 197-198.** Respondent then stated: "MY physical limitations are still the same." (*sic*) **App. 197-198.**

Ms. Rittman granted Respondent's 2010 waiver request, on behalf of the Advisory Committee, pursuant to Rule 6.01(h). **App. 959-960 (Tr. 22-23)**.

At the Panel hearing in this matter, Ms. Rittman testified that Supreme Court Rule 6.01(h) provides the only exception to the requirement that active Missouri lawyers pay their annual enrollment fees. **App. 951 (Tr. 14)**. Rule 6.01(h) is intended to allow a fee waiver for an attorney whose physical or mental incapacity has caused them to become delinquent. **App. 952-953 (Tr. 14-16)**. According to Ms. Rittman, the rule is worded such that if the attorney has the "capacity to engage in the practice of law, [the Advisory Committee] would not grant the waiver." **App. 952-953 (Tr. 14-16)**. Ms. Rittman testified that the practice of law includes, "entering an appearance (and) making filings and pleadings on someone's behalf in a court of law." **App. 953 (Tr. 16)**.

Unknown to Ms. Rittman, Respondent had entered an appearance and/or made a legal filing on behalf of many clients on approximately 117 occasions in 46 cases between February 26, 2009 and January 29, 2010 in a wide variety of litigation cases (criminal, equitable, juvenile, domestic, probate and municipal) in the circuit and associate circuit courts of southeast Missouri. **App. 900-920: (marked as Demonstrative Ex. 1 (color-coded) which highlights by month Respondent's appearances and court filings as contained in the certified county court records): App. 205-755; 759-868 (marked as Ex. 5-10 and 12-15)**. On January 4, 2010, in a particular municipal court case in Stoddard County (09SD-MU00023), Respondent filed

a letter with the court stating she was "available all of February and March for a one day trial." **App. 466.** On February 3, 2010, Respondent (i) appeared in court with one client in separate criminal cases in Scott County **App. 538, 541**, (ii) filed a petition for full custody for a second client **App. 556** and (iii) appeared at a hearing with a third client in a Cape Girardeau County criminal case. **App. 722**.

Following Respondent's 2010 waiver request, Respondent made approximately 95 additional filings or appearance through August of 2010 in a variety of cases, 18 of which were filed in the year 2010. **App. 900-920.** On April 7, 2010, in a particular municipal case in Stoddard County (09SD-MU00017), Respondent announced she was available "all of May" to conduct the legal proceeding. **App. 461**.

At her disciplinary hearing on September 24, 2010, Respondent represented herself *pro se* for nearly 8 hours, with brief recesses. **App. 938-1242 (Tr. 1-304)**. The record of the disciplinary hearing indicates that Respondent made an opening statement, objected to evidence, cross-examined witnesses, conducted direct examination and made a closing argument. **App. 938-1242 (Tr. 1-304)**.

Ms. Rittman testified that the number and types of court cases in which the Respondent was practicing law in 2009 and 2010 were inconsistent with the Respondent's written representations to the Advisory Committee on January 29, 2010. She testified she felt misinformed by the Respondent regarding her capacity to practice law. **App. 966-989 (Tr. 29-52).** She testified that the Respondent's statement about her attempts to handle a few simple cases reinforced the Advisory Committee's impression that the Respondent lacked the physical capacity to practice law. **App. 974 (Tr. 37**).

## B. Statements Regarding Judges

Statements Regarding Judge Joe Satterfield. On a public Internet forum between November 14, 2009 and May 17, 2010, Respondent posted numerous comments regarding the integrity of Associate Circuit Judge Joe Satterfield of Stoddard County, including, but not limited to, the following:

> #79 November 14, 2009: i have proof that satterfield knew a girl had a valid prescription for hydrocodone and when she refused to testify for the prosecution he tripled her cash bond and signed the warrant for possession of hydrocodone, i also have aletter where rance called judge sharp and they decided together what would hapen if my client didnt plea, and the dumbass put it in a letter to briney and he passed it on to me without looking at it, briney is a dirty S.O.B. i have had three cases in which i proved my guys didnt do what was accused and he wouldnt drop charges until day of the trial, that is false imprisonment and there is going to be a multi-million dollar class action suit filed within the next couple months, tell me your stories, you may have a claim.
>
> #80 November 14, 2009: okay i just read the past posts, simple, you can be mnding your own business and a cop can accuse you of somethnig and briney and satterfield will sign anything and throw your butt in jail, i have proof that keith

haynes knew a girl had a script for medication and handed him the bottle, which is easily traceable, haynes put it n his pocket and then asked for a warrant saying he found a pill and a seperate bottle that wasnt for the medication, leaving out that the girl possessed the stuff legally, he lied to get someone arrested, still feel safe? I HAVE WRITTEN DOCUMENTATION PROVING THIS, dumbass haynes didnt realise the social worker would type a report that talks about the script and how it was legal.and no i am not scared, they are bullys who need to be both disbarred and removed from the bench and prosecutors office, briney kept a kid in jail for 2 additional weeks after i showed him the pharmacy print out where the lortab he had in his pocket was his medication, briney said he should have had it in the bottle, when i then showed him the statute where it says you dont have to have it in its original container unless its a schedule II and this was a schedule III, he still kept him locked up for two more weeks, that is bullshit and false imprisonment, he needs to have his ass locked up and see how he likes it, he and satterfield can share a cell. And yes i am an attorney and former prosecutor (*sic)* **App**. **871-890**.

On November 16, 2009, Respondent left the following voicemail message with Cape Girardeau Prosecuting Attorney, Morley Swingle, regarding Judge Satterfield in reference to Mr. Swingle's upcoming trial as special prosecutor in *State v. Heather Ellis*, case number 08DU-CR00039, in Dunklin County:

> Morley, this is Lisa Coatney. Um, I'm an attorney out of Sikeston. Listen, I've got some documents that show Judge Satterfield, um, putting out a warrant for a girl in possession of hydrocodone when, um, he knew there were documents filed in court, uh, four days earlier that show that on that date she has a valid prescription for the medication. Um, he also raised the bond to $20,000. The reason I am telling you this is you may not want him as your judge on the Heather Ellis case because it would be grounds for appeal with you've got a judge that is doing illegal activity. And I've got the first bond, the second bond and the report that was filed in his court that show that he did in fact know that she has a valid prescription on that date. So, if you want to see that or, um, or anything, just give me a call. 573-823-6041. Also this is within the past couple of months so it is definitely relevant to his, uh, bias and, um, ability to be a fair and impartial judge. Okay? Thanks. **App. 869-870**.

Respondent was not the attorney of record in the *Ellis* case. **App. 1092 (Tr. 154)**.

