IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
LISA DAWN COATNEY	)	**Supreme Court # SC 91497**
	)	
Respondent	)	

RESPONDENT'S BRIEF

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ATTORNEY FOR THE RESPONDENT

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RESPONDENTS BRIEF

STATEMENT OF FACTS

I. BACKGROUND OF THE RESPONDENT

Respondent, Lisa Dawn Coatney, is a native of Sikeston Missouri and has been a member of the Missouri Bar since 2003. Coatney received her bachelor's degree with honors from the University of Nevada-Los Vegas and her juris doctorate from Southwestern University in Los Angeles in 2000. After completion of her formal education she worked for Clark County District Attorney's office in Las Vegas before returning to Missouri. Once in Missouri she worked as an assistant prosecuting attorney in Scott County, Missouri. After briefly returning to Las Vegas, Coatney returned to Missouri with her family and began working for the Missouri Children's Division of Family Services where she was responsible for the entire South Central Missouri region. In 2006 she was appointed by Governor

Matt Blunt as the prosecuting attorney for Maries County. Coatney maintained that position until 2006 when she sought treatment for injuries sustained in a 2004 auto collision. This accident eventually led to a hospitalization and surgery for a cervical fusion, at which time she contracted methicillin-resistant staphylococcus aureus (“MRSA”) a bacterial infection that is highly resistant to some antibiotics. MSRA was particularly devastating to Lisa because it infected her blood.

MRSA is a common "staph" bacteria which causes infections in different parts of the body - including the blood, and every major organ; her skin, lungs, spleen, liver, kidneys, and most interior organs. MRSA is sometimes called a "superbug" because it is resistant to many antibiotics. Although most MRSA infections aren't serious, some can be very debilitating and even life-threatening. MRSA ate away much of her cervical spine leaving a canal like indentation in the back of her neck from the base of her skull to her thoracic spine. This infection has lessened the efficiency of her heart, lungs, skeletal, and musculature of her body causing multi-system organ failure. It took two and a half months in a hospital to arrest and contain the infection; much of this time was spent with fever and nausea with the constant administration of intravenous fluids. She has been left with cyclical vomiting syndrome with irritable bowl syndrome.

These disabilities continue to this day despite the arrest of the infection. Coatney's medical history is not a disputed fact in this proceeding, but the incapacitating effects of her condition are at issue in this case. After a prolonged hospital stay she was forced to resign her prosecutorial post, and she remains in a debilitated condition. Since that time she has continued to do pro bono work mostly in Stoddard County, but also in the Scott, New Madrid, Bollinger, Mississippi, and Cape Girardeau Courts.

Lisa was released from in patient hospitalization in late 2006. She did no work until a friend requested representation in an ex-parte proceeding in April of 2009. In August of 2009 there was another disabling incident where Lisa was backed not by a vehicle and this triggered a response from the MRSA and she spend an additional eleven days in the hospital. When she returned, her disability was exacerbated. In this condition, she also saw the needs of the citizens in Stoddard County then she began to take some cases as she could. Apparently, Judge Kamp felt the need to check on the truth of this series of misfortunes and called the hospital at the time to verify her condition. As of 2000 census, there were 29,705 people, 12,064 households, and 8,480 families residing in Stoddard County. The population density was 36 people per square mile (14/km^2). There were 13,221 housing units at an average density of 16 per square mile. The racial

makeup of the county was 97.34% White, 0.91% Black or African American, 0.40% Native American, 0.09% Asian, 0.01% Pacific Islander, 0.24% from other races, and 1.01% from two or more races. Approximately 0.78% of the population was Hispanic or Latino. 38.4% were of American, 15.4% German, 12.4% Irish and 8.5% English ancestry according to Census 2000.

The poverty level of a family of four around this time was $18,400 in the United States (Federal Register Vol. 68 p. 26). The median income for a household in the county was $33,120, and the median income for a family was $41,072. Males had a median income of $26,514 versus $17,778 for females. The per capita income for the county was $18,003. About 12.80% of families and 16.50% of the population were below the poverty line, including 20.20% of those under age 18 and 17.60% of those 65 or over. Stoddard County is typical of the other counties in Southeast Missouri, except perhaps for Cape Girardeau. Affluence is not abundant in Southeast Missouri.

In her post accident legal career Lisa served the twenty percent (20%) of the population below the poverty line. According to the Missouri Directory there are about twenty lawyers in private practice with practice addresses in Stoddard County. Lisa Coatney, is one of them and she is a zealous advocate for her

constituents in this small tight knit community (Preamble to the Code of Professional Conduct).

