UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WESTERN MISSOURI
KANSAS CITY MISSOURI

In the Matter of the	)	
Disciplinary Proceedings	)	Case No.
Of Bret Landrith	)	

ANSWER TO SHOW CAUSE

Come now the respondent Bret D. Landrith appearing *pro se* and makes the following answer to the court's order of show cause over whether reciprocal discipline should be imposed.

INTRODUCTION

The respondent respectfully requests that the court stay its order of interim suspension and the present order to show cause since the respondent made a timely motion to reconsider the Kansas Supreme Court order of disbarment, suspending the mandate. This court's local rule 83.6 (b) (3) direct that discipline is to be stayed until the other court's decision is final.

Alternatively, the state disbarment order on its face is void *ab initio*. (over problems the reconsideration seeks to address). Void orders cannot be treated as final orders. See i*nfra*, respondent's memorandum of law.

The respondent respectfully requests that the court permit the opportunity to respond to any future order upholding the respondent's disbarment with a complete record and arguments supporting the criteria required under Rule 83.6(b)(4).

STATEMENT OF FACTS

1. The complainants' and Disciplinary Administrator's pretext for retaliation against the appellant was concern for the quality of James Bolden's and David Price's representation.

2. The respondent's two client's controversial nature arises from a federal civil rights suit against the City of Topeka, *James L. Bolden v. City of Topeka* KS Dist. Court Case # 02-CV-2635-KHV for taking Bolden's two houses in furtherance of a joint county and city resolution to use one lot for a park and the other for public housing, both to be developed with federal funds without compensating Bolden for the takings.

3. David Price, an American Indian is a key witness in James Bolden's case and the respondent represented him in an appeal of a termination of parental rights where the Shawnee Court had found him unfit over an uncharged allegation he had committed the crime of prosecution.

4. James Bolden's other witness, Mark Hunt an African American and a non commissioned officer had the custody of his children taken away and was denied visitation based on false *exparte* allegations by Topeka and state law enforcement officers he had committed a rape of a nonexistent victim and that never occurred and was never charged.

5. The complainants served the original ethics complaint after a lengthy prehearing motion practice so that the respondent would receive the complaint in *ad terrorem* from the appeals panel hearing his case during his thirty day deadline to prepare David Price's Kansas Court of Appeals brief.

6. The Disciplinary Administrator's ethics prosecution was initiated against the appellant during the twenty days preparation for James Bolden's jury trial July 6, 2004 before District Judge Kathryn H. Vratil, necessitating the respondent's filing in Kansas District court for injunctive relief.

7. The respondent has sought relief from the state's prosecution of the respondent in *Landrith v. Hazlett*, KS Dist. Case No. 04-2215-DVB in which no independent finding of fact or law was made and that relief request is now before the Tenth Circuit in Case No. 04-3364.

8. The State Disciplinary Administrator Stanton Hazlett told the disciplinary tribunal all federal Kansas District Court judges recused themselves from . Case No. 04-2215.

9. The relief action proffered extensive evidence and arguments of law why the State of Kansas's investigation and prosecution of the respondent was in bad faith and in retaliation for the respondent's ethical representation of an African American client with civil rights claims against a state agency(The City of Topeka) and the African American's chief witness, a man of American Indian descent in a related parental rights termination case.

10. The Chief Judge of the District of Utah assigned to the case made no findings of fact or law and refused to rule on post trial relief.

11. The Tenth Circuit Court of Appeals was delayed by the fraudulent misrepresentation to the appellate court of Stanton Hazlett that the state would not discipline the respondent, therefore the appeal should be dismissed as moot.

12. On July 8th, 2005, the City of Topeka's first African American Judge, Municipal Court Judge Deborah Purce suffered the instigation of an investigation for termination

immediately after she had ruled in favor of David Price, the respondent's client and chief witness for James Bolden. Judge Deborah Purce stated that the City of Topeka was retaliating against her for acting ethically:

> "People have told me that Ebberts was under pressure from the police department because of my number of 'not guilty' verdicts," Purce said. "It would not be legal or ethical for me to be fired because I weighed evidence in favor of the accused more than Ebberts and police would have liked."
>
> Purce also outlined the events of July 8. Armed security guards were called to escort her out of the courthouse"
>
> "Ex-judge sees race as issue" Topeka Capital Journal July 17, 2005.

13. Until being suspended in October, the respondent was preparing to argue his case 04-3306 *James L. Bolden v. City of Topeka* before the Tenth Circuit in Oral Argument scheduled November 17, 2005.

14. On the day of the respondent's Kansas Supreme Court oral argument, the Kansas District Attorney for Shawnee County was forced to release a report chronicling the City of Topeka's false testimony and faked probable cause, evidence and warrant requests. The report US Attorney for Kansas had quit accepting Topeka police cases because of city misconduct.

15. On December 9th, 2005 the Kansas Supreme Court order the disbarment of the plaintiff.

16. On December 18, 2005, the respondent emailed a letter to the Clerk of the Western District of Missouri Court giving notice of the Kansas Supreme Court ruling disbarring the respondent:

> "Dear Clerk of the Court,

This letter is to inform you that the District of Kansas has taken disciplinary action against me, suspending me from the practice of law as an interim measure while I respond to a show cause request over reciprocal disbarment.
Attached is the State of Kansas order disbarring me. I am preparing a motion for reconsideration of the State of Kansas Disbarment in addition to preparing an answer to the Kansas District Court show cause order. I have also sought federal injunctive relief against the Kansas Disciplinary Administrator.
The current Western District of Missouri case I am counsel in is *Huffman v ADP et al*, 05-01205-GAF.

Respectfully submitted,
S/Bret D. Landrith
Bret D. Landrith # KS00500"

17. The respondent filed a timely motion for reconsideration with Kansas Supreme Court on December 29, 2005.

18. The Kansas Courts online case inquiry system's [1] last entry is:

"29-DEC-05 MOTION FOR REHEARING/MODIFICATION"

19. The actions of Kansas state judicial branch officials have deprived James Bolden of counsel just before his oral argument was scheduled to be heard in Tenth Circuit and he is now forced to bring a pro se action against Shawnee County that participated in the takings. The actions of Kansas state judicial branch officials have deprived David Price of counsel as he seeks to reopen the termination of parental rights case based on evidence of fraud revealed in testimony given during the respondent's disciplinary hearing.

20. The actions of Kansas state judicial branch officials have deprived Mark Hunt of counsel to defend against having his children taken and against retaliatory discharge by his employer, The Kansas Army National Guard.

---

[1] http://judicial.kscourts.org:7780/pls/coa2/CLERKS_OFFICE.list_case_detail?i_case_number=94333&i_case_name=

21. The actions of Kansas state judicial branch officials have deprived Sam Lipari of his choice of counsel in Medical Supply Chain Inc. v. Neoforma et al, originally filed in the District of Missouri, Case No. 05-0210-CV-W-ODS.

MEMORANDUM OF LAW

The respondent makes the following arguments in support of his Answer to Show Cause seeking the stay of any suspension and all orders to answer for reciprocal discipline based on the Kansas Supreme Court order.

I. THE KANSAS SUPREME COURT ORDER IS NOT FINAL

The respondent filed a timely motion to reconsider the order of disbarment. Kansas Supreme Court Rule 7.06 (a) Rehearing Or Modification In Supreme Court states:

> "(a) A motion for rehearing or modification in a case decided by the Supreme Court may be served and filed within twenty (20) days of the date of the decision. A copy of the Court's opinion shall be attached to the motion. **The issuance of the mandate shall be stayed pending the determination of the issues raised by such a motion.** If a rehearing is granted, such order suspends the effect of the original decision until the matter is decided on rehearing." [Emphasis added].

A. The Respondent Has Not Yet Been Disbarred

The court's Show Cause order is premature. The respondent is not yet disbarred in Kansas. A federal district court should not address a change in the respondent's status until it happens:

> "Thus the situation here is not a matter of exhausting state remedies in respect to an alleged federal right but of there being no basis for any alleged federal right to exist as to the Committee's actions until the California Supreme Court in the exercise of its original power over admissions has allowed these actions to serve as a deprivation."

Chaney v. State Bar of California, 386 F.2d 962 at 966 (9th Cir., 1967).

i. Western District of Missouri Rules Stay Reciprocal Discipline

This court's local rule 83.6 (b) (3) direct that discipline is to be stayed until the other court's decision is final:

> "83.6 Attorney Discipline (b) Discipline Imposed By Other Courts. 3. In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this Court shall be deferred until such stay expires."

ii. Other US District Courts Also Stay Reciprocal Discipline

The Western District of Kentucky Bankruptcy Court incorporates this same principle in its local rules:

> "4.2 Discipline in Another Court; Procedure e. Finality of the Other Court's Action 2. If the discipline imposed in the other Court has been stayed or has not become a final decision, any reciprocal discipline imposed by this Court shall be deferred until the stay expires or the decision becomes final."

B. The Kansas Supreme Court order is Not Final Because It Is Void *ab initio.*

The Kansas Supreme Court order disbarring the respondent is also not a final order because it is void on its face under the Fourteenth Amendment for subject-matter jurisdiction *infra,* depriving the respondent of the right to appeal the disbarment and similarly depriving other courts from relying on the Kansas Supreme Court order.

Courts have also held that, since a void order is not a final order, but is in effect no order at all, it cannot even be appealed. Courts have held that a void decision is not in essence a decision at all, and never becomes final. Consistent with this holding, in 1991, the U.S. Supreme Court stated that, "Since such jurisdictional defect deprives not only the initial court but also the appellate court of its power over the case or controversy, to permit the appellate court to ignore it. …[Would be an] unlawful action by the appellate court itself." *Freytag v. Commissioner*, 501 U.S. 868 (1991). In *People v. Miller* (1930),

339 Ill. 573, at pages 578--79, 171 N.E. 672, at page 675, the Illinois Supreme Court, when considering the question of judgments issued by courts with no jurisdiction, states:

"Every judgment of a court rendered without jurisdiction is a nullity--not merely voidable but void--and may be disregarded. It is subject to attack by any person at any time in any court and in any proceeding in which it is brought in question."

Following the same principle, it would be an unlawful action for a court to rely on an order issued by a judge who did not have subject-matter jurisdiction and therefore the order he issued was Void *ab initio.*

The respondent respectfully requests this court stay the imposition of any suspension or show cause order until the State of Kansas has issued its final mandate and the respondent has had time to prepare a response.

II. CURRENT ORDER VIOLATES THE FOURTEENTH AMENDMENT

The federal courts do not have jurisdiction to review an order of a state court disbarring an attorney for personal and professional misconduct. *Gately v. Sutton*, 310 F.2d 107, 108 (10th Cir. 1962). However disbarment by federal courts does not automatically follow disbarment by state courts. *Theard v. United States*, 354 U.S. 278, 282, 77 S.Ct. 1274, 1 L.Ed.2d 1342 (1957); *Selling v. Radford*, 243 U.S. 46, 37 S.Ct. 377, 61 L.Ed. 585 (1916).

A. The Western District of Missouri And The Fourteenth Amendment

In *United States v. Nichols*, a three judge panel of the Western District of Missouri obtained certiorari over a question on the limits of enforcement of the Fourteenth Amendment. The case was combined with others including *United States v. Stanley* from the Kansas District Court. The US Supreme Court ruled that the Fourteenth Amendment addresses state action in all forms:

> "It is state action of a particular character that is prohibited. Individual invasion of individual rights is not the subject- matter of the amendment. It has a deeper and broader scope. It **nullifies and makes void all state legislation, and state action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty, or property without due process of law, or which denies to any of them the equal protection of the laws**."

The Civil Rights Cases, 109, U.S. 3, 11, 17 (1883). The Supreme Court explained that Kansas rulings in violation of the Fourteenth Amendment are void:

> "**The first section of the fourteenth amendment… nullifies and makes void all state legislation, and state action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty, or property without due process of law, or which denies to any of them the equal protection of the laws**."

The Civil Rights Cases, 109, U.S. 3, 11, 17 (1883). The court clearly is addressing as prohibited actions including to "deprive a man of his right to vote, to hold property, to buy and to sell, **to sue in the courts**, **or to be a witness**" that are rendered void when supported by "state authority in the shape of laws, customs, ***or judicial*** or executive proceedings." *Id*.

The State of Missouri found that it could not enforce judgments violating the Fourteenth Amendment:

> *"Shelley v. Kraemer*, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 involved the direct enforcement of racially discriminatory restrictive covenants by Missouri and Michigan State courts. The United States Supreme Court found State action holding that (pp. 13-14, 19, 68 S.Ct. pp. 842, 845), "the purposes of the agreements were secured only by judicial enforcement by state courts of the restrictive terms of the agreements" and that "but for the active intervention of the state courts, supported by the full panoply of state power, petitioners would have been free to occupy the properties in question without restraint."

Johnson, Matter of, 460 N.Y.S.2d 932 at 955, 93 A.D.2d 1 (N.Y.A.D. 2 Dept., 1983). The Missouri court identified the danger of judicially enforcing a decree that furthered racial discrimination, not unlike the Kansas Supreme Court's disbarment order

that furthers state conduct in violation of 42 U.S.C. §1981 protected speech on behalf of African Americans:

> "Thus the Supreme Court holds that specific performance of a racial restrictive agreement by judicial decree is a violation of the Fourteenth Amendment although the agreement itself is constitutionally valid."

Weiss v. Leaon, 359 Mo. 1054, 225 S.W.2d 127 at 130 (Mo., 1949)

On its face, the Kansas Supreme Court's disbarment of the respondent punishes the respondent for his association with David Price and Price's "ideas" all of which are protected conduct on behalf of the residents of minority neighborhood plagued by crime. This political speech and testimony in support of James Bolden's Fair Housing Act and 42 U.S.C. §1981 claims was by a member of a protected class. David Price is of American Indian descent. "This abrogation and denial of rights, for which the states alone were or could be responsible, was the great seminal and fundamental wrong which was intended to be remedied." *The Civil Rights Cases*, 109, U.S. 3, 11, 17 (1883).

B. The Deference To Be Given The Disbarment Order

On its face, the Kansas Supreme Court order is void for lack of subject matter jurisdiction, the recommendation adopted by the Kansas Supreme Court is infirm in lacking evidence to support the discipline but most egregiously, the recommendation is facially fraudulent. Missouri state courts are obligated to give a judgment of a sister state full faith and credit unless that judgment is void for lack of either personal jurisdiction or subject matter jurisdiction or the judgment is obtained by fraud. *Phillips v. Fallen* , 6 S.W.3d 862, 864 (Mo.banc 1999).

Federal courts must give the same preclusive effect to state court judgments that those judgments would be given in courts of the state in which the judgments were

rendered. See 28 U.S.C. § 1738; *Wilkinson v. Pitkin County Bd. of Comm'rs*, 142 F.3d 1319, 1322 (10th Cir. 1998). "The preclusive effect of a state court decision . . . is a matter of state law." *Id.* However By its terms, and in light of its purpose, the Full Faith and Credit Clause imposes no obligation whatsoever on the federal government. *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 232-34 (1998); *Univ. of Tenn. v. Elliot*, 478 U.S. 788, 799 (1986) ("The Full Faith and Credit Clause is of course not binding on federal courts . . . .").

Under Kansas Supreme Court Rule 7.06 (a), the current order has been suspended while the court determines if reconsideration is to be heard. The respondent has a great burden to overcome the presumption of a Kansas Supreme Court discipline order once a valid order is issued:

> "With respect to a judgment rendered by a court of general jurisdiction of another state, we presume not only that the court had both personal and subject matter jurisdiction, but that the court followed its laws and entered a valid judgment in accordance with the issues in the case. *Bastian v. Tuttle* , 606 S.W.2d 808, 809 (Mo.App. 1980). A party asserting the invalidity of such a judgment has the burden of overcoming the presumption of validity, unless the proceedings show that the judgment is not entitled to that presumption. *Id.*"

L & L Wholesale, Inc. v. Gibbens, 2003 MO 516 at ¶ 33 (MOCA, 2003). Federal courts also recognize that a state disbarment order may be invalid for failure of Due Process:

> "So also the more recent decision of the Supreme Court *In re Ruffalo*, 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968) demands that there be notice of the alleged professional misconduct as does *Committee on Professional Ethics & Griev. v. Johnson*, 447 F.2d 169 (3rd Cir. 1971). We must conclude that the disbarment judgments were procedurally deficient and on that account were invalid. "

Burkett v. Chandler, 505 F.2d 217 (C.A.10 (Okl.), 1975).

On its face, the Kansas Supreme Court order denied the respondent the Due Process required for state action against the respondent's protected conduct under 42 U.S.C. § 1981, denying the existence of any Liberty interest and refusing even to consider the federal statutory defense.

C. The Current Order Disbarring the Respondent Violates The First Amendment

The findings of fact stated in the body of the Kansas Supreme Court opinion and used to find ethics violations justifying the respondent's disbarment are *prima facie* a renouncement of the constitutional rights to freedom of speech and to seek redress in court. The decision also renounces the statutory protection of those rights embodied in 42 U.S.C. § 1981 and the Kansas Supreme Court opinion similarly renounces any comity based on the Supremacy Clause deferring to the power of federal courts to decide federal questions in federal controversies being litigated in US District court.

The Kansas Supreme Court decision renounced any Liberty interest based on the First Amendment Right to Freedom of Speech and sua sponte determined that the First Amendment Rights to Freedom of Association and access to federal courts for the Redress of Grievances are forfeit. "The first amendment embodies 'a profound national commitment to the principle that debate on public issues (such as the performance of the probate court system) should be uninhibited, robust, and wide-open.' *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964)." *Dacey v. New York County Lawyers' Ass'n*, 423 F.2d 188 at 193 (C.A.2 (N.Y.), 1970).

The ethics complaints and disciplinary prosecution were used to prevent the respondent's African American client and his minority witnesses from asserting federally guaranteed rights.

> "[I]n *Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293, 297, 81 S.Ct. 1333, 1336, 6 L.Ed.2d 301, we reaffirmed this principle: '* * * regulatory measures * * * no matter how sophisticated, cannot be employed in purpose or in effect to stifle, penalize, or curb the exercise of First Amendment rights.'"

National Association For Advancement of Colored People v. Button, 371 U.S. 415 at 439, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963).

i. David Price's cause was over a Liberty interest

Much of the charged conduct was retribution for accurately describing the injuries to the respondent's clients and his witnesses in pleadings on behalf of James Bolden and his witness David Price. The naked purpose of the retribution was to discourage the respondent from assisting in James Bolden obtaining relief for property taken from by the City of Topeka for a public purpose without compensation and from interfering in the retaliation against David Price through the sale of his son as punishment for his protected speech against the City of Topeka.

> "However, the ability and willingness of persons to serve as advocates for their clients, particularly in matters adverse to the government, will be severely hampered if persons acting under color of state law are permitted to retaliate with impunity against attorneys who exercise their First Amendment rights on behalf of their clients. See *Velazquez*, 531 U.S. at 548, 121 S.Ct. 1043 ("The attempted restriction is designed to insulate the Government's interpretation of the Constitution from judicial challenge. The Constitution does not permit the Government to confine litigants and their attorneys in this manner. We must be vigilant when Congress imposes rules and conditions which in effect insulate its own laws from legitimate judicial challenge.") (emphasis added)."

Mezibov v. Allen, 411 F.3d 712 dissent at pg. 725(Fed. 6th Cir., 2005).

The interests the respondent advocated for on behalf of David Price were protected Liberty interests: "The right of a parent to raise his children has long been recognized as a fundamental constitutional right, "far more precious than property rights." *Stanley v. Illinois*, 405 U.S. 645, 651 (1972), quoting *May v. Anderson*, 345, U.S.

528, 533 (1953); *Skinner v. Oklahoma*, 316 U.S. 535, 541, (1942); *Meyer v Nebraska*, 262 U.S. 390, 399 (1923), See, e.q. *Castigno v Wholean*, 239 Conn. 336 (1996); *In re Alexander V.*, 223 Conn. 557 (1992). *In Re: May V Anderson* (1953) 345 US 528, 533, 73 S. Ct. 840, 843 97 L. Ed. 1221, 1226, This case similar to Price's in that it involved a natural parent stripped of her rights without the right to utter a single word in her defense. The order was originally granted for 6 months in which the court allowed the mother to "fight" for her rights back, but kept getting delayed so that the child would incur more time with the father.

ii. James Bolden's Cause Was Protected Political Expression

James Bolden was the only plaintiff out of over a hundred property owners displaced by the City of Topeka in historically minority neighborhoods without compensation required by the federal funds the city used to clear the properties and under state law.The Kansas Supreme Court does not have subject matter jurisdiction to punish an attorney for his client's non-frivolous claims based on the Fair Housing Act, 42 USC §§1981, 1982 under 42 USC §1983 in federal court against the state agency the City of Topeka:

> "The first is that a State cannot foreclose the exercise of constitutional rights by mere labels. The second is that abstract discussion is not the only species of communication which the Constitution protects; **the First Amendment also protects vigorous advocacy, certainly of lawful ends, against governmental intrusion**. *Thomas v. Collins*, 323 U.S. 516, 537, 65 S.Ct. 315, 325, 89 L.Ed. 430; *Herndon v. Lowry*, 301 U.S. 242, 259—264, 57 S.Ct. 732, 739—742, 81 L.Ed. 1066. *Cantwell v. Connecticut*, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213; *Stromberg v. California*, 283 U.S. 359, 369, 51 S.Ct. 532, 535, 75 L.Ed. 1117; *Terminiello v. Chicago*, 337 U.S. 1, 4, 69 S.Ct. 894, 895, 93 L.Ed. 1131. In the context of NAACP objectives, litigation is not a technique of resolving private differences; it is a means for achieving the lawful objectives of equality of treatment by all government, federal, state and local, for the members of the Negro community in this country. It is thus a form of political expression. Groups which find themselves unable to achieve their objectives through the ballot frequently turn

> to the courts. Just as it was true of the opponents of New Deal legislation during the 1930's, for example, no less is it true of the Negro minority today. And under the conditions of modern government, litigation may well be the sole practicable avenue open to a minority to petition for redress of grievances."

National Association For Advancement of Colored People v. Button, 371 U.S. 415 at 429-430, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963).

D. Supremacy Clause

On its face, the Kansas Supreme Court decision includes findings that the respondent should be disbarred for filing a non frivolous civil rights lawsuit on behalf of James Bolden that went before a jury on 42 USC § 1983 claims based on the City of Topeka's retaliation against James Bolden for his testimony in Shawnee District court. Not all of Bolden's claims were heard and the remainder are on appeal.

The Kansas Supreme Court also found that the respondent should be disbarred for filing a non frivolous 42 USC § 1983 based Civil rights law suit seeking prospective injunctive relief against the Kansas judicial branch official's bad faith enforcement of the Kansas Rules of Professional Conduct, clearly allowed under the rulings in under *Leclerc v. Webb*, No. 03-30752 (Fed. 5th Cir. 7/29/2005) (Fed. 5th Cir., 2005) and *Dubuc v. Michigan Board of Law Examiners* (6th Cir., 2003). The state officials sole defense that the Disciplinary prosecutor Stanton Hazlett is part of the judicial branch and therefore immune is contrary to controlling law. Inn the Sixth Circuit in *Dean v. Byerley*, No. 02-1421 (6th Cir. 1/8/2004) (6th Cir., 2004) concerns 42 U.S.C. §1983 liability of a state bar official for retaliating against the protected speech of a prospective attorney. The state's disciplinary office was also organized within the state's judicial branch.

The Kansas Supreme Court findings of law and fact also clearly show that the respondent is being disbarred for his former client David Price's protected political

speech (under *Button*) in Price's pro se resort to US District court to vindicate his federal guaranteed rights.

The Kansas Supreme Court is void for violating the Fourteenth Amendment including the Supremacy Clause, the Due Process Clause, the First, Fifth, Sixth Amendments that protect access to courts:

> "The right of access to the courts is a fundamental right guaranteed by the Constitution." *Delew v. Wagner*, 143 F.3d 1219, 1222 (9th Cir.1998). The Supreme Court has recognized the source of this right in the Privileges and Immunities Clause of Article IV, the First Amendment, the Fifth Amendment Due Process Clause, and the Fourteenth Amendment Equal Protection and Due Process Clauses."

Christopher v. Harbury, 536 U.S. 403, 415 n. 12, 122 S.Ct. 2179, 153 L.Ed.2d 413 (2002).

Seeking relief from the Kansas Judicial branch officials bad faith prosecution was certainly warranted. The Supreme Court has found it appropriate for federal courts to grant declaratory or injunctive relief barring parallel state court proceedings in which fundamental federal constitutional rights are threatened or not adequately protected. See, e.g., *Zwickler v. Koota*, 389 U.S. 241, 249-251, 88 S.Ct. 391, 19 L.Ed.2d 444 (1967); *Dombrowski v. Pfister*, 380 U.S. 479, 489-90, 85 S.Ct. 1116, 14 L.Ed.2d 22 (1965); *New York Times v. Sullivan*, 376 U.S. 254, 279-80, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964).

i. The Use of Kansas State Courts to Interfere in Federal Actions

The state courts of Kansas have a history of being used to impermissibly interfere in ongoing federal cases. This has been accomplished by using the state court to punish or threaten a federal party or its counsel, usurping the federal court's jurisdiction and violating the spirit of comity, typically through the threat of sanctions:

> "We know that what the Kansas court has been led to do in this case goes beyond its powers. There is no just purpose whatever in leaving the plaintiffs before us exposed to the ordeal of contempt proceedings. And there is, above all, the hobbling effect of the Kansas contempt proceeding upon the uninhibited exercise of rights and powers assigned by the Congress to this forum. In all these circumstances, it seems a clear and compelling next step from Donovan to enforce the paramount federal law by granting the relief plaintiffs seek herein."

Bekoff v. Clinton, 344 F.Supp. 642 at fn 4 (S.D.N.Y., 1972). When Kansas state courts interfere in an ongoing federal case they are clearly placing themselves in the express exception of 28 § 2283 to take away federally guaranteed rights without jurisdiction:

> "§ 2283 embodies on the national level a deep and reciprocal policy of our federalism:
>
> "Early in the history of our country a general rule was established that state and federal courts would not interfere with or try to restrain each other's proceedings." *Donovan v. City of Dallas*, 377 U.S. 408, 412, 84 S.Ct. 1579, 1582, 12 L.Ed.2d 409 (1964) (emphasis added).
>
> In enforcement of that vital principle, it is clear that the right to sue in the federal court, having been "granted by Congress," "cannot be taken away by the State." Id. at 413, 84 S.Ct. at 1583. **More specifically, it is clear that the courts of Kansas are "without power to take away this federal right by contempt proceedings or otherwise**." Id. at 413-414, 84 S.Ct. at 1583."

Bekoff v. Clinton, 344 F.Supp. 642 at 645 (S.D.N.Y., 1972).

ii. Ignoring 42 U.S.C. § 1981 Right Defense Violates the Supremacy Clause

On its face, the Kansas Supreme Court's order ignores defenses raised by the respondent based on his aserted 42 U.S.C. § 1981 based rights to speak on behalf of African American and American Indian citizens seeking redress against state actions encroaching on their protected Liberty interests in owning property and raising their children respectively. The state courts' respect for federal courts is governed by constitutional principles embodied in the Supremacy Clause of the United States

Constitution. *In re Kansas City Star Co.*, 73 F.3d 191, 195 (8th Cir.1996) ("The Supreme Court has unequivocally stated that a `state-law prohibition against compliance with [a federal] district court's decree cannot survive the command of the Supremacy Clause.'") (quoting *Washington v. Fishing Vessel Ass'n*, 443 U.S. 658, 695, 99 S.Ct. 3055, 61 L.Ed.2d 823 (1979), which in turn cites Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401, 3 L.Ed.2d 5 (1958)); *Zajac v. Federal Land Bank of St. Paul*, 909 F.2d 1181, 1184 8th Cir.1990) (Arnold, J., concurring) ("The state courts are open to consider, and in fact are obligated under the Supremacy Clause to consider, assertions of federal statutory right, whether they arise as part of someone's claim or as part of a defense.

Disbarment Order Exceeded Kansas Supreme Court's Jurisdiction

The Kansas Supreme Court lacked subject matter jurisdiction to discipline the respondent for non frivolous federal claims brought by himself or by his clients that were raised in US District court.

If courts act beyond their authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply VOID, AND THIS