

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

ROY KING, JR.,

Respondent.

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Supreme Court #SC89442

INFORMANT'S REPLY BRIEF

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POINTS RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE VIOLATED THE RULES OF PROFESSIONAL CONDUCT BY ENGAGING IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE, BY FAILING TO REASONABLY COMMUNICATE WITH HIS CLIENT AND BY FAILING TO DILIGENTLY HANDLE THE LEGAL MATTER FOR WHICH HE WAS RETAINED

Rule 4-8.4(d)

Rule 4-1.4

A.B.A. Standards for Imposing Lawyer Sanctions (1991 ed.)

POINTS RELIED ON

II.

**THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LAW LICENSE,
STAY THE SUSPENSION AND PLACE RESPONDENT ON PROBATION
CONSISTENT WITH THE RECOMMENDATION AND TERMS SET FORTH IN
THE DECISION OF THE DISCIPLINARY HEARING PANEL**

A.B.A. Standards for Imposing Lawyer Sanctions (1991 ed.)

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE VIOLATED THE RULES OF PROFESSIONAL CONDUCT BY ENGAGING IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE, BY FAILING TO REASONABLY COMMUNICATE WITH HIS CLIENT AND BY FAILING TO DILIGENTLY HANDLE THE LEGAL MATTER FOR WHICH HE WAS RETAINED

The Respondent's Brief is rife with excuses, selective memory, factual misstatements and legal misinterpretation intended to sidestep personal and professional responsibility for his ethical misconduct. Equally disturbing, Respondent makes various statements and assertions that reflect a basic misunderstanding of his professional duties as a lawyer and a total lack of respect for the disciplinary process and his troublesome disciplinary history. Respondent refuses to acknowledge any wrongful conduct in his representation of his client Shelby Phenix and incorrectly claims in mitigation that he was defending himself from his client's physical contacts directed at him. **Respondent Brief at 24.**

As a starting point, Informant agrees with Respondent's assertion that the ABA *Standards for Imposing Lawyer Sanctions* (1991 ed.) is an appropriate and helpful reference, recognized by this Court, for use in lawyer disciplinary cases. While there is agreement that the *Standards* provide an appropriate and useful "theoretical framework" for analyzing lawyer sanctions, Informant strongly disagrees, in several critical respects,

with Respondent's evidentiary analysis of the misconduct found by the Disciplinary Hearing Panel and the sanction analysis undertaken by Respondent in his brief. Informant's specific points of disagreement with Respondent's unsupported claims and sanction analysis follow.

Respondent violated Rule 4-8.4(d) prohibiting conduct prejudicial to the administration of justice. The Disciplinary Hearing Panel took evidence on this matter and properly judged the veracity and character of each witness. In finding misconduct, the Panel properly determined that Respondent engaged in abusive conduct toward his client that included verbal harassment and a physical confrontation in violation of Rule 4-8.4(d).

The Panel found that Respondent engaged in a physical struggle with his client that caused them to roll down a hill. In this regard, Respondent admitted in his testimony that he only stopped fighting when he realized that his client refused to participate in the fight. Respondent readily admitted to the Panel that he "called [Phenix] everything except a child of God", that he was "ready to whip [Phenix's] ass" and that he wanted to fight his client. **App. 87-92 (Tr. 85-93).** Phenix thereafter found it necessary to obtain an Order of Protection against Respondent from the Jackson County Circuit Court.

In his brief, Respondent admits engaging in physical confrontations with his client, stating that "it is only because of my athleticism and luck neither of us was seriously injured." **Respondent Brief at 14.** Respondent claims that he acted in self-defense and that he "reacted well under the circumstances with an emotional flavor." **Id.** The Panel thought otherwise, finding that Respondent instigated the verbal and physical

confrontation and that a serious physical encounter was avoided only because Phenix withdrew. Respondent's conduct was not in keeping with the fiduciary relationship that accompanies the attorney-client relationship and was in violation of his professional duty owed to his client.

Respondent's admissions to the Disciplinary Hearing Panel that he challenged his client to a fight, threatened to "break his neck", and engaged in a physical struggle with Phenix constituted acts of baseness and depravity that support a finding of moral turpitude. In addition, such conduct between an attorney and his client severely damaged the attorney-client relationship and was prejudicial to the administration of justice in violation of Rule 4-8.4(d).