It is easy to think of the legal profession as a cerebral, sedentary enterprise, where academics, struggle and debate minute points of fact and law and philosophies. Only when engaged in the practice, does one see that justice is a process of a battle of forces, and the battleground requires zealous advocates to achieve what is expected from the system, justice as the client sees it. This expectation is what society calls justice is. There can be little doubt that image aside, this profession, in its demand for the zealous, requires the drive of John Henry and the brain of Aristotle, and the practice of law is rarely privy to all of these qualities anywhere especially in a small rural and impoverished community.

Lisa Coatney is no doubt a zealous and outspoken advocate. Unfortunately for the profession, for the needy clientele of her area, she cannot maintain the necessary zeal with this level devastation in her body. When this practitioner, try as her passion might direct, is not capable of engaging in the practice of law with the zeal required, when the practitioner cannot do the job daily, in a continuum of days, in a succession of weeks, and in a year of months in a body that is free of pain and fatigue from one day to the next, she cannot practice law, because the practice of law, entails making a sustainable living at it. If the lawyer can’t be free

to advise clients and do the job, she can't take fees, because that will result in refunds from inability to perform, and a clientele which does not have an extra hundred bucks in the family budget to pay even for a half hour of the normal charges for legal services, expects its money's worth.

II. REPRESENTATIONS TO THE ADVISORY COMMITTEE

The first violation of the Rules of Professional conduct, Count I charges a violation of Rule 6.01 (h).

Rule 6.01(h) Waiver of Fees and Penalties by Advisory Committee. Penalties and past due enrollment fees may be waived by the advisory committee upon proof satisfactory to it that any delinquency was caused by reason of physical or mental incapacity to engage in the practice of law. The advisory committee shall notify the chief disciplinary counsel of each such waiver granted and the reason therefor.

When the Rules of Professional Conduct address waiver of fees for incapacity it does not mean that the lawyer is disabled. It refers to "incapacity", not disability, to sustain a livelihood and because the practice of law translates to income and the ability to pay, and when income cannot in good conscious be derived because of incapacity to continually perform, the representations to the Advisory Committee, Sara Rittman, were accurate, fully disclosed and the waiver of fees were appropriate. Research has not revealed an applicable definition of

either incapacity or disability but it seems to be used interchangeably with incapacity referring mainly to mental states and disability referring to physical states so the precedent is thin.

Regardless, Lisa is incapable of a continuous practice of law. If there is doubt, is this really the subject of a discipline in this case? Couldn't the Bar in its wisdom demand further proof of incapacity, or merely deny a waiver in the future, or tell her to repay the fees. It is less than $400 dollars I believe. It seems that the Disciplinary Counsel, while conceding zealous advocacy, should spared the bar from disciplinary charges when it has yet to exhaust other remedies.

I do not believe it is reasonable to apply the rigid standards pushed by the Disciplinary Counsel. It is more a measure of credibility and trust than it is a listing of the 127 cases that Lisa has appeared in because there is not telling what the appearance was, what action it required, or whether it could be done by a disabled attorney, how comfortable Lisa felt in continual performance. The case listings are Exhibits 2. Of those cases 42 of the listed number were either before 2009 when she returned to work. An additional 31 were ancillary cases when a defendant is cases were leaving 54 cases and 17 were bad check cases for one defendant Kevin Grubbs and Keiffer Clay had several counts. Lisa's states that the real count was about 20 different clients and many of the cases were one day ex-parte cases; 15

minute restraining order cases that took about 15 minutes. The count of 127 cases is a gross misrepresentation of Lisa's activity (See Exh. 5A thru Exh. 10C). None of the statistical information tells whether she is capable of a sustainable practice. In the several cases on "incapacity" in the case law, most refer to mental incapacity. A finding of incapacity is clearly subjective, fact intensive, and usually left to the trier of the facts, the advisory committee.

The committee did not find a violation. The advisory committee was privy to Lisa's medical history, and it is one that no one would want to have. The DHP was not wrong in finding no intentional act of deception or gaming of the system. The Disciplinary Counsel did not carry the day there, and it should not carry the day before this Highest Court.

On behalf of the Respondent, the review and discipline sought by the Disciplinary Counsel in Count 1 of the Information should be denied.

III. STATEMENTS REGARDING JUDGES

Count II of the information alleges a violation of Rule 4-8.2 (a) for two postings on the internet.

Rule 4-8.2. Judicial and Legal Officials

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the

qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

On November 14, 2010 two posting were made on an obscure website for the local area. The first posting was made with statements that Judge Joe Satterfield of Stoddard County tripled the bond on a female defendant, Jessica Billings, before his court because the defendant refused to testify for the prosecution, against Lisa's client, Jermaine Young. The rest of the posting was about a law enforcement officer Keith Haynes.