Mr. Swingle filed an ethics complaint against Respondent for making false or reckless allegations against Judge Satterfield. **App. 869-870; 1082-1092 (Tr. 144-54)**.

Judge Satterfield was the judge presiding in *State v. Jessica Billings*, case numbers 09SD-CR00880 and 09SD-CR00938, in Stoddard County. **App. 841-868**. It was Judge Satterfield's handling of the *Billings* cases that Respondent criticized in her Internet postings and voicemail message to Mr. Swingle. **App. 1065-1070 (Tr. 127-132).**

Billings was charged in case 09SD-CR00880 with felony possession of a firearm and Judge Satterfield set her bond at $7,500. **App. 850-868.**

Billings was charged in case 09SD-CR00938 with possession of a controlled substance and unlawful use of drug paraphernalia and Judge Satterfield set her bond at $20,000. **App. 841-849**.

Billings was represented in both cases by attorney, Shawn Boyd. **App. 841-868; 1052-1053 (Tr. 114-5)**.

Judge Satterfield testified at Respondent's disciplinary hearing that he has discretion on setting the bond amount in a criminal case and that, in doing so, he considers the facts and circumstances of each. Judge Satterfield testified that he relied on his discretion in setting the bond in each of the *Billings* cases. **App. 1047-1056 (Tr. 109-118**).

Judge Satterfield testified that the appropriate way for a defendant to challenge the bond amount is to file a motion with the trial court. **App. 1051 (Tr. 113**).

Mr. Boyd did not file a motion with the trial court challenging the bond amount in either *Billings* case. **App. 1055 (Tr. 117)**.

Judge Satterfield testified that he has never faced criminal charges. **App. 1074 (Tr. 136).** Respondent confirmed that Judge Satterfield has not been convicted of any criminal offense, but that she has the right to "free speech" to express her opinions. **App. 1140-1141 (Tr. 202-3).**

Respondent did not proffer evidence at her disciplinary hearing establishing that Judge Satterfield engaged in illegal or criminal conduct in the *Billings* cases or in any other matter.

Statements Regarding Judge Gary Kamp. In *State v. Patrice M. Jones*, case number 09G9-CR01896, filed in Cape Girardeau County, the defendant was charged with misdemeanor assault and resisting arrest. Respondent made allegations in open court that Associate Circuit Judge Gary Kamp was "depriving her client's rights of having a jury trial and that [he] had a history of doing that." (*sic*) **App. 998 (Tr. 61)**.

Judge Kamp testified at Respondent's disciplinary hearing that he never denied Jones a jury trial. Judge Kamp also testified that in his 15 years of being on the bench, he "never denied a defendant a right to a jury trial when it was requested." **App. 999-1000 (Tr. 62-3**).

The court record in *Jones* reflects that on December 4, 2009, the court had set the case for jury trial. **App. 721.**

Respondent did not proffer evidence at her disciplinary hearing indicating that Judge Kamp "had a history" of denying defendants the right to a jury trial.

### C. Representations to a Tribunal

On December 1, 2009, in *State v. Patrice M. Jones*, case number 09G9-CR01896, in Cape Girardeau County, Respondent filed a motion for change of judge in which she stated: "As I have filed a judicial complaint regarding a previous case with Judge Kamp, I ask that this case be transferred to a different judge." **App. 740.** The motion was denied for not being timely filed. **App. 720.** On December 2, 2009, Respondent filed a motion for continuance, "ask[ing] that Judge Kamp recuse himself as I have filed a judicial complaint against him which fairly guarantees my client an unfair trial." **App. 736-737.**

On December 3, 2009, the court clerk made the following docket entry: "Called atty (*sic*) to notify her that her motion for continuance would be taken up at scheduled court time. She plans on being here because she can't wait to see the look on the Judge's face when she tells him that she has filed a judicial complaint against him and that he deserves it." **App. 721**.

At the hearing on December 4, 2009, Respondent stated in open court that she had filed a judicial complaint against Judge Kamp. **App. 998 (Tr. 61)**. Judge Kamp granted Respondent's motion for continuance and set the matter for jury trial. **App. 721**. On December 14, 2009, Judge Kamp entered the following order: "Due to the unethical conduct of the defendant's attorney, the court has been obligated to file an ethical complaint against Lisa Coatney. The Court therefore recuses itself on its own motion. " **App. 721**.

Jim Smith, Counsel for the Commission on Retirement, Removal and Discipline, testified before the Disciplinary Hearing Panel that he recalled receiving a telephone call

from Respondent. Mr. Smith searched his records and found no written complaint filed by the Respondent against Judge Kamp. **App. 1032-1035 (Tr. 94-97**). Mr. Smith testified that whenever anyone calls him with an oral complaint, his practice is to tell that person to file or forward to him a written complaint. **App. 1034-1035 (Tr. 96-97**). Mr. Smith testified that Respondent had filed a written complaint with his office against a different judge on a previous occasion. **App. 1044-1045 (Tr. 106-07).**

While cross-examining Mr. Smith, Respondent indicated that she filed a judicial complaint against Judge Kamp with the "Missouri Bar." **App. 1036 (Tr. 98)**. Respondent did not testify under oath or produce evidence of having filed a written complaint.

In another case before Judge Kamp, *State v. Tamika S. Tate*, case number 09G9 CR00174, in Cape Girardeau County, the Respondent was in court for her client's probation revocation hearing. Tate was on probation when she pled guilty in two misdemeanor cases in Stoddard County. **App. 759-840**. According to Judge Kamp's testimony to the Panel, Respondent stated to the court that she had filed motions to set aside Tate's guilty pleas in Stoddard County. **App. 1002 (Tr. 65)**. In addition, Respondent made the following statement on the record on June 24, 2009: "If the guilty plea – if our motion down below is granted will that change the disposition of this Court? If her guilty plea to that is thrown out will that change the disposition of the Court?" **App. 686**. In neither of the Stoddard County cases did Respondent file a motion to set aside Tate's guilty pleas. **App. 1006 (Tr. 69); App. 759-840**.

In addition, in the *Tate* probation revocation proceeding, Respondent made a statement to the court that she had arranged with the sheriff's office for the transportation of a jailed witness, John Tate, from the Stoddard County jail, for the following day. Based on those representations, the court granted Respondent's motion to continue the revocation hearing. **App. 1002-1004 (Tr. 65-67)**. On the day of the hearing, Judge Kamp learned that Respondent did not make the necessary arrangements to have Mr. Tate transported to Cape Girardeau County to testify. **App. 1002-1004 (Tr. 65-67)**.

