IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:

JASON HENRY,

Respondent.

Supreme Court # SC95688

RESPONDENT'S BRIEF

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ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER AUTHORITIES

RULES

RESPONDENT'S ADDITIONAL FACTS

Respondent accepts Informant's Statement of the Facts with these additional facts.

After the appointment of the Disciplinary Hearing Panel the Chair of the Disciplinary Hearing Panel wrote Respondent and Mr. Rapp the Special Representative Representing the Informant, and asked if the parties were going to have a suggested resolution or a stipulation. (TR43)

When there was no contact by Mr. Rapp with Respondent, the Respondent called Mr. Rapp about whether they were going to have an agreed resolution or stipulation. At that time Mr. Rapp advised Respondent that the Chief Disciplinary Counsel, Mr. Pratzel, had decided that Mr. Rapp should recommend to the Disciplinary Hearing Panel that Informant be disbarred. (TR32)

This news informant caused Informant to be upset and so he called Mr. Pratzel to discuss the reasoning for a recommendation of disbarment. Respondent was unable to reach Mr. Pratzel and left two voicemails expressing Respondent's thoughts about the recommendation of disbarment. (TR32,TR35)

Recordings of those two voicemails were sent by Mr. Pratzel's office to Mr. Rapp. (TR41) Nothing was sent to Respondent- no copies of the recordings, no amendment to the Information and no notice that the recordings would be utilized in any way at the hearing. (TR36)

At the hearing Mr. Rapp advised the Chair of the Disciplinary Hearing Panel that the information was intentionally vague so that it hopefully it would not create any media publicity. Mr. Rapp advised the Chair that Informant would present its case and at the

close of the evidence would move to conform the pleadings to the evidence. (Transcript A 37 & 38)

Mr. Rapp then questioned Informant about whether he had made calls to Mr. Pratzel, and then offered the recording into evidence. Respondent objected and advised that the recordings were not relevant, and had nothing to do with the charges. (TR42) Recordings were received over the objection of Respondent. (TR43)

Mr. Rapp also questioned Respondent about whether he suffered from Aspergers and whether Respondent was claiming his conduct was affected by his Aspergers to which Respondent replied yes. (TR82)

At the close of the evidence Mr. Rapp moved to conform the pleadings to the evidence and that Motion was sustained. (TR98)

Mr. Rapp then advised the Disciplinary Hearing Panel that the Office of Chief Disciplinary Counsel was recommending disbarment or in the alternative that Respondent be suspended with conditions.

At the conclusion of the hearing the Disciplinary Hearing Panel issued its Findings and found that Respondent has violated Rule 4-8.4(g) because Respondent's words and conduct manifested bias or prejudice based upon race. (DHP 4)

The Hearing Panel also found that Respondent has violated Rule 4-8.2(a). (DHP 4) That rule provides "a lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or false concerning the qualifications or integrity of a judge, adjudicatory officer or public legal official, or a candidate for election or appointment to judicial or legal office."

The decision by the Hearing Panel found that Respondent did not violate Rule 4-8.4(d) which provides that "it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice." (DHP 4,5)

POINTS RELIED ON

I.

RESPONDENT VIOLATED RULE 4-8.4 (g) BY MANIFESTING RACIAL BIAS OR PREJUDICE IN THE REPRESENTATION OF A CLIENT; VIOLATED RULE 4-8.2(a) BY MAKING FALSE OR RECKLESS STATEMENTS CONCERNING THE QUALIFICATIONS OR INTEGRITY OF JUDGES AND THE JUDICIARY; AND VIOLATED RULE 4-8.4(d) BY ENGAGING IN CONDUCT THAT IS PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE.

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

Missouri Supreme Court Rule 4-8.2

Missouri Supreme Court Rule 4-8.4

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

POINTS RELIED ON

II.

UPON APPLICATION OF THE ABA SANCTION STANDARDS, INCLUDING AGGRAVATING AND MITIGATING FACOTRS, AND PRIOR DECISIONS OF THIS COURT, THE COURT SHOULD DISBAR RESPONDENT FROM THE PRACTICE OF LAW.

Matter of Westfall, 808 S.W.2d 829 (Mo. banc 1991)

In re Coe, 903 S.W.2d 916 (Mo. banc 1995)

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

Matter of Smith, 749 S.W.2d 408, 414 (Mo. banc 1988)

Missouri Supreme Court Rule 5.11(c)

Missouri Supreme Court Rule 5.225(a)(b)

Missouri Supreme Court Rule 55.33(b)

ARGUMENT

I.