For background fill, on May 13, 2009, a search warrant was presented to someone and signed on a complaint by Officer Haynes after an anonymous tip of unknown content or veracity that a residence in Puxico, the residence of Jermaine Young, a convicted felon, and Jessica Billings, not a convicted felon, had a controlled substance and a firearm in it. The search itself was made while the defendants were not at home and a firearm was found in a dresser drawer and a single pill was located in an undisclosed location. The defendants came home while the search was going on and Jessica Billings was said to have drop a pill bottle containing a single pill which did not belong to the pill bottle that was supposedly dropped. The couple's vehicle, which was not part of the search

warrant, was searched and a small amount of marijuana was found. (See Complaint by Keith Haynes in Exh. 15)

On May 13, 2009, Jessica Billings was arrested and charged with Class C Felony of felon in possession of a firearm and set bond at $7,500. Ms. Billings had her two young children with her at the time, and the children were turned over to Family Services. The arrest warrant and bond of $7,500 (cash only) were signed by Judge Satterfield on May 14, 2009. (Exh 15)

On May 23, 2009, Judge Satterfield signed a second arrest warrant for Jessica Billings for possession of a controlled substance except 35 grams of marijuana or less a Class C. Felony and unlawful use of drug paraphernalia with a Bond set at $20,000. (Part of Exh 14) This bond was set the same day a First Amended Juvenile petition was filed on May 20, 2009. Juvenile petition was filed over the welfare of Jalen Young age 3 months and Jerome Young. The hearing on that was set for June 16, 2009 attended by Jessica Billings, Jermaine Young, and Wanda Young the grandmother, concerning the welfare of the two children. Judge Satterfield presided over the juvenile hearing. Jermaine Young who were arrested with a bond set at $7,500 cash only bond signed by Judge Satterfield. While this was pending she was charge the on May 23, 2009 (Exh 14) with a narcotics possession, a single hydrocodone pill, (DC Exh. 5 P. 7 L. 13; Preliminary Hearing

on Jermaine Young; transcript July 18, 2009) and her bond was set at $20,000 on that charge. Both of the charges came out of one search warrant and one arrest warrant signed on May 13, 2009 by Judge Satterfield. The time line on this was as follows:

May 13, 2009 Search Warrant signed by Judge Satterfield was for an unknown quantity of marijuana Billings charged with Possession of controlled substance marijuana (no marijuana was found let alone ner or around children (TR 128 L 7-14) and Unlawful possession of Drug Paraphenalia (DC Exhibit 14) (Respondent Exh. C).

May 13, 2009 Jessica Billings was arrested and originally charged with felon in unlawful possession of a firearm because she was living there. She had not so much been arrested at this time. The firearm referred to was found in a sock in a dresser drawer, unloaded. Judge Satterfield set bond amount at $7,500 cash (DC Exhibit 15) (Respondent Exh. B) on represetions by Haynes.

May 15, 2009 Juvenile petition filed before Judge Satterfield to decide what to do with the small children of Jermaine Young and Jessica Billings.

May 22, 2009 Warrant issued and served and Bond set a $20,000 on the drug charge of May 13, 2009 signed by Judge Satterfield (Exhibit 14) (Respondent Exh. C)

May 23, 2009 There was a Family Team Support Meeting which Lisa attended for Jermaine. Jessica and Rhonda, Jessica's mother wanted Lisa to represent them before the Juvenile authorities.

June 16, 2009 Letter sent to Honorable Joe Z. Satterfield, signed by Amy Helm of Children's Service indicating that Jessica Billing produced a prescription for Hydrocodone to Juvenile Office Tonya Causey on May 13, 2009 after it was found at the home of Jessica Billings and Jermaine Young. (Respondent Exh. D)

July 16, 2009, Juvenile Hearing and children turned over to Jessica's parents.

June 18, 2009 Nolle Pros of both cases after preliminary hearing.

Lisa was given the facts of the prescription for narcotics from Jermaine Young, Jessica Billings, and the mother of Ms. Billings at the Juvenile Hearing on June 16, 2009. She knew these facts well before she made the postings. She had talked to Jessica Billings while she was with her client, co-defendant Jermaine Young (Exh 5a Preliminary Hearing Transcript PP 29-33). She had reason to believe that the increase of bonds was done out of some vindictiveness since she was told this by Billings and Young and knew of the letter from the juvenile office to Judge Satterfield sent June 16, and received verbal reports of the Juvenile

Hearing on June 16, 2009. It is not a careless disregard of the truth even by objective standards adopted in *In re Westfall* because she believed the statement to be factually true at the time she made the statements on the internet and believed these to be true at the time she talked to Morley Swingle on the phone. The postings are set out in full and verbatim in the Disciplinary Counsel's brief. (D.C. Brief P. 14). Lisa was working with the NAACP and the FBI concerning Satterfield on independent complaints from Lisa and the NAACP about Satterfield's treatment of African Americans, interracial couples such as Jermaine Young and Jessica Billings.