### D. Communications with Individuals in the Legal System

In *State v. Jermaine Young*, case number 09SD-CR00879, in Stoddard County, with the charge of felony firearm possession, the court conducted a preliminary hearing on the record on June 18, 2009. **App. 242-285**. Prior to the preliminary hearing, Respondent spoke in person at the county jail with Jessica Billings, who was charged along with Respondent's client, Young. Respondent knew at the time that attorney, Shawn Boyd, who was not present, represented Billings. **App. 1128-1140 (Tr. 190-202)**.

During the preliminary hearing, the following colloquy about that conversation occurred:

> **QUESTIONS BY MS. COATNEY:**
>
> Q. Miss Billings. When we spoke we spoke about your custody matter. Correct?
>
> A. Yes.

Q. And you wanted to know how anything in the original case would affect your custody matter with your kids. Correct?

A. Yes.

Q. You wanted to speak to me about the fact that you had been threatened by Children's division yourself, that you had been threatened by Children's Division in this matter. Correct?

A. Yes.

Q. Did I try to influence you in any way?

A. You just said that writing a statement wouldn't do me any good and that if it came for us to testify against each other that you would eat me up in Court. That's what was said.

Q That I would have – that there would be a conflict, that I would have to go after you in order to represent my client. Correct?

A. Yes.

**App. 270-71**.

At her disciplinary hearing, Respondent confirmed she had spoken with Billings at the jail and told her: "I would have to go after you if you were on the stand" testifying against Mr. Young. **App. 1128-1140 (Tr. 190-202)**. Respondent also testified that it was "her job" to go after Billings on cross-examination if she were to testify against Respondent's client. **App. 1132 (Tr. 194)**.

Prior to the conversation at the county jail, Respondent had not received permission from Mr. Boyd to speak with Billings. **App. 1130 (Tr. 192)**. Respondent testified that it is the client, not her attorney, "who determines if there is an attorney-client relationship." **App. 1131 (Tr. 193)**.

### E. Representations to a Tribunal

In *State v. Henry N. Bonnor*, case number 10SO-CR00640, in Scott County, the State was represented by Assistant Prosecuting Attorney, Austin Crowe, and the defendant was represented by Respondent. **App. 498-521**.

On July 27, 2010, Respondent filed a Motion to Quash Warrant on behalf of the defendant wherein Respondent represented to the court that she spoke to "Austin Crowe, on July 27, 2010, while in court on another matter about moving the Henry Bonner case to August 4 with the Karen Clay case." **App. 505**.

On July 30, 2010, Mr. Crowe filed a Response to Defendant's Motion to Quash Warrant, stating that the "claim made by the attorney for the defendant is a gross misstatement of facts. Lisa Coatney was not in court on July 27, 2010 and no conversation between herself and assistant prosecuting attorney Austin D. Crowe on that date. There was no agreement to continue Mr. Bonner's case." **App. 506-508**.

Mr. Crowe testified at Respondent's disciplinary hearing consistent with the contents of his Response to Defendant's Motion to Quash Warrant. **App. 1108-1114 (Tr. 170-6)**.

There is no filing in the *Bonner* case by Respondent correcting the court record as to Respondent's false representation contained in her Motion to Quash Warrant. **App. 498-521**.

At the disciplinary hearing, Respondent's cross-examination of Mr. Crowe revealed that the alleged misrepresentation in Respondent's motion in *Bonner* could be a typographical error. **App. 1119-1123 (Tr. 181-85)**.

III. The Disciplinary Hearing Panel's Decision

On December 10, 2010, the Disciplinary Hearing Panel filed its Decision recommending (i) Respondent receive a Reprimand as to Count II of the First Amended Information and (ii) all remaining counts be dismissed. **App. 154-182**.

As to Count I (Misrepresentations to the Advisory Committee), the Panel found that i) there were no material misrepresentations by Respondent to obtain the waiver of past due enrollment fees and ii) that the rule encompasses all "incapacity," meaning partial, intermittent or complete incapacity. According to the Panel, the way Rule 6.01(h) is written is such that hardship must be created by "incapacity" to practice law, meaning, for example, that the attorney does not earn much money in the practice because she is incapacitated, either partially, intermittently or fully. **App. 171-172.** According to the Panel, most of Respondent's work was done intermittently and "her health created an incapacity to practice law on that intermittent basis." **App. 171-172**.

The Panel concluded that even if the rule is interpreted to require full incapacity, Respondent did not misrepresent her physical state, and so she was erroneously granted

the waiver by the Advisory Committee. Thus, the erroneous grant of the waiver did not make her guilty of misrepresentation. Moreover, the Panel noted, that Respondent's letter dated January 29, 2010 stated that Respondent "…tried to return to work and took around ten cases in six months…" The Panel concluded that this information supplied by Respondent should have alerted the Advisory Committee that Respondent might have been engaged in the practice of law. Since Respondent admitted her work and taking cases, the Panel found she could not be said to have deceived the Advisory Committee. Consequently, the Panel recommended dismissal of Count 1. **App. 171-172; 180**.

As to Count II (False Statements about Judges), the Panel found that Respondent did make statements about Judge Satterfield and Judge Kamp's integrity she knew to be false or with reckless disregard as to their truth or falsity, in violation of Rule 4-8.2(a). **App. 172-173**.

As to Count III (Abuse of Legal Process), the Panel made the following findings:

> Concerning the representation that Coatney made that she had "filed a complaint" against Judge Kamp, the Panel does not believe that Coatney misrepresented this fact intentionally to gain a change of judge. Had the Panel believed that, it would've recommended more stringent punishment. The Panel believed that Coatney may have assumed that she had lodged a complaint when she spoke to Smith about Judge Kamp. Smith testified that the Commission did not always require a formal complaint to be filed. The Panel assumes

> that Coatney may have said the word "filed" or others understood her to say "filed" when she actually "made" a complaint by phone.
>
> As far as Coatney stating that she had filed a motion to set aside pleas in an underlying case upon which a probation revocation matter was based: The misrepresentation, if made, would not require a hearing in the probation matter to be put off. The Panel is uncertain if Coatney made this representation or if it was misunderstood as a representation when she asked a question about what would happen if the plea was set aside.
>
> With respect to the Tate matter, the Panel believes this was simply a mistake. The Panel doesn't believe that any intentional misrepresentations were made. **App. 175-178**.

Consequently, the Panel recommended dismissal of Count III. **App. 178**.

As to Count IV (Improper Communications with Individuals in the Legal System): "The Panel [found] that the words Respondent spoke to Jessica Billings were in no way improper communication with a client represented by another attorney. With respect to this allegation that Coatney spoke to another represented by an attorney, the Panel concluded that she did so but the conversation was not about any substantive issue regarding the other attorney's criminal representation. Coatney did not tamper with any witness because she was simply using the courtroom testimony example to illustrate why

a conflict of interest would interfere with representation. There was no evidence to the contrary." Consequently, the Panel recommended dismissal of Count IV. **App. 179-180**.