RESPONDENT VIOLATED RULE 4-8.4(g) BY MANIFESTING RACIAL BIAS OR PREJUDICE IN THE REPRESENTATION OF A CLIENT; VIOLATED RULE 4-8.2(a) BY MAKING FALSE OR RECKLESS STATEMENTS CONCERNING THE QUALIFICATIONS OR INTEGRITY OF JUDGES AND THE JUDICIARY; AND VIOLATED RULE 4-8.4(d) BY ENGAGING IN CONDUCT THAT IS PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE.

Respondent agrees that his e-mail to his client's wife contained inappropriate language and particularly that he should not have referred to Judge Gaitan as a "puppet nigger." He admits that his e-mail violated Rule 4-8.4(g) by manifesting racial prejudice in the representation of a client.

Respondent agrees that he made false or reckless statements concerning the qualifications of Judge Gaitan, and therefore, violated Rule 4-8.2(a) but denies that his statement called into question the integrity of Judge Gaitan.

Respondent agrees that his description of the author of the *Rentschler* decision as an "idiot" called into question the qualifications of the author of that opinion. 311 S.W.3d 783 (Mo. banc 2015) He agrees that violated Rule 4-8.2(a) but denies that his statement called into question the integrity of the author of that opinion.

Respondent did not know who the author was, indicated that it was a Missouri Court of Appeals, Western District case when in fact it was a Missouri Supreme Court

case and unlike the Respondent in *Matter of Westfall,* 808 S.W.2d 829 (Mo. banc 1991) did not name the Judge nor did he in any way allege the Judge lacked integrity. (TR27) Respondent thought the opinion was incorrect and he should have expressed his criticism of the opinion without using the word "idiot" to describe the author of the opinion.

Respondent admits and agrees that the term "puppet nigger" was completely inappropriate, he has apologized to Judge Gaitan (TR24) and he apologizes to this Court, to the Bar and to the public for his use of that term and the other terms within his e-mail to his client.

He also apologizes to the Court and to Judge Price for his use of the term "idiot" which he agrees was improper. In the future he will refrain from any characterization of the author of an opinion, and confine himself to an analysis of the opinion itself without any invective.

In regard to the alleged violation of Rule 4-8.4(d), Respondent has previously admitted he violated that Rule. The disciplinary hearing panel, however, did not find a violation of that Rule. Upon reflection Respondent believes the determination of the disciplinary hearing panel was correct.

At the hearing counsel for informant, T. R. 124, A153, cited ABA Standards for Imposing Lawyer Sanctions 6.0, 6.1 and 6.11 to the panel. In the introduction to that standard it states, "Lawyers are officers of the Court, and the public expects lawyers to abide by the legal rules of substance and procedure which affect the administration of justice." (emphasis added)

All of the standards relating to conduct that is prejudicial to the administration of justice are found in standard 6.1, 6.11, 6.12, 6.13 and 6.14. They all require that there be some conduct which causes an adverse effect or a potentially adverse effect on a legal proceeding.

The only legal proceeding at issue is the Federal Habeas case before Judge Gaitan. There was no effect on that proceeding. It had already been decided. There was no appeal. In Informant's brief at Page 29, the Informant states that there was a significant adverse effect on that proceeding. He does not state how or in what way there was an adverse effect. The DHP decision states the Informant argued to the DHP that Respondent's conduct after the Information was filed and at the hearing constituted violation of Rule 4-8.4(d). The DHP found no disruption. (DHP 4, 5)

Judge Gaitan is an experienced able Jurist. He has no trouble making decisions based on the facts or the law. Other than to appropriately refer this case for investigation and action to the OCDC, he took no further action that is contained in the record of this case. There was no wasting of judicial time or effort.

Counsel for Informant has called Rule 8.4(d) one of the catchall rules. (TR 104) He then cites to the ABA Standards Standard #6 which requires an adverse effect on the legal proceeding.