On the November 14, 2010 posting only four (4) lines are directed to Judge Satterfield and from Lisa's view with first-hand information from the defendant, Billings, the statements were in fact true, not reckless or false. Judge Satterfield did in fact set a bond on a very minor narcotics charge that was triple the bond on a firearms possession charge for arguable but discretionary reasons. He felt that a defendant with two charges was more likely to flee if she was able to make another bond. (TR 115 14-116 L 23). This was while she was still on a $7,500 bond for charges from the same incident which she couldn't make. Jessica Billings told Lisa she was to be bonded out on OR (Own Recognizance) after a juvenile court hearing and was returned to the jail. When she was asked at the jail if she had

tesitified [against Jermaine] and she said no, she found out that the recognizance bond was out and her bond was $20,000.

This bond was onerous for whatever reason for a poverty defendant with two small children in her care on first time and minor charges, while her probable flight mate is also in custody. Lisa's comments on the judges reasoning may have been second hand, but it was not recklessly false, and it was worthy of comment when there is no other forum to make known a perceived injustice, and no harm has come to the judiciary attributable to the posting or to Judge Satterfield for whatever reputation the judicial community in Stoddard County has was not enhanced or despoiled by the posting. (See Exhibit A) Judge Satterfield's record is a finding of "manifest injustice" for Travis Gibson in 2009, which was confined for 14 months by Judge Satterfield when there was no crime committed. Judge Scott Thompson released him after motions were filed and Judge Thompson made the finding referred to above. There is a suit against Judge Satterfield for this.

Lisa's speech in this regard, in this posting, is protected by the First Amendment. *In re Westfall* 808 S.W. 2d 829 (Mo Banc 1991) and in *In re Madison*, 283 S.W, 3d 350 (Mo. Banc 2009) are cases that hold that the comments of lawyers have free speech protections, but there are also constraints. In Madison, there was a seemingly perpetually angry lawyer venting that anger repeatedly in

open court, and this was one of several incidents of anger acted out, and after a hearing on several incidents of angry statements, a suspension was recommended and sustained with a condition of anger management.

In re Westfall, this Supreme Court adopted an objective test of a lawyer's conduct when spoken conduct is at issue in a disciplinary proceeding involving criticism of the judiciary, "what the reasonable lawyer, considered in light of all his professional functions, would do in the same or similar circumstances.", and it used as precedent *In re the Discipline Against Graham*, 453 N. W. 2nd 313, (cert denied 1990).[1] The court allowed the court scrutiny to pass 1st Amendment

[1] In re Disciplinary Action Against Graham, 453 N.W.2d 313 (Minn.), cert. denied sub nom. Graham v. Wernz, 111 S.Ct. 67, 112 L.Ed.2d 41 (1990). See also Louisiana State Bar Ass'n v. Karst, 428 So.2d In Graham the Supreme Court of Minnesota held that the proper standard in attorney discipline cases "must be an objective one dependent on what the reasonable attorney, considered in light of all his professional functions, would do in the same or similar circumstances." Id. at 322. Minnesota's rule is identical to this Court's Rule 8.2(a), and also identical to Rule 8.2, American Bar Association Model [**24] Rules of Professional Conduct. The Graham court noted that Rule 8.2(a), on its face, rejects an absolute privilege for false statements made by a lawyer with reckless disregard for the falsity. The court noted that the rule's language itself is consistent with the constitutional limitations placed on defamation

constraints because of the compelling state interest of preserving the integrity of the judicial system was served.

If Lisa's speech is not protected by the First Amendment, it is necessary to address whether the comments of Lisa Coatney were within what reasonable lawyers might do in light of the professional functions of serving clients, before courts and against prosecutors she regularly practices.

She said she had proof that Judge Satterfield raised the bond a defendant because he was upset she would not testify in a criminal case against another defendant. She came to this information by talking with her client, Jermaine Young, in the accepted and willing presence of the co- defendant, Ms. Billings, and Wanda Billings mother, who explained the bonding situation at a juvenile hearing

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actions by the United States Supreme Court cases of New York Times and Garrison. Id. at 321. The court concluded, however, that because of the interest in protecting the public, the administration of justice, and the profession, a purely subjective standard is inappropriate. Id. at 322. Citing the differences between defamation (a personal wrong with a personal redress) and professional discipline (redress of a public wrong) the court decided that attorneys should be held to a higher standard when leveling criticism that may adversely affect the administration of justice.

shortly after Billings and Young were arrested on in May 13, 2009. Therefore, at the time she made the posting she had reason to believe that bond of was raised because of judicial bias against a particular defendant event though it wasn't a client of hers. It did involve a co-defendant and close associate, in fact a boyfriend of hers and her knowledge came directly firm the affected person.