As to Count V (Misrepresentations to a Tribunal): The Panel recommended dismissal of Count V. **App. 179-180**. The Informant is not pursuing review of the Panel's recommendation for dismissal of Count V.

As to the sanction recommended for the violation of Rule 4-8.2(a) for Count II, the Panel relied upon the ABA Standards for Imposing Attorney Sanctions, noting the need to consider the following factors: (a) the duty violated; (b) the lawyer's mental state; (c) the potential or actual injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors. The Panel noted that this disciplinary case involved the duty to the legal profession. The Panel stated that the Respondent's mental state was not specifically addressed at the hearing. The Panel concluded that there was no actual damage, but only the likelihood of potential damage to the public's perception of the judicial system. The Panel determined that no aggravating circumstances were present, but did note the presence of the following mitigating circumstances: absence of a prior disciplinary record, absence of a dishonest or selfish motive and no personal or emotional problems. The Panel relied upon ABA Standard 7.3 in recommending that a reprimand be issued for Respondent's violation of Rule 4-8.2(a). **App. 174-175**.

## IV. Respondent's Conduct Following the Panel's Decision

Following the Panel's decision, Informant timely rejected the Panel's recommendation. **App. 186**.

On January 7 and 8, 2011, Respondent sent emails to the Panel members, counsel for Informant, the Chief Disciplinary Counsel (Informant) and two individuals who have no connection to the disciplinary proceeding. In the address bar of her emails, Respondent referred to the Chief Disciplinary Counsel as "hugeprickjackass." **App. 187, 190**. In the content of her emails, Respondent made allegations and remarks regarding the integrity of the Chief Disciplinary Counsel and one of the complainants, a prosecuting attorney.[4] Respondent argued she is a victim of the Chief Disciplinary Counsel's abuse of office and innocent of all ethical charges, particularly when her professional misconduct is compared to the professional misconduct of the complainant. **App. 187-193**.

[4] "…Please re-evaluate whether Mr. Pratzel is actually doing the job to which he was appointed or is seeking a personal vendetta against someone who questioned his authority and if Pratzel is doing a favor for a friend, Swingle, in continuing going after me. Please examine that if Pratzel truly felt these things in my case were ethical breaches, and if so, why wasn't his friend Mr. Swingle ever subject to any discipline over his actions that were reported to the Bar? Those seem much more closely to resemble ethical violations than the alleged actions of my case." **App. 192**.

## POINTS RELIED ON

I.

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT COATNEY FOR HER MULTIPLE VIOLATIONS OF THE RULES OF PROFESSIONAL CONDUCT IN THAT:**

**A. RESPONDENT MADE MISREPRESENTATIONS TO THE ADVISORY COMMITTEE IN SUPPORT OF HER REQUEST FOR A FEE WAIVER IN VIOLATION OF RULES 4-8.4;**

**B. RESPONDENT MADE FALSE AND RECKLESS STATEMENTS ABOUT THE INTEGRITY OF TWO JUDGES, IN VIOLATION OF RULES 4-8.2 AND 4-8.4;**

**C. RESPONDENT MADE MISREPRESENTATIONS TO TRIBUNALS WITH THE INTENT TO DISRUPT THE PROCEEDINGS, IN VIOLATION OF RULES 4-3.3, 4-3.5, AND 4-8.4; AND**

**D. RESPONDENT IMPROPERLY COMMUNICATED WITH A REPRESENTED PARTY ABOUT THE SUBJECT MATTER OF THE REPRESENTATION, IN VIOLATION OF RULES 4-4.2 AND 4-8.4.**

Rule 4-8.4

Rule 6.01

Rule 4-8.2

Rule 4-3.3

Rule 4-3.5

Rule 4-8.3

*In re Renae Ehler*, 319 S.W.3d 442, 448 (Mo. banc 2010)

*In re Disney*, 922 S.W.2d 12 (Mo. banc 1996)

*In re Donaho*, 98 S.W.3d 871 (Mo. banc 2003)

*In re Madison*, 282 S.W.3d 350 (Mo. banc 2009)

II.

**SUSPENSION FROM THE PRACTICE OF LAW IS THE APPROPRIATE SANCTION IN THIS CASE WHERE RESPONDENT KNOWINGLY VIOLATED DUTIES OWED TO THE LEGAL SYSTEM CAUSING HARM TO THE LEGAL SYSTEM, BECAUSE:**

**A. THE ABA STANDARDS FOR IMPOSING LAWYER SACTIONS SUGGEST SUSPENSION AS THE APPROPRIATE SANCTION; AND**

B. **THIS COURT HAS RULED THAT AN ATTORNEY WHO ENGAGES IN MULTIPLE ACTS OF PROFESSIONAL MISCONDUCT REGARDING THE DUTIES OWED TO THE LEGAL PROFESSION AND WHO REFUSES TO ACKNOWLEGE THE WRONGFUL NATURE OF THE MISCONDUCT SHOULD BE SUSPENSED.**

ABA's *Standard for Imposing Lawyer Sanctions* (1991 Ed.)

*In re Warren*, 888 S.W.2d 334 (Mo. banc 1994)

*In re Madison*, 282 S.W.3d 350 (Mo. banc 2009)

*In re Murphy*, 732 S.W.2d 895 (Mo. banc 1987)

*In re Donaho*, 98 S.W.3d 871 (Mo. banc 2003)

## ARGUMENT

I.

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT COATNEY FOR HER MULTIPLE VIOLATIONS OF THE RULES OF PROFESSIONAL CONDUCT REGARDING:**

**A. HER FALSE STATEMENTS OF FACT TO THE ADVISORY COMMITTEE,**

**B. HER FALSE AND RECKLESS STATEMENTS ABOUT THE INTEGRITY OF TWO JUDGES,**

**C. HER FALSE STATEMENTS OF FACT TO TRIBUNALS WITH THE INTENT TO DISRUPT THE PROCEEDINGS, AND**

**D. HER IMPROPER COMMUNICATION WITH A REPRESENTED PARTY ABOUT THE SUBJECT MATTER OF THE REPRESENTATION.**

"Professional misconduct must be proven by a preponderance of the evidence before discipline will be imposed." *In re Crews*, 159 S.W.3d 355, 358 (Mo. banc 2005). This Court reviews the evidence *de novo,* independently determines all issues pertaining to credibility of witnesses and the weight of the evidence, and draws its own conclusions of law. *In re Belz,* 258 S.W.3d 38, 41 (Mo. banc 2008). The Panel's findings of fact,

conclusions of law, and the recommendations are advisory and, this Court may reject any or all of the Panel's recommendations. *In re Coleman,* 295 S.W.3d 857, 863 (Mo. banc 2009)." *In re Renae Ehler*, 319 S.W.3d 442, 448 (Mo. banc 2010).