Respondent violated Rule 4-1.4 by failing to respond to his client's reasonable requests for information. The Panel correctly found (i) that Respondent failed to notify his client that he had filed a lawsuit on his behalf or provide his client with a copy of the Petition for Damages until, in response to his client's demand, he provided a copy of the client file to Phenix some six (6) months after being retained, (ii) that Respondent failed to respond to numerous telephone calls and faxes from his client between May and September 2004, and (iii) that Respondent refused to communicate with his client regarding the representation when they saw each other at a bar in October 2004. These findings supported the Panel's conclusion that Respondent failed to reasonably communicate with his client in violation of Rule 4-1.4.

Respondent asserts that his client knew that Respondent had filed a lawsuit on his behalf and knew the status of the litigation during summer 2004 as a result of checking

the case on *Case.net*. Respondent apparently believes that he fulfilled his professional duty to communicate with his client by virtue of the fact that his client, out of a sense of frustration arising from his inability to receive information from Respondent, sought out information available on the internet. A client's independent search for information does not relieve an attorney from communicating with that client. The Panel correctly found that Respondent violated Rule 4-1.4 by failing to reasonably communicate with Phenix regarding the status of the representation.

Respondent's other random claims should be summarily rejected. Throughout his brief, Respondent makes various outlandish claims and assertions. In each case, the statements are erroneous and unsupported by any record evidence.

For example, Respondent asserts that "duty and loyalty are concepts I believe in strongly, especially if I'm paid in full and in advance." **Respondent Brief at 22.** This revealing statement reflects Respondent's attitude toward the attorney-client relationship and helps explain Respondent's lengthy disciplinary history. The lawyer's duty of loyalty attaches to the attorney-client relationship from the outset of the representation regardless of whether the attorney's fee is paid in full or in advance. Respondent's failure to provide his client with the appropriate level of duty and loyalty throughout the representation violated the Rules of Professional Conduct.

Respondent states that his client had no complaints regarding his legal services "other than I was not going to try his case." **Respondent Brief at 6.** Likewise, Respondent claims that his client never complained "other than he wanted me to complete his case." **Respondent Brief at 7.** Respondent apparently fails to understand

or recognize that his client retained him in order to pursue a claim that might include taking the case to trial. In any event, it is clear that any client expects his attorney to complete the representation and that Respondent failed to do so.

Respondent states that Phenix's claim was a "slam dunk" case and that Phenix could have tried the matter himself except for the fact that he was afraid of the defendant, Michael Straws. **Respondent Brief at 9.** Such an unsupported assertion reflects a failure on Respondent's part to understand the very reason for the legal representation. Phenix retained Respondent to competently represent him in the claim against Straws, to reasonably communicate regarding the progress of the litigation and to conduct himself in accordance with the attorney-client relationship. Respondent failed to do so and thereby violated the Rules of Professional Conduct.

Respondent attitude toward the Disciplinary Hearing Panel and the attorney disciplinary process generally is very troublesome. Thus, Respondent characterizes his client Phenix as a "civilian in this war between the Special Representative, the DHP and me." **Respondent Brief at 12.** In describing his posture toward the Panel, Respondent asserts that he "should have declared open warfare." **Respondent Brief at 26.** Such bold and careless statements are misplaced and reflect Respondent's failure to understand that the disciplinary proceedings are intended to protect the public and the integrity of the Bar. Respondent engaged in professional misconduct in his representation of his client and his failure to acknowledge the misconduct or to understand the nature of these proceedings constitutes aggravating circumstances.

ARGUMENT

II.

THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LAW LICENSE, STAY THE SUSPENSION AND PLACE RESPONDENT ON PROBATION CONSISTENT WITH THE RECOMMENDATION AND TERMS SET FORTH IN THE DECISION OF THE DISCIPLINARY HEARING PANEL

Throughout his brief, Respondent displays an alarming and disturbing lack of understanding and appreciation regarding his extensive disciplinary history as well as the seriousness of the current charges. The following examples are illustrative:

a. In mischaracterizing his client's motive in filing a complaint with the Office of Chief Disciplinary Counsel, Respondent states "...like clients in the past *and probably in the future*, they rather file with the OCDC alleging, ethical and misconduct issues to bolster their claim(s)." **Respondent Brief at 6 (*emphasis supplied*).**