Whether she knew there were two charges involved or one is less the focus; a $20,000 bond for a small amount of Schedule II drug is very high. Poor people don't get the most aggressive legal services to challenge the bond and the cases were nolle pros within a month of the arrest. I made this point because the DHP mentioned that the lawyers for Billings did not protest the amount of her bond. The lawyer did not have much of a chance until the first hearing, the preliminary hearing and afterward it was unnecessary.

In the second posting on that same day, November 14, 2010, is more directed at Welborn Briney and again it is commentary, not made for its truth or falsity, but in fact it is true. In the posting, Lisa said "briney and satterfield will sign anything and throw your butt in jail". This is not a serious comment, not made for belief, and should be protected humorous speech. Humor is a protected form of free speech, to be protected as much, under appropriate circumstances, as political speech, journalistic exposes, or religious tracts. *Salomone v. Macmillan Publishing*

Co., 97 Misc. 2d 346, 349-50, 411 N.Y.S.2d 105, 108 (N.Y.Sup.Ct. 1978), rev'd on other grounds, 77 A.D.2d 501, 429 N.Y.S.2d 441 (N.Y.App.Div. 1980). Humor and comedy, however, do not enjoy constitutional [**18] protection. *See* *Polygram Records, Inc. v. Superior Court*, 170 Cal. App. 3d 543, 216 Cal. Rptr. 252 (Cal.Ct.App. 1985).

Greenbelt Coop. Pub. Assoc. v. Bresler, 398 U.S. 6, 90 S. Ct. 1537, 26 L. Ed. 2d 6 (1970), the Supreme Court employed the standard of whether even the most "careless reader" would perceive that the allegedly defamatory language was no more than "rhetorical hyperbole."

Also it is close to literal truth. It is true that prosecutors such as Welborn Briney and duty judges, such as Judge Satterfield do, in deed, sign many warrants presented by law enforcement officers that result in allowing those officers to incarcerate people. That last sentence is a more refined way of saying “a cop can accuse you of something and briney and satterfield will sign anything and throw your butt in jail”. This comment should not be the subject of discipline, merely because it is in the vernacular of the street. While it may not be the written with the couth of a reasonable lawyer in similar situations, it is factually true, it is not reckless, and in certain places it can be funny.

Here is the scenario. There is Judge Satterfield reasoning as he sees one side of a barn that this particular female defendant, with a pending charge of possessing a firearm, has a bond set at $7,500. About a week or more later, a second charge arises of possessing a small amount of controlled substance (one or two pills TR 112 L. 5-7, One pill Exh.14 and 15), but now known to be in the company of a convicted felon, her boyfriend and father of her two small children, and when he sees this second charge for a possession of a small amount of controlled substance, he sets the bond on the crime of lesser violence at $20,000, on the theory that she may be a flight risk with two charges against her knowing all the time her boyfriend is also in custody, and knowing she is the only one to care for the children and knowing that the children have been turned over to the nurturing hands of the Division of Family Services Reasonsble minds might think he had a different motive than common sense and judicial discretion (TR 110 L 7 thru TR 116).

Such was the view of Lisa Coatney from her side of the barn. She did not represent the lady, Jessica Billings. Lisa represented, the boyfriend, Jermaine Young, and came to this knowledge in a conversation with her client Jermaine Young, in which Ms. Billings was a willing participant and saw that she had a hand raised just after she refused to testify at a juvenile hearing.

This is frustrating, but she had reason to believe her comments were based on the truth from on of the participants. The records of the sequence of charges and the charges themselves and the amounts of narcotic involved were correct, and she made a public statement about it on the internet. While it is not the point of this brief to opine about the conduct of a reasonable lawyer in the circumstances, she could have been more erudite in her criticism, but perhaps her earthiness took away the substance of seriousness that might otherwise have been accorded to it. These comments were not false statements made by a lawyer with reckless disregard for the truth. The statements may not have been literally true, but are they false? Was Judge Satterfield's actions unassailable by a member of the bar who has no standing to appeal the decision, and if she did, whose is realistically going to appeal anything on the in and out day to day mundane infractions of civil and criminal rules, without money, time or legal precedent to change or uphold.

This posting is hardly the stuff of the Buzz Westfall, prosecutor of St. Louis County, clearly a public figure in the area, going to media and singling out a particular jurist, by name, unknown but to the legal community, a jurist who authored an opinion of a three judge panel of the Missouri Court of Appeals reversing a conviction of dishonesty and prejudging cases to fit his own view of the law on a radio station that broadcasts to millions of people.

It is not the stuff of the Louisiana district attorney James Garrison, in *Garrison v. State of Louisiana,* 379 U.S. 64, 85 S. Ct. 209, 13 L.Ed.2d 125 (1964), who was accused and convicted of criminally defaming eight Louisiana judges at a press conference. He was exonerated by the Supreme Court which applied the New York Times rule on judges being public officials and found that criminal defamation required actual malice which meant statements were not defamatory in this context unless made with knowledge that the statement was false or with reckless disregard of whether it was false or not.