Informant alleges a pattern of misconduct by Respondent, which violates her duties owed to the legal system.

### A. Count 1: Misrepresentation to the Advisory Committee

In Count I, Informant alleges that Respondent made false statements to the Advisory Committee regarding her physical capacity to engage in the practice of law and her consequent ability to pay her 2008, 2009 and 2010 Missouri Bar annual enrollment fee. **App. 48-49**. Engaging in deceitful conduct, such as making false or misleading statements to a third party, is a violation of Rule 4-8.4(c). "Questions of honesty go to the heart of fitness to practice law." *In re Disney*, 922 S.W.2d 12, 15 (Mo. banc 1996). Making such statements to the Advisory Committee to avoid the obligation to pay the annual enrollment fee is particularly troublesome because it impacts the administration of justice and the legal profession, in violation of Rule 4-8.4(d). "This Court regards dishonesty before a disciplinary committee to be especially egregious." *In re Donaho*, 98 S.W.3d 871, 874 (Mo. banc 2003).

In her January 29, 2010 waiver request, Respondent described in detail her ongoing physical problems and how they interfered with her basic ability to physically function: "[S]itting or standing for more than ten minutes is extremely painful." "If my upper extremities aren't in constant pain my lower back and leg kicks in." "This and no

support in my neck…makes typing impossible for more than a few minutes due to muscle spasms (which) has forced me to realize **I can't work right now**." **App. 197-198**. (emphasis added).

"I tried to return to work and took around ten cases in six months. These were simple cases that had me work maybe two hours a week. Even doing this little I was on six rounds of antibiotics in five months, ten day cycles, three autoimmune breakouts with swollen joints and mouth ulcers and an 11 day inpatient hospital stay. I worked these cases for gas money only. Further a girl backed her car directly into my lower back, knocking me to the ground, and now my left leg has sciatic damage where I fall with little to no warning." **App. 197-198** (*sic*) (emphasis added).

Respondent again stated: "**MY physical limitations are still the same**." (*sic*) **App. 197-198** (emphasis added).

Based upon these representations, a reasonable person would conclude that Respondent was reporting her physical incapacity to practice law. At the Respondent's request, Sara Rittman, on behalf of the Advisory Committee, waived Respondent's 2010 annual fee, pursuant to Rule 6.01(h). **App. 960 (Tr. 23).**

The record evidence demonstrates, however, that in 2009 and 2010, Respondent enjoyed an extensive legal practice, far beyond "10 simple cases in 6 months." Respondent "practiced law" on at least 117 occasions in an estimated 46 cases between February 26, 2009 and January 29, 2010 in a wide variety of litigation cases (criminal, equitable, juvenile, domestic, probate and municipal) in the circuit and associate circuit courts of southeast Missouri. **App. 900-920**.

On January 4, 2010, in a municipal court case, 24 days before she represented to the Advisory Committee that she lacked the physical capacity to practice law, Respondent filed a letter in court representing she was "available all of February and March in 2010 for a one day trial." **App. 466**. In addition, on February 3, 2010, 4 days after stating to the Advisory Committee that she lacked the physical capacity to practice law, Respondent (i) appeared in court with one client in separate criminal cases in Scott County **(App. 538, 541)**, (ii) filed a petition for full custody for a second client **(App. 556)** and (iii) appeared at a hearing with a third client in a Cape Girardeau County criminal case **(App. 722)**.

After her January 29, 2010 waiver request, Respondent made approximately 95 filings or appearances through August 2010 in a variety of cases, 18 of which were filed in the year 2010. **App. 900-920**. Moreover, in a municipal case on April 7, 2010, Respondent filed a letter in court that she had "all of May" to conduct the legal proceeding. **App. 461**.

In addition, on September 24, 2010, Respondent represented herself *pro se* at her disciplinary hearing for nearly 8 hours, with only a few brief recesses. The record on appeal demonstrates that Respondent possessed the physically capacity to make her opening statement, object to evidence, cross-examine witnesses, conduct direct examination of witnesses and make her closing argument to the Panel. **App. 938-1242 (Tr. 1-304)**.

The reality of Respondent's continuous and extensive legal practice in 2009 and 2010 belies her claim of physical incapacity.

In her January 29, 2010 waiver request, Respondent represented that she worked for gas money only, implying her physical capacity was so limited that she could not afford to pay her annual fee. **App. 197-198**.

Practicing law is a privilege, not a right. See *In re Conner*, 207 S.W.2d 492, 499 (Mo. banc 1948). Lawyers' annual enrollment fees are necessary to sustain a self-regulating profession and must be paid regardless of the form a particular lawyer's practice takes or how much money she earns. Without the revenue from annual fees, the public and the integrity of the legal profession are threatened. By Supreme Court rule, the only lawyers excused from paying the annual enrollment fee are those who are delinquent because they were unable to practice law due to physical or mental incapacity. Rule 6.01(h).

In summary, Respondent misrepresented her physical capacity to practice law and actively misled the Advisory Committee in order to induce it to grant her a fee waiver, in violation of Rules 4-8.4(c) and (d).

### B. Count II: False Statements about Judges

In Count II, Informant alleges that Respondent made false or reckless statements concerning the integrity of Judge Satterfield of Stoddard County and Judge Kamp of Cape Girardeau County. **App. 49-50**. The Disciplinary Hearing Panel agreed and recommended that Respondent be reprimanded. **App. 180-182**. Informant respectively suggests that the Panel's recommended discipline is insufficient.

Rule 4-8.2(a) prohibits a lawyer from making a statement that she knows to be false or with reckless disregard as to its truth or falsity concerning the integrity of a judge. Lawyers do not enjoy free speech rights "to resist a ruling of the trial court beyond the point necessary to preserve a claim for appeal." *In re Madison*, 282 S.W.3d 350, 354 (Mo. banc 2009) citing *In re Coe*, 903 S.W.2d 916 (Mo. banc 1995) quoting *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1071 (1991). Such statements "can undermine public confidence in the administration and integrity of the judiciary, thus in the fair and impartial administration of justice." *In re Madison*, 282 S.W.3d 350, 354 (Mo. banc 2009) citing *In re Westfall*, 808 S.W.2d 829, 836 (Mo. banc 1991). Respondent "is necessarily aware, as are all lawyers licensed in Missouri, that if [s]he believes an ethical violation has occurred, [s]he is required to file a complaint with the Commission on Retirement, Removal and Discipline. Rule 4-8.3(b)." *In re Madison*, 282 S.W.3d at 358 (Mo. banc 2009).