If a lawyer violates any of the Rules 8.4(b) through 8.4(g), that lawyer violates catchall rule 8.4(a). Respondent has admitted violating Rules 4-8.2(a) and 4-8.4(g). He therefore has violated Rule 4-8.4(a). He is not thereby automatically the violator of Rule 4-8.4(d). In order for that to occur there must be some adverse impact on the system of

justice, as when a judge has to needlessly disqualify or delay a case or is impacted in having to take extra steps for her own personal safety as occurred In re Madison, 282 S.W. 3d 350, 359 (Mo. banc 2009).

While the words that Respondent use in his e-mail are offensive and inappropriate, they did not adversely impact any legal proceeding and this Court should not find a violation of Rule 8.4(d).

ARGUMENT

II.

UPON APPLICATION OF THE ABA SANCTION STANDARDS, INCLUDING AGGRAVATING AND MITIGATION FACTORS, AND PRIOR DECISIONS OF THIS COURT THE COURT SHOULD DISBAR RESPONDENT FROM THE PRACTICE OF LAW.

The Informant suggests that disbarment is the appropriate discipline for Respondent's conduct, however, cites no case in which disbarment was imposed and none which suggests disbarment is appropriate. Informant has scoured the jurisdictions in this country looking for cases which suggest disbarment but apparently has found none. Informant has cited eight out of state cases. One was an admonition, three are reprimands.

Criticism of judges is not a new concept. It has been going on since the days of John Marshall. The existing case law in Missouri and the ABA Standards Imposing Lawyer Sanctions provide sufficient guidance to reach the appropriate disposition in this matter. The out of state cases cited by Informant are not apposite to the determination of proper discipline in this case. For example, in the Isaacson case, 860 N.W.2d 490 (Wis. 2015) cited by Informant at page 29 of his Brief, he states that Isaacson's license was suspended for one year as a result of comments made by Isaacson concerning judges and others.

In fact, Isaacson's Wisconsin license was already suspended since May 2011 for non-cooperation with the Wisconsin Office of Lawyer Regulation, was also suspended

for failure to pay Wisconsin state Bar dues and failure to provide trust account verification as of October 2012, and for failure to comply with mandatory CLE requirements, effective June 2014. At the time the matter came before the Supreme Court Isaacson was still suspended.

On March 5, 2014 a disciplinary complaint was filed alleging four counts of professional misconduct involving comments made concerning judges and others. Isaacson did not file an Answer and did not appear. Motion for Default Judgment was filed which was sustained. The referee recommended one year suspension and the Office of Lawyer Regulation did not appeal that recommendation.

Rather than go through an analysis of the out of state cases used by Informant, Respondent suggests that the Missouri cases of *In Re Coe*, 903 S.W. 2d 916 (Mo. banc 1995) *In Re Madison*, 282 S.W. 3d 350 (Mo. banc 2009) and *Matter of Westfall*, 808 S.W. 2d 829 (Mo. banc 1991) provide the appropriate authority for discipline in this case.

Counsel for Informant advised the Disciplinary Hearing Panel in this case that the racial slur was not likely to be repeated. (TR 124), and that the only aggravating factor had to do with anger issues of the Respondent. (TR125) Counsel for the Informant advised the Disciplinary Hearing Panel that the slur is a "one time thing." (TR125).

Counsel for the Informant further told the Disciplinary Hearing Panel that Respondent did not obstruct the disciplinary process. (TR126) In contrast to that representation to the DHP, Informant now states that the conduct of Respondent had no purpose other than to disrupt or impede the disciplinary matter and to attempt to intimidate the disciplinary officers and should be considered aggravating conduct. (Page

32, Informant's Brief) Informant should not be allowed to tell the DHP one thing and then tell this Court something else.

In the DHP decision the DHP states that Counsel for the Informant argued that Respondent's conduct after the Information was filed and at the disciplinary hearing constituted violations. (DHP 4) He argued that Respondent sent emails that seemed increasingly agitated and angry. A week before the hearing Informant alleged that Respondent left two voicemails for Alan Pratzel which were agitated, vulgar and angry. And he alleged that at the disciplinary hearing Respondent was angry and used vulgar language. The DHP dismissed those allegations and therefore found no disruption. (DHP 5)

In addition there was no disruption of the hearing. A reading of the transcript shows that the Chair of the Disciplinary Hearing Panel handled all matters of dispute between Counsel for Informant and Respondent in a fair, firm and prompt fashion. She did not permit any disruption to occur and there was clearly no disruption.