The case of *In re Coe,* 903 S.W. 2d 916, citing *Gentile v. State Bar of Nevada,* (MO Banc 1995) which was cited by the Disciplinary Counsel is not instructive on this point as it concerned conduct of a trial lawyer repeatedly disrupting the trial during a three or four week trial.

IV. STATEMENTS ABOUT THE HISTORY

OF DENYING JURY TRIALS

BY JUDGE GARY KAMP AND CANDOR TO A TRIBUNAL

Rule 4-3.3. Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

Rule 4-8.2. Judicial and Legal Officials

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

This response will combine the issues on Judge Gary Kamp under this heading.

Concerning the comments made about Judge Gary Kamp. Most of these were made in open court, in front of the judge. This is one comment "that Gary Kamp was depriving her client's rights to a jury trial and he had a history of doing that" (TR 61). If you look at the forms signed by Tamika Tate and other defendants in Cape Girardeau, while they advise a defendant he has a right to a trial by judge, it doesn't say you "but you have to ask for it".

Lisa Coatney has a history with Judge Kamp that stems from a time when her diligence may have caught the Judge in an error and he had to change a ruling and dismiss a charge. Lisa brought it to the attention of the judge that the

prosecution did not have enough evidence to prosecute a charge, and it took four court appearances and an acknowledgment by the prosecution on four separate occasions that it was not going to prosecute for lack of evidence before charges were dropped (TR. 72-73 L. 5-9 and P.75. L 3-8).

Later in the representation of other defendants before his court she made two representations, 1) she filed a bar complaint against him and 2) she filed motions to set aside guilty pleas in another county Stoddard on a defendant.

Lisa did file a bar complaint on Judge Kamp, but orally by telephone and later in writing. There is no formal way of filing a complaint, and often it starts out as oral, but a complaint was made on December 3, 2009 (TR. 58 L. 8 to P.62 L. 9). She made the claim that she was going to do so or had done before actually doing it, and that may be more evidence of her inability to do the work she intends to do because of her illness than any deliberate effort to game the system for advantage. In truth these matters were going to come to hearing and resolution sometime and soon regardless of her comments or filings. Any advantage gained by delay would be miniscule to her clients and to any disadvantage would hardly be noticeable except to put her on a less favorable footing an advocate for a cause before the court. I suspect she was on precarious footing already by the time the comments

were made and for other reasons of personality conflicts that may afflict many practitioners in this business.

Also, there was a discussion about having filed motions to set aside guilty pleas in Cape Girardeau County concerning a defendant who was being represented by Lisa before Judge Kamp in Cape Girardeau County. The case was continued several times by the court at Lisa request and at the last court date she was unable to successfully get a witness who was in custody brought to the court in time for a hearing after she advised the court the witness was necessary, and in custody, and she'd promise to make arrangements to get him to court. The witness was requested, but for reasons of lack of staffing and probably timing of the request, the sheriff did not have the manpower to make the delivery of the prisoner/witness at the appointed time. It was the opinion of Judge Kamp that Lisa was using false representations of actions to get continuances and advantage to her clients, and therefore obstructing the judicial process. (DC Exhibit 11)

It is the argument of the Respondent that this is a misunderstanding of motives and a drawing of the worst conclusions of the parties motives in getting continuances and in denying jury trial rights by two people in the judicial system who are suspicious of each other on the best of occasions and it is not the stuff for discipline a license, either judicial officer or an advocate officer.

Some indication of the objective view of this controversy is in the questioning by one of the hearing officers, Mr. Engler, about whether attempts were made to settle these matters before all the formal charges and hearings. It seems that initial remedial efforts were not or are not within the purview of the OCDC at least as this part of the Information was concerned. (TR 90 L. 10 – P 91-92 L 1-15).

V. STATEMENTS ABOUT THE HISTORY OF

DENYING JURY TRIALS BY JUDGE GARY KAMP

This likelihood of denial of jury trials on a regular basis may well be true in fact in this county and by this jurist. Our Missouri and United States Constitutions guarantee jury trials to criminal defendants. It is not something one has to request, all be it is something a defendant may waive. The Arraignment forms and Advice forms to those who want to waive the right to counsel in this county, say one can "request of jury". I think this is wrong and may indeed lead to repeated denials of rights to jury trials (TR P 57 L.5-19) (P.60 L 2-8 through P. 62) as it did here when Tomika Tate and Patrice Jones were almost denied a jury trial before Lisa started representing her merely because she did not ask for (TR 62). This is not the way this constitutional right should be handled, especially for the pro se defendant.

The Sixth Amendment guarantees the accused certain rights:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.