The Panel found that Respondent authored and published on the Internet the claim that Judge Satterfield was engaged in illegal conduct and corruption with regard to his handling of two criminal cases involving defendant, Jessica Billings. **App. 173.** Respondent had no relationship with Ms. Billings, who was represented at all relevant times by attorney, Shawn Boyd. **App. 858, 1052-1053 (Tr. 114-15).**

Respondent made similar accusations in a telephone message to the Cape Girardeau Prosecuting Attorney, Morley Swingle, to convince him to request a change of judge from Judge Satterfield in the *Heather Ellis* case because of Judge Satterfield's handling of the *Billings* cases. **App. 868-870, 1086-1087 (Tr. 148-149).**

At no time during her disciplinary hearing did Respondent proffer evidence that Judge Satterfield was engaged in any illegal conduct or corruption with regard to Jessica Billings or any other person. The *Billings* court files do not reflect any motions or complaints by Mr. Boyd concerning Judge Satterfield's handling of the cases. **App. 841-868**. Judge Satterfield testified that he handled the *Billings* cases with the appropriate discretion and did not engage in any illegal conduct or corruption. **App. 1047-1055 (Tr. 109-117).**

As to Judge Kamp, the Panel found that Respondent accused him, in open court, of denying her client, Patrice Jones, a jury trial and further stated that Judge Kamp had a history of denying other defendants of their right to a jury trial. **App. 998 (Tr. 61)**. The court record reflects that Ms. Jones was in fact granted a jury trial. **App. 721.** Judge Kamp testified before the Panel that he never denied a defendant's request for a jury trial. **App. 999-1000 (Tr. 62-3)**. Respondent never proffered evidence at her disciplinary hearing proving that Judge Kamp had a history of denying defendants of their right to a jury trial.

With respect to Judge Satterfield, the Panel found Respondent should have filed a judicial complaint if she believed that he engaged in unethical conduct. **App. 173**. With respect to Judge Kamp, the Panel found Respondent should have made and preserved for appeal an objection to the perceived treatment of her client. **App. 174**.

Rather than following proper procedure by objecting to or reporting perceived judicial misconduct, Respondent chose to publicly make false and reckless remarks about the integrity of both judges, in violation of Rules 4-8.2(a) and 4-8.4(d).

### C. Count III: Abuse of the Legal Process

In Count III, Informant alleges Respondent made false statements in two court cases seeking an unfair advantage for herself and her client and disrupting the proceedings before the tribunals. **App. 50-53**. An "assertion purporting to be on the lawyer's own knowledge, as…in a statement in open court, may properly be made only when the lawyers knows the assertion is true, or believes it to be true on the basis of a reasonably diligent inquiry." Rule 4-3.3, comment 3. Rule 4-3.3(a)(1) requires *candor* from a lawyer when making a statement of fact to the court. A "lawyer must not allow the tribunal to be misled by false statements of fact." Rule 4-3.3, comment 2. Engaging in conduct intended to disrupt a tribunal violates Rule 4-3.5(d).

In the first case, *State v. Patrice M. Jones,* Case No. 09G9-CR01896, in Cape Girardeau County, Respondent represented to the court that she filed a judicial complaint against Judge Kamp, in order to obtain a change of judge **App. 736, 740** and "to see the look on his face because he deserves it." **App. 721**. Judge Kamp initially denied Respondent's Motion for Change of Judge as being out of time. **App. 720**. Ultimately, however, because of Respondent's accusations and overall conduct, Judge Kamp felt compelled to file a disciplinary complaint against Respondent and to recuse himself from the case. **App. 735**.

In point of fact, Respondent never filed a complaint against Judge Kamp with the Commission on Retirement, Removal, and Discipline. **App. 1032-1035 (Tr. 94-7)**. The Disciplinary Hearing Panel chose to believe that Respondent's misrepresentations were unintentional because she "may have said the word "filed" when she actually "made" a

[verbal] complaint by phone." **App. 176-178**. There is no factual basis in the record for the Panel's conclusion. "Making" a telephone call to the Commission is not what the Respondent told the court she did in *Jones*. The court file shows she typed the word "filed" in her pleadings, twice. **App. 736, 740**.

Respondent is familiar with the meaning of the word "filed." According to Jim Smith, Respondent had previously "filed" a written complaint with the Commission regarding a different judge. **App. 1044-1045 (Tr. 106-7)**. Also, each lawyer licensed in Missouri "is necessarily required to file a complaint with the Commission on Retirement, Removal and Discipline," if he [or she] believes an ethical violation has occurred. Rule 4-8.3." *In re Madison,* 282 S.W.3d 350, 358 (Mo. banc 2009) (emphasis added). Most significantly, Jim Smith advises all callers that a judicial complaint must be filed with his office, in writing, in order to be properly considered. **App. 1033-1035 (Tr. 95-97).**

In addition, it is clear from the record that Respondent intentionally disrupted a tribunal with her misrepresentations about having filed a judicial complaint against Judge Kamp. She desired a change of judge and ultimately achieved it. Because of Respondent's misconduct, Judge Kamp believed it necessary to file a disciplinary complaint against her and recuse himself from the case. **App. 735**.

In the second case, *State v. Tamika Tate*, Case No. 09G9-CR00174, a probation revocation case pending in Cape Girardeau County, Respondent represented in open court that she had filed motions to set aside her client's guilty pleas in the two underlying Stoddard County cases. **App. 1002 (Tr. 65)**. Further, Respondent made the following statements captured on the record: "If the guilty plea – if **our** motion down below is

granted will that change the disposition of this Court? If her guilty plea to that is thrown out will that change the disposition of the Court?" **App. 686** (emphasis added). In neither of the Stoddard County cases, however, did Respondent file a motion to set aside Tate's guilty pleas.

In addition in the *Tate* probation revocation case, Respondent made a statement in court that she had arranged for the transportation of a jailed witness from Stoddard County to testify in support of her client. **App. 1002-1004 (Tr. 65-67)**. Based on that representation, the court granted Respondent's motion to continue the hearing. **App. 1002-1003 (Tr. 65-6).** On the day of the hearing, however, Judge Kamp learned that Respondent failed to secure the necessary arrangements with the sheriff's office to have the witness transported to Cape Girardeau County. **App. 1004 (Tr. 67).** Again, a court was misled by Respondent's false representation and court proceedings were disrupted.

Rather than abide by her duty of candor, Respondent made false statements to a court in two cases in an attempt to gain an unfair advantage for herself and her client. Her actions disrupted the court proceedings and affected the fair administration of justice, in violation of Rules 4-3.3(a)(1), 4-3.5(d) and 4-8.4(d).