The Disciplinary Hearing Panel found no disruption. The Disciplinary Hearing Panel was in the best place to observe whether or not there was disruption. It found none. DHP Decision, page 5.

It is well established that the purpose of discipline is to protect the public and the integrity of the Bar and courts, not to punish the lawyer. The lack of a cited disbarment case and the variance between what Informant told the DHP and what he now tells this Court suggests that Informant's purpose is to punish the lawyer.

Taking Informant's Counsel at his word when he told the DHP that the only aggravating factor has to do with anger issues, let us look at what caused the anger in Respondent.

Respondent wrote the email to his client's wife knowing it would get to his client but not intending or expecting the email to get to Judge Gaitan. (TR75) When Respondent learned the email had gotten to Judge Gaitan, Respondent did what he should have done. He admitted his misconduct to the OCDC, he took responsibility for it, and he apologized to Judge Gaitan. (DHP 10)

When the Information was filed Respondent admitted the allegations, examined the Missouri Disciplinary Rules, the case law and the ABA Standards. After reading those he believed those things indicated a public reprimand was the proper discipline. (TR130)

Respondent suffers from Aspergers and Hemochromatosis. Aspergers is a neurological condition characterized by a greater or lesser degree of communication skills, socially and emotionally inappropriate behavior and inability to interact successfully with peers. NIH, National Institute of Neurological Disorders and Stroke. (RA11) See also "Asperger syndrome" NIH U.S. National Library of Medicine, Guide to Understanding Genetic Conditions (RA15) and Bio Behavioral Institute "Do OCD and Asperger's disorder coexist?" (RA24)

In describing the effect of Aspergers on himself Respondent testified that he has a tendency not to think before he speaks, is not tactful, does not make eye contact, is to

introverted, not good at social interaction, and he is not married and has no children. (TR58, 59)

Hemochromatosis is a genetic disorder found in Caucasians most commonly in people of Northern European origin, particularly of Nordic or Celtic ancestry. The body has an inappropriate absorption of dietary iron which has life threating complications of cirrhosis, diabetes and heart disease. The treatment is phlebotomy which is the drawing of blood from the patient to rid the body of extra iron. Blood may be removed as often as once or twice a week for as long as several months to a year depending on the severity of the iron overload. National Institute of Diabetes and Digestive and Kidney Diseases, "hemochromatosis" (RA26).

Sometime in late January 2016 Respondent was told by Mr. Rapp that Mr. Pratzel was going to recommend disbarment in this case. Given that Respondent had admitted all of the allegations of the Information, had reviewed the Missouri case law and rules, the ABA Standards which Respondent believed indicated reprimand was appropriate, and given the fact that Respondent was suffering from a possibly life threatening condition, hemochromatosis, and being treated for it and that because of his Aspergers Respondent had poor social skills, he was understandably agitated when told that his livelihood was at stake. (TR33)

On February 2, 2016 Respondent tried to call Mr. Pratzel to discuss the disbarment recommendation. He was unable to talk to Mr. Pratzel and left two voicemails. (TR32)

At the hearing on February 9, 2016 Mr. Rapp advised he was going to play the voicemails. He had not provided the voicemails, had not told Respondent he was going to

use them and he had not moved to amend the Information. Respondent objected to the voicemails as not being relevant. (TR42) Mr. Rapp also advised the DHP that there were emails from Respondent to the Disciplinary Hearing Panel Chair which were increasingly agitated and angry. (DHP 4) No motion was made to amend the Information even though a Respondent is neither required nor expected to defend against charges not contained in the Information. Matter of Smith, 749 S.W. 2d 408, 414 (Mo. banc 1988)

At the outset of the hearing Counsel for the Informant had told the chair of Disciplinary Hearing Panel that the Information was intentionally vague to protect Judge Gaitan and to avoid publicity. (TR8) He would therefore put his case on and at the conclusion would move to conform the pleadings to the evidence. (TR9)

Informant offered the voicemails from Mr. Pratzel into evidence after identifying them. Respondent objected to them as not being relevant and stated that he had not heard them. (TR 36, 42) Rule 5.11(c) requires the Disciplinary Counsel to provide a copy of any statements or documents obtained in an investigation to the Respondent. Clearly the voicemails were statements of Respondent which he was entitled to receive.