It is this arguments contention that if this is the modus operandi of the Cape Girardeau Circuit and Judge Kamp's courtroom, there is likely a repeated denial of jury trials such that the comments of Lisa Coatney, if not in fact correct, are not false or reckless. She should not be disciplined for this in any fashion. The practice of the judge and all counties that follow this practice are perilous because the court doesn't advise that in the incorrectly advising people of constitutional rights.

VI. COMMUNICATIONS WITH INDIVIDUALS IN THE LEGAL SYSTEM

Rule 4-4.2. Communication with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Point C of the Disciplinary Counsel's brief concerns communications with Jessica Billings, the girlfriend or mate of Jermaine Young a client of Lisa Coatney. As the incident is portrayed by the Disciplinary Counsel, Lisa Coatney disregarded

all rules of ethical conduct and threatened Ms. Billings who might be testifying at hearing scheduled for Jermaine Young by saying if she testified, she knew Lisa Coatney would have to "go after her" (Exh 5 Preliminary hearing PP 27 - 32) or "eat her up" in court on cross examination. This portrayal as a threat is incorrect. The correct portrait was that she was explaining that would be her job if she testified because Lisa Coatney represented Jermaine Young, the person against whom the testimony of Ms. Billings would be sought. Even a lay member of the DHP, Ms. Downs of the DHP understood it this way by the tenor of her questioning (TR 137 L 18 to 138 L. 25) The characterization of this incident as an effort by Lisa Coatney to threaten a witness if she testified is distorted and a false portrait itself. Lisa was telling this woman who came to talk to her about her children, that if she testified against Lisa's client, Lisa would have to "go after her" eat her up" because that was her job.

The DHP found this to be the case and gave an advisory opinion of dismissal on this point and that advices should be followed by this Court.

VII. REPRESENTATIONS TO A TRIBUNAL

Rule 4-3.3. Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

This point has been dropped by the disciplinary counsel, but since these disciplinary matters are advisory, it is a necessary subject of comment. This point has to do with communications to the court in a letter that she had spoken to Austin Crowe, a prosecutor, on July 27, 2010, about moving a case to a different date. Mr. Crowe swore he had not spoken to Ms. Coatney about that on July 27, 2010, but may have done so on July 21, 2010 and that the date in the letter could have been a typographical error. Ironically, Mr. Crowe's letter complaining about the situation had a similar erroneous date inserted by Mr. Crowe and because of that lack of substantive proof the point of discipline has not been pursed.

I do think it is important to set this out because this seems to be some evidence of overreaching even in an adversarial process by a supposedly objective but zealous prosecutor.

VIII. RESPONDENT'S CONDUCT

FOLLOWING THE PANEL'S DECISION

After the DHP decision to Dismiss all but Count II of the complaint and recommending a reprimand rather than disbarment, a clear loss for the OCDC, the

disciplinary counsel now asserts that she should be disciplined for calling the Chief Disciplinary Counsel a “hugeprickjackass” because she was questioning why she was prosecuted so vigorously and seemingly Morley Swingle, one of her nemesis’s, was not prosecuted for some rather public acts of impropriety, had two defendant’s released from custody after many years in confinement due to prosecutorial misconduct, a man named Kezer and a man named.

This is a slip. Do not blow this out of proportion. The word “hugeprickjackass” is a partial address, a phrase, appearing in address of an intended recipient of an email from Lisa Coatney. It unfortunately appears in the line above and immediately before the address of another intended recipient alan.pratzel@courts.mo.gov. It is not addressed to Alan Pratzel. However, it is our contention that this effort to discipline Lisa Coatney is an example of some unwarranted zeal by the Disciplinary Counsel in policing the legal community in general.

This characterization is delicate, but it raises a valid point. Aside from the fact that perhaps Lisa could use a CLE in charm school from her other internet submissions, she has raised a valid criticism of the purpose of the OCDC and she has raised this criticism in the very appropriate forum. Is this OCDC a star chamber or a body designed to police and enhance the legal profession or what is

the purpose? If the purpose is to discipline, suspend or take licenses, then I think it should be made known to the legal community that the OCDC is a strictly adverse body for the public interest and against the lawyer's license so that lawyers will not take admonitions lightly and fight them to a standstill. Two or three admonitions lead to a reprimand then a suspension and then disbarment. It means little to the legal profession in corporate law, or government, or large business practices. These professionals do not have a strident clientele, but to the lawyers in the trenches, the ones who face a distrusting and informed public, bar complaints are a real threat.

She has a constitutional right to voice opinions to members of the process and within the system; this highest and most venerable Court, to the Disciplinary Counsel himself and to her adversaries, Mr. Swingle, Judge Satterfield, and Judge Kamp, his office. Lisa Coatney did not intend to call Mr. Pratzel a "hugeprickjack ass" and this should be put to rest. It is not a subject of discipline. Actually of all protected speech we have discussed this statement, if made, or if made in the context in which it was purportedly made, would be protected. It certainly isn't literally true and no one would take as true or false. It is not false or true; it is not reckless disregard of anything, but manners, someone's taste, and probably not the most cultured use of appropriate language of the judicial system. It is not the subject of discipline.