### D. Count IV: Improper Communications with Individuals in the Legal System

In Count IV, Informant alleges that Respondent spoke with a represented party without permission, regarding the subject matter of Respondent's representation of her client, in violation of Rule 4-4.2. **App. 53-55**. In addition, Informant alleges that Respondent made intimidating statements to the represented party regarding that party's

right to testify against Respondent's client, in violation of Rule 4-8.4(d). **App. 53-55**. In certain circumstances, intimidating a witness could be considered criminal: "A person commits the crime of tampering with a witness if, with purpose to induce a witness or a prospective witness to…absent [her]self…or to withhold evidence,…,„[s]he…uses…threats…" Mo. Rev. Stat, §575.270(1) (2010). Tampering with a witness…is a…felony if the original charge is a felony." Mo. Rev. Stat, §575.270(3) (2010). In this case, the conduct by Respondent is unethical and warrants a severe sanction.

In *State v. Jermaine Young*, case number 09SD-CR00879, pending in Stoddard County, the defendant was charged with felony firearm possession and was represented by the Respondent. At the preliminary hearing, evidence revealed that Respondent spoke in person at the county jail with Jessica Billings, who was facing the same charges as Respondent's client. Respondent knew at the time that Shawn Boyd, who was not present, represented Billings. **App. 1128-1132 (Tr. 190-4)**. Billings testified at the preliminary hearing that Respondent told her that "writing a statement wouldn't do any good and that if it came for Billings and Respondent's client to testify against each other that Respondent would "eat [her] up in court." **App. 270-271**. At her disciplinary hearing, Respondent confirmed that the colloquy with Billings occurred. **App. 1128-1132 (Tr. 190-194).**

Respondent's conduct is shocking. Respondent spoke with a represented party about the subject matter of the representation without permission from counsel for that party. In addition, Respondent used words that a reasonable person would find

intimidating. Contrary to Respondent's belief, she was not free to engage in a conversation with Billings without Mr. Boyd's knowledge and permission, simply because Billings consented to the conversation. **App, 1131 (Tr. 193)**. "Rule 4-4.2 applies even though the represented party initiates or consents to the communication." Rule 4-4.2, comment 3. Respondent's statement as to what she would do if Billings chose to testify against Young indicates Respondent intended to make an *impression* on Billings. "Rule 4-4.2 contributes to the proper functioning of the legal system by protecting the person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter…and the uncounselled disclosure of information related to the representation." Rule 4-4.2, comment 1.[5]

By speaking with a represented party without the consent of that party's lawyer regarding the subject matter of the representation, Respondent violated Rule 4-4.2 and engaged in conduct prejudicial to the administration of justice, in violation of Rule 4-8.4(d). By making statements of intimidation, the Respondent's conduct could chill the party from exercising her constitutional right to testify in her own defense, in violation of Rule 4-8.4(c).

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[5] "A party is to be protected from the influences of opposing counsel's "calculated and self-serving approaches" as well as from "misguided but well-intended communications." *In re News America Pub., Inc.*, 974 S.W.2d 97, 101 (Tex.App.-San Antonio, 1998).

### E. Count V: Misrepresentations to a Tribunal

As to Count V, the Informant concurs with the Panel's recommendation to dismiss. **App. 179**.

II.

**SUSPENSION FROM THE PRACTICE OF LAW IS THE APPROPRIATE SANCTION IN THIS CASE WHERE RESPONDENT KNOWINGLY VIOLATED DUTIES OWED TO THE LEGAL SYSTEM CAUSING HARM TO THE LEGAL SYSTEM AND TO INDIVIDUALS WHO ARE PART OF THE LEGAL SYSTEM BECAUSE:**

**A. THE ABA STANDARDS FOR IMPOSING LAWYER SACTIONS SUGGEST SUSPENSION AS THE APPROPRIATE SANCTION; AND**

**B. THIS COURT HAS RULED THAT AN ATTORNEY WHO ENGAGES IN MULITPLE ACTS OF MISCONDUCT REGARDING THE DUTIES OWED TO THE LEGAL PROFESSION AND REFUSES TO ACCEPT THE WRONGFUL NATURE OF THE CONDUCT SHOULD BE SUSPENSED.**

The Disciplinary Hearing Panel found that Respondent engaged in professional misconduct in her public comments about Judge Satterfield and Judge Kamp (Count II) and recommended that she be reprimanded. The Panel recommended that Counts I, III, IV and V of the First Amended Information be dismissed. **App. 154-182**. Except for concurring with the recommendation for dismissal of Count V, Informant respectfully disagrees with the Panel and suggests that Respondent's multiple instances of misconduct support a suspension from the practice of law with strict conditions for her reinstatement.

**A. ABA Standards:**

This Court has relied on the ABA's Standard for Imposing Lawyer Sanctions (1991 Edition) to determine the appropriate discipline to be imposed in attorney discipline cases. *In re Warren*, 888 S.W.2d 334 (Mo. banc 1994); *In re Griffey*, 873 S.W.2d 600 (Mo. banc 1994); *In re Oberhellman*, 873 S.W.2d 851 (Mo. banc 1994).

> ABA Standard 3.0 states that a court will look at four primary factors in determining which sanction is appropriate: (1) the duty violated; (2) the lawyer's mental state; (3) the potential or actual injury the conduct caused; and (4) aggravating and mitigating circumstances. The definitions of the ABA Standards provides that the term "injury" includes harm to the legal system or the profession, that acting with "intent" means having "a conscious objective or purpose to accomplish a particular result," and that acting with "knowledge" means "a conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish" that result. *In re Madison*, 282 S.W.3d 350, 360 (Mo. banc 2009).

Each of Respondent's incidents of misconduct falls under the category of Violations of Duties Owed to the Legal System. ABA Standard 6.0. "Lawyers are officers of the court, and must abide by the rules of substance and procedure which shape the administration of justice." ABA Standard 6.0. "Lawyers must always operate within

the bounds of the law, and cannot create or use false evidence, or engage in any other illegal or improper conduct (Rules 3.1 through 3.6, 3.9, 4.1 through 4.4, 8.2 8.4(d)(e)&(f)/DR7-102 through DR7-110)." ABA Standard 6.0.

The record evidence demonstrates that Respondent's conduct was done with "knowledge." She was "consciously aware of the nature and attendant circumstances of her conduct" and explained very clearly her intentions. As to Count I, Respondent's misrepresentations to the Advisory Committee were made to obtain a fee waiver. As to Count II, Respondent's Internet postings regarding Judge Satterfield were intended to expose him in a public forum in a negative light. Her telephone message regarding Judge Satterfield's integrity was intended to convince Mr. Swingle to seek a change of judge in a special prosecution. As to the first of the cases referenced in Count III, Respondent's pleadings stated her intention was for Judge Kamp to recuse himself. As to the second of the cases, Respondent's false statements were made to obtain favorable rulings (i.e. avoidance of revocation of her client's probation and a hearing continuance). As to Count IV, Respondent knowingly spoke to a represented party, without proper permission, and warned her of the consequences if she chose to testify against Respondent's client.