The emails that Informant says were sent from Respondent to the Chair of the DHP were never identified, were never marked and were never offered or admitted into evidence. Thus those emails, whatever they are, are not in evidence in this case and cannot be used as part of a charge of misconduct, cannot be the basis of a motion to conform pleadings to evidence and were not furnished to Respondent prior to the hearing. No issues relating to those emails or the voicemails to Mr. Pratzel were tried be either

express or implied consent of the parties and thus the Information remains unamended. See Supreme Court Rule 55.33(b).

Informant's Brief states on page 29 that "...the use of an isolated racial comment or racially charged conduct ... - often results in a reprimand or a lesser discipline." Counsel for the Informant told the DHP that the racial comment that Respondent used is a "one time thing." (TR125). A one-time thing is an isolated comment. Respondent made no further comments concerning Judge Gaitan after his email to EC except for his apology. Counsel for Informant also told the DHP that in most racial cases reprimand is the usual discipline. (TR118)

This Court has expressed itself on the importance of apologies. In the case of In Re Coe 903 S.W. 2nd 916 (Mo. banc 1995), Coe was charged with violating Rule 4-3.5(c) in a case in the U.S. District Court of the Western District of Missouri captioned U.S. v. Dowdy. After the hearing on the matter "the master found Coe intended to disrupt the flow of the trial and to distract the jury and was blatantly disruptive of the entire judicial process." Coe had a prior admonition for violating Rule 4-3.5(d) by walking out of Court with the file and returning only after being served with a subpoena. The case was referred to the OCDC by the Federal District Judge.

The Missouri Supreme Court issued an Opinion which found that Coe should be suspended. Judge Robertson dissented and found reprimand was the proper discipline. Judge Holstein and Judge Benton found that Coe should be suspended, but suggested if Coe would issue a public apology they would consider changing their votes from

suspension to reprimand. Judge Robertson stated (l.c.919) "...given that incentive, Respondent apologized. Who wouldn't?"

Coe had argued that her actions did not disrupt the trial or that her actions were the result of being baited by the trial Judge and that the speech or conduct was protected by the First Amendment of the US Constitution. Coe, l.c. 917.

In Respondent's case upon learning his email had gone to Judge Gaitan Respondent immediately took responsibility for his conduct, agreed he violated the rules of professional conduct, apologized to Judge Gaitan and expressed remorse. The Coe case certainly supports reprimand as the proper discipline in this case. In every out of state case cited by Informant where the attorney apologized there was either an admonition or reprimand.

In the Thomsen case, In re Thomsen, 837 N.E. 2d 2011 (Ind. 2015) cited by Informant, Ms. Thomsen even had a prior private reprimand. In Re Thomsen, 911 N.E. 2d 575,576 (Ind. 2009), showing a private reprimand in 2003.

Respondent's email to EC contained a reference to the Rentschler v. Nixon decision. Respondent indicated his belief the opinion was wrongly decided and referred to the author of the opinion as "an idiot." His email did not name the author and did not accuse the author of dishonesty or a lack of integrity. (Exhibit 3)

The case of Matter of Westfall, 808 S.W. 2d 829 (Mo. banc 1991) considered a televised statement of Buzz Westfall, the St. Louis County Prosecuting Attorney in which he named the name of the Court of Appeals Judge who had written an opinion with which Westfall disagreed, accused the judge of dishonesty and lack of integrity. Westfall

defended his position by claiming the speech was protected by the First Amendment. (l.c. 833) Westfall also accused the judge of deliberate dishonesty, purposefully ignoring the law to achieve personal ends, and of a deliberate, dishonest, conscientious design on the part of the judge to serve his own interest. (l.c. 838) The Westfall statement ran on the 6:00 and 10:00 news on the NBC affiliate in St. Louis. At the disciplinary hearing before the Master, Westfall spoke to the Judge and apologized to him. This Court imposed a reprimand on Westfall.

Unlike Westfall, Respondent did not name the Judge, did not accuse the Judge of dishonesty and did not impugn the integrity of the Judge. It is suggested that had Respondent not admitted this violation in his answer that a case could be made that there was no violation and that the comment was protected by the First Amendment.

Finally, the case of *In Re Madison*, 282 S.W.3d 350 (Mo. banc 2009) is instructive on the appropriate discipline. Madison was an African American lawyer who was reprimanded in June 1999 by this Court because he pleaded guilty in Kansas to the felony charge of aggravated assault. This Court imposed a discipline of reprimand coupled with probation. The probation required him to obtain anger management counseling which he did. His probation was then terminated on May 17, 2001.