POINTS RELIED ON

THE SUPREME COURT SHOULD EITHER DISMISS ALL CHARGES OF VIOLATIONS OF THE RULES OF PROFESSIONAL CONDUCT AGAINST LISA COATNEY OR ACCEPT THE RECOMMENDATION OF THE DISCIPLINARY HEARING PANEL FOR DISCIPLINE BUT ADMONISH HER BEHAVIOUR BECAUSE:

1. THE REQUESTS FOR A FEE WAIVER WERE APPROPRIATE IN THAT THE RESPONDENT IS NOW AND HAS BEEN INCOMPACITED IN HER EFFORTS TO PRACTICE LAW WHEN SHE SOOUGHT THE WAIVERS AND SHE DOES NOT MAKE A SUSTAINABLE LIVING IN HER PRACTICE BECAUSE OF HER MEDICAL CONDITION.

THE APPLICATIONS DID NOT VIOLATE 4-8.4.

2. THE STATEMENTS MADE BY THE RESPONDENT WERE CONSTITITIONALLY PROTECTED SPEECH AND WERE NOT KNOWINGLY FALSE OR MADE WITH RECKLESS DISREGARD FOR THE TRUTH AND WERE WITHIN THE STANDARD OF CARE FOR LAWYERS IN SIMILAR SITUATIONS. THE COMMENTS DID NOT VIOLATE RULE 4-8.2 or 4-8-4.

3. THE STATEMENTS MADE TO TRIBUNALS ABOUT FILING MOTIONS AND FILING COMPLAINTS AGAINST JUDGES WERE NOT DESIGNED TO DISRUPT COURT PROCEEDINGS, DID NOT DISRUPT COURT PROCEEDINGS, AND DID NOT VIOLATE RULES 4-4.3, 4-4.5, OR 4-4.8.

4. THE RESPONDENT'S COMMUNICATION WITH A PARTY REPRESENTED BY ANOTHER ATTORNEY WHO WAS NOT PRESENT WAS NOT A VIOLATION OF 4-4.2 OR 4-8.4 BECAUSE THE COMMUNICATION WAS NOT CONFIDENTIAL, AND THE COMMUNICATIONS CAME AT THE REQUEST OF THE PERSON SEEKING INFORMATION, AND WERE NOT THREATENING, NOR TAKEN TO BE THREATENING.

ARGUMENT

I do not think Lisa Coatney should be disciplined, and if disciplined, I believe it should not exceed an admonishment. This was the first recommendation in Count II, the Count of Gravitas and it was rejected by the OCDC. It is disturbing that the Discliplinary Counsel has to take this further. It did not offer diversion under Rule 5.05 or even discuss compromise before the hearing. The disciplinary system is mostly set up by the OCDC for the prosecution, and when its system and procedures result in a set back or less, why is that not the end. While this is not a criminal prosecution, it is a judicial action involving the constitutional protection of due process on life, liberty and property. The question is, if the prosecution process gets its due, should it be able to go forward beyond the initial recommendation of its advisory panel. This is a question concerning the need for modification of Rule 5.30 (b).

Regardless, while it may be impossible to clearly and factually demonstrate by evidence what is false or reckless and determine motives on bonds and fairness, it seems that if this particular advocate in her zeal has crossed a line in deprecating the judiciary. This being her first offense, it if can be remedied by an admonishment, it should be so rather than a reprimand or suspension or

disbarment. This is not an offense worthy of the full measure of disciplinary action as requested by the disciplinary counsel.

CONCLUSION

The advisory decision and recommendation of the disciplinary hearing Panel should be adopted as to counts I, III, IV, and V. It is respectfully requested that this high court review the evidence, findings, and recommendations of the DHP on Count II in light of Constitutionally protected speech, and in light of the facts and what Lisa knew and said from what she knew and reasonably believed, to determine if these were false, or reckless statements and made in a manner that would meet the standard of care of the reasonably prudent lawyer. I ask the court to keep in mind there is no legal standard on the propriety of "earthy' vernacular.

RESPECTFULLY SUBMITTED

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via U.S. Mail, first class, postage prepaid on this _____ day of June, 2011 to: Mr. Alan D. Pratzel, Chief Disciplinary Counsel, 3335 American Avenue, Jefferson City, MO 65109 and Mr. Marc A. Lapp, Special Counsel, Region X Disciplinary Committee, P.O. Box 12406, St. Louis, MO 63132.

_____

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 8,199 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and

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

_____

JOHN J. ALLAN