Significant harm was done to the fair administration of justice by Respondents misconduct. She was granted a fee waiver based on her misrepresentations and received court rulings in her favor based on misrepresentations. Judges suffered harm by having their integrity attacked publicly with false and unsupported conclusions. More significantly, the public's confidence in the legal system suffers when an officer of the

court denigrates judges unfairly and in an inappropriate manner.[6] There was great potential for harm to other individuals in the legal system, particularly, Ms. Billings, whom Respondent attempted to intimidate, during an inappropriate conversation.

Contrary to the Panel's findings, the only relevant mitigating factor for Respondent's misconduct is the absence of prior disciplinary history. ABA Standard 9.3 However, all of Respondent's violations reflect on her fitness to practice law.

Contrary to the Panel's findings, significant aggravating circumstances for Respondent's misconduct are present. The most compelling are (i) multiple offenses and (ii) [the] refusal to acknowledge the wrongful nature of the conduct. ABA Standard 9.2.

Respondent apparently believes that the rules of the Missouri legal system do not apply to her and therefore chooses not to abide by them. Even after her disciplinary hearing, in an email to the Disciplinary Hearing Panel rejecting the suggestion that her

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[6] It is noteworthy to recognize Respondent's lack of awareness to the particular sensitivities surrounding the *Heather Ellis* prosecution. The Missouri legal system was in the national spotlight owing to the allegations made of racial discrimination and prosecutorial bias. Emily Friedman and Tom McCarthy, *Heather Ellis Could Face Prison Time After Cutting the Line at Walmart*, ABC World News (November 18, 2009), http://abcnews.go.com/WN/woman-cut-line-walmart-prison/story?id=9107365. For a lawyer with no connection to the proceedings to improperly insert herself, even at the margin, and risk negative public perception, demonstrates a fitness to practice law issue.

conduct was wrongful, Respondent continued to assail the legal system by attacking the motives and integrity of the Chief Disciplinary Counsel. **App. 187-193**.

When analyzing the ABA Standards regarding an attorney's violation of the duty owed to the legal system, it is clear that suspension is the appropriate sanction in this case:

> 1. Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potential adverse effect on the legal proceeding. ABA Standard 6.12. (Respondent's misrepresentation of having filed a judicial complaint against a judge in order to force a recusal; Respondent's misrepresentation of having filed motions to set aside her client's underlying guilty pleas in order to gain an unfair advantage; Respondent's misrepresentation to the court that she secured transportation of a witness in order to receive a continuance.)
>
> 2. Suspension is generally appropriate when a lawyer knowingly violates a court order or rule, and causes potential injury to a client or a party, or causes interference or potential interference with a legal proceeding. ABA Standard 6.22.

(Respondent misrepresenting her capacity to practice law for a fee waiver; Respondent making false and reckless statements in and out of court regarding the integrity of two judges.)

3. Suspension is generally appropriate when a lawyer engages in communications with an individual in the legal system when the lawyer knows that such communication is improper, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding. ABA Standard 6.32. (Respondent inappropriately speaking with and intimidating a represented party not to testify against her client.) ABA Standards 6.0.

**B. Missouri Case Law:**

Consistent with this Court's holding in *In re Littleton*, 719 S.W.2d 772, 777 (Mo. banc 1986), the instant case "is not a proper case for reprimand because respondent's breach of discipline was not an isolated act and did involve dishonest, fraudulent, or deceitful conduct on the part of the attorney." *In re Murphy*, 732 S.W.2d 895, 903 (Mo. banc 1987). "Misconduct involving subterfuge, failing to keep promises, and untrustworthiness undermines public confidence in not only the individual but in the bar." Id. Therefore, in order to protect the public, and maintain the integrity of the

profession, a substantial penalty must be imposed." *In re Donaho*, 98 S.W.3d 871, 874 (Mo. banc 2003) citing *In re Disney*, 922 S.W.2d 12, 15 (Mo. banc 1996).

Factually, Respondent's misconduct regarding her statements about the integrity of Judge Satterfield and Judge Kamp is similar to the misconduct in the *Madison* case. *In re Madison,* 282 S.W.3d 350 (Mo. banc. 2009). Mr. Madison "impugned the integrity of [two] judges…by intentionally send[ing] [inappropriate] letters and continues to believe that they were appropriate and deserved." He "expressed no remorse." Respondent's other misrepresentations before Judge Kamp "were intended to disrupt the legal process, and they did so needlessly." *In re Madison,* 282 S.W.3d at 359. In *Madison,* this Court issued a suspension indefinitely with no leave to reapply for six months, with special conditions for readmission. *In re Madison,* 282 S.W.3d at 360.

The instant case is deserving of a more lengthy suspension because it involves additional egregious and potentially dangerous conduct affecting the administration of justice and individuals in the legal system. In its totality, the record evidence supports the sanction that Respondent be suspended indefinitely from the practice of law with no leave to reapply for 1 year. Reinstatement should be conditioned on meeting the requirements for readmission set out in this Court's rules. In addition, the Court should require that Respondent undergo a psychological evaluation, attend the ethics school conducted by the Office of Chief Disciplinary Counsel and "demonstrate affirmatively that [s]he understands [her] responsibilities as attorney and counselor and giv[e] assurances that that there will be a correction of the problems which have brought [her] to [her] present situation." *In re Reza*, 743 S.W.2d 411, 412 (Mo. banc 1988).

## CONCLUSION

Respondent committed professional misconduct (1) by making false representations to the Advisory Committee to obtain a waiver of her annual enrollment fees, (2) by making false and reckless statements regarding the integrity of Judge Satterfield and Judge Kamp, (3) by making false accusations and misrepresentations to the court to gain an unfair advantage and (4) by speaking with and intimidating a represented party without the consent of that party's counsel. All of Respondent's acts prejudiced the fair administration of justice and caused harm to the legal system. Respondent's refusal to acknowledge her wrongdoing and her post-hearing taunts directed at the Chief Disciplinary Counsel warrant a suspension from the practice of law.

Respectfully submitted,

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ATTORNEY FOR INFORMANT

## CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of March, 2011, two copies of Informant's Brief and a disk containing the Brief in Word format have been sent via First Class United Mail, postage prepaid, to:

Lisa Dawn Coatney
1811 State Hwy Z
Sikeston, MO 63801

_____
Alan D. Pratzel

## CERTIFICATION: 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. Complies with the limitations contained in Rule 84.06(b);

3. Contains 10,974 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and

4. That Trend Micro Anti-Virus software was used to scan the disk for viruses and that it is virus free.

_____
Alan D. Pratzel

## APPENDIX

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