Respondent later claimed that his client "threatened to take [Respondent] to the Bar Committee but little did he know that I've been through this process several times before therefore, those types of threats do not intimidate or anger me." **Respondent Brief at 7.**

b. In referring to his prior record of discipline, including a 1996 public reprimand from this Court, Respondent stated that he "had been the subject of prior violations of discipline, most of them not very significant." **Respondent Brief at 23.**

c. In referring to three prior admonitions issued to him by the Office of Chief Disciplinary Counsel, Respondent stated that "...before Respondent knew what hit him, he had a jacket full of petty violations." **Respondent Brief at 23.**

d. In referring to his brief administrative suspension in 2008 for failing to meet his Missouri Continuing Legal Education requirements, Respondent referred to the MCLE requirements as “newly discovered” and claimed that he “wasn’t given any due process in that matter....I guess once you’ve had as many complaints as I have constitutional due process is not due.” **Respondent Brief at 24.**

e. In refusing to accept the Panel’s recommendation of various probationary terms, including attendance at Ethics School, Respondent states that “all of this is unnecessary. When I needed a monitor ten (10) years ago, there was no one to be found. A monitor under these circumstances is insulting.” **Respondent Brief at 24-25.**

f. In further rejecting the Panel’s decision and recommendation of probation, Respondent boldly asserts that he “should have declared open warfare” on the disciplinary process and that “[h]istory has shown us many times that appeasement can backfire on you. In light of *In re Belz* No. SC 889, (2008) [sic], the OCDC does not believe in mitigating factors, period.” **Respondent Brief at 26.**

Contrary to Respondent’s statements, his disciplinary history is extensive and reflects a pattern of malaise toward his clients and the practice of law. This Court publicly reprimanded Respondent on June 27, 1996 for violating Rule 4-1.16(d) (failing to return third-party funds held in trust). In addition, Respondent has been admonished on the following three (3) occasions: in March 1999 for violating Rule 4-1.5(c) (failing to have a written contingent fee agreement) and Rule 4-1.16(d) (failing to return client funds held in trust); in February 1998 for violating Rule 4-1.3 (diligence), Rule 4-1.4 (communication) and Rule 4-1.5(c) (failing to have a written contingent fee agreement);

and in May 1998 for violating Rule 4-1.5(c) (failing to have a written contingent fee agreement). **App. 159-166.** This previous discipline is an aggravating circumstance under the A.B.A. *Standards for Imposing Lawyer Sanctions*. Under the system of progressive discipline followed by the Court, the OCDC and the entire attorney disciplinary system, a stayed suspension with probation is appropriate in this case.

Respondent's attitude toward the OCDC, the Disciplinary Hearing Panel and the entire disciplinary process is the best evidence that the probationary terms recommended by the Panel are necessary and appropriate. In particular, attendance at the Ethics School, with its emphasis on law practice management skills, is essential in this case.

CONCLUSION

Respondent committed professional misconduct by (i) verbally threatening his client and engaging in a physical confrontation with his client in violation of Rule 4-8.4(d), (ii) by failing to keep his client reasonably informed about the status of his case and by failing to promptly comply with reasonable requests for information from his client in violation of Rule 4-1.4, and (iii) by failing to diligently and promptly handle the legal matter entrusted to him by his client in violation of Rule 4-1.3. The presence of significant aggravating circumstances, including prior misconduct and Respondent's refusal to take responsibility for, or even acknowledge, the wrongful nature of his conduct, support the imposition of discipline. Informant respectfully requests that the Court suspend Respondent from the practice of law for one (1) year, provided, however, that the suspension be stayed and in lieu of enforcement thereof, Respondent be placed on probation for a period of one (1) year consistent with the probationary terms set forth

in the decision of the Disciplinary Hearing Panel. Finally, Informant requests that the Court tax all costs in this matter, including the \$1000.00 disciplinary fee under Rule 5.19(h), to Respondent.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of October, 2008, two copies of Informant's Reply Brief and a diskette containing the brief in Microsoft Word format have been sent via First Class mail to:

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Respondent

Alan D. Pratzel

CERTIFICATION: RULE 84.06(c)

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

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 2,509 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and
4. That Norton Anti-Virus software was used to scan the disk for viruses and that it is virus free.

Alan D. Pratzel