After completing his probation Madison was admonished in 2006 for failing to communicate with his client in violation of Rule 4-1.4. He was also admonished for three additional violations in 2003 for violations of Rule 4-1.1 competency, Rule 4-1.2 failing to abide by clients decision and Rule 4-1.3 diligence. (l.c. 363)

Mr. Madison represented the plaintiff in a Jackson County personal injury case which was set for trial on August 15, 2005. Because of a unique family situation that arose the judge was unable to be present to hear the case. Efforts were made to find another judge to hear the case, but no judge was available.

Madison then sent a letter to the judge questioning her integrity, accusing her of racism, of being arbitrary, and requested that she recuse herself. Although not required to do so the judge did recuse and sent a letter to Madison advising that she had recused. The judge found the accusation of racism insulting and offensive. (l.c. 355)

Even though the Judge had disqualified herself Madison then sent the judge a second letter accusing her of bias and racism towards an African American attorney, accusing her of denying justice to Madison, inferred she was drunk with power and questioned her fitness to sit as a judge. The judge did not respond. Madison then sent a third letter to the judge advising her that her conduct had caused his client to settle her case for pennies on the dollar and that the judge's system of justice was corrupt. Madison then accused the judge of an "act of infamy" and stated the judge's robe was forever stained. He went on to accuse her of being a part of an "evil network" which he feared would seek vengeance upon him.

As a result of those letters the judge became concerned for her own safety and began to take security measures that she had never taken before and had the sheriff's department escort her to her car when she left the Courthouse.

In another case involving a landlord-tenant issue on March 17, 2004 Madison represented the landlord. The tenant appeared and disputed the amount due. The tenant

was unrepresented. The judge told Madison and the tenant to go into the hall and try to settle the matter. Madison said he did so but was not seen by anyone in the courtroom to have left the courtroom.

The judge called the case again and advised Madison of several dates on which the matter could be heard. Madison advised he wanted to have the case handled "today."

At the conclusion of the docket the judge called Madison's case, put the tenant under oath, and examined her. This was the process used by the judge when there was a pro se defendant. The judge then found that the landlord had excused all but the last month's rent. Madison began to argue with the judge. The judge advised he wasn't going to argue with Madison and entered Judgment for the landlord in the amount of $350.00 and possession. Madison stated "there's no basis in law." The judge told Madison not to argue with him and ordered him out of the courtroom.

Madison did not appeal the judge's ruling but sent a letter to the judge telling the judge he was not faithful to the law, showed contempt for the law and Madison, accused the judge of ruthless abuse of power, and contempt of the law and stated the judge's decision was unfair and blatantly without legal basis. He claimed an appeal would show the judge abused his discretion and violated the code of judicial conduct. He also stated that because of the judge's unethical conduct his client lost $ 1,005.00.

Mr. Madison did not file a complaint with the Commission of Retirement Removal and Discipline and did not file an appeal.

The Disciplinary Hearing Panel found that Madison in his letters, and in part to the media and other members of the public asserted that the judge in the personal injury case

was arbitrary, racist, treated him differently because he was black, that the judge was a part of an evil network and would seek vengeance upon him, that she could not have upheld the ideals of her office, she thought she was the most important person in the legal process, that he had profound doubts about her fitness to preside, she was drunk with power and her robe was forever stained by reason of her improprieties.

As to the second judge, Madison claims the judge denied him the opportunity to cross examine a witness and was incorrect as to the law. Madison chose not to appeal although he was aware he could do so.

The Court found that far from being carefully or well researched Madison's allegations against both judges were completely without factual basis, made in the heat of anger and pique. "The allegations were made either with their knowledge of their falsity or with reckless disregard as to their truth. They were intended to disrupt the legal process, and they did so needlessly. They further caused one judge to recuse herself unnecessarily from a case and put her in fear of her safety. This conduct was prejudicial to the administration of justice." (l.c. 359)

In contrast to Madison, there are no aggravating circumstances in this case except Respondent's alleged anger issues. Madison refused to acknowledge the wrongfulness of his conduct. Respondent admitted the wrongfulness of his conduct. Madison showed no remorse. Respondent immediately expressed remorse. Madison offered no apology. Respondent immediately apologized upon learning the email had gone to Judge Gaitan.

Madison repeated his allegations to lawyers and non-lawyers and to a TV reporter. Respondent did not take any measures to further publish his email. Madison had prior

discipline and a criminal record. Respondent has no prior discipline and no criminal record. The Court found that Madison acted with a selfish motive, there was a pattern of misconduct, he disrupted the Disciplinary Hearing Panel proceeding when he didn't appear at a deposition that he had scheduled, he shouted at the Chair of the Disciplinary Hearing Panel, and he wouldn't allow the Chair of the DHP to talk or anyone else. Madison called the DHP Chair part of the evil network. Respondent did none of those things. Counsel for the Informant advised the Disciplinary Hearing Panel that Respondent's anger issues constitute the only aggravating factor in the case. (TR125) Looking at the ABA Standards dealing with aggravating factors, those are contained in ABA Standard 9.22. Looking at those aggravating factors Respondent had no prior disciplinary offenses, no dishonest or selfish motive, no pattern of misconduct, no multiple offenses, no bad faith obstruction of the disciplinary proceeding, no submission of false evidence, false statements or other deceptive practices during the disciplinary process, no refusal to acknowledge the wrongful nature of his conduct, there was no vulnerability of Judge Gaitan, Respondent had about 13 years of experience in the practice of law but no experience with the disciplinary process, there was no restitution to be made and there was no illegal conduct of Respondent of any kind.

On the other side of the ledger, mitigating factors are found at ABA Standards 9.32. Taking those in order there was an absence of a prior disciplinary record, there was absence of dishonest or selfish motive, there were personal or emotional problems, there was a timely good faith effort to rectify the consequences when Respondent apologized to Judge Gaitan, there was full and free disclosure to the disciplinary board and

cooperative attitude toward the proceedings. In regard to experience Mr. Henry was a lawyer with about 13 years experience, there was evidence of Respondent's good character and reputation, there was evidence of a physical disability in that both Aspergers and hemochromatosis are physical conditions which cause disability. There was no mental disability or chemical dependency, there was delay in the disciplinary proceedings in that Respondent admitted all of his conduct and then it took over a year after he admitted his conduct for the matter to be heard, there were no other penalties or sanctions. In regard to remorse, Respondent expressed his remorse. There were no prior offenses. There are numerous substantial mitigating circumstances. There are no aggravating circumstances. Respondent does not submit his physical conditions of Aspergers and hemochromatosis as mitigating factors but offers them in explanation as they relate to what was the cause of Respondent's agitation when he was told that the OCDC was going to recommend disbarment.

Given the conduct of Respondent in immediately taking responsibility for his misconduct and for apologizing to Judge Gaitan and in looking at the numerous mitigating factors along with the lack of aggravating factors this is a reprimand case.

The Informant is concerned with anger management issues the Respondent may have. In 2012 this Court amended the Conditional Discipline Rule 5.225 to provide for the sanction of reprimand with requirements. The rule provides that a lawyer is eligible for reprimand with requirements if the lawyer is unlikely to harm the public, should be required to take specific steps for practice improvement, does not need to be monitored, is able to perform legal services and is able to practice law without causing the Courts or

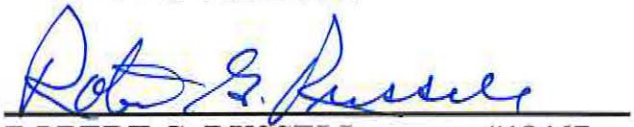
profession to fall into disrepute, has not committed acts warranting suspension or disbarment. Pursuant to those eligibility requirements Respondent is eligible for a reprimand with requirements.

Respondent suggests that in order to meet the OCDC's concern about Respondent's anger issues that there be a reprimand with a requirement that Respondent undergo anger management training in a program that is acceptable to the Office of Chief Disciplinary Counsel within a set period of time once a program is selected.

Conclusion

Under the facts and law in this case, reprimand with requirements is the proper discipline and answers the concerns of Informant concerning the alleged anger issues, and therefore should be the discipline in this case.

Respectfully Submitted,

By: 

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 18th day of July, 2016, a true and accurate copy of the foregoing was served via the electronic filing system pursuant to Rule 103.08 to:

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RULE 84.06(c) CERTIFICATION

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 5, 763 words, according to Microsoft Word, which is the word processing system used to prepare this brief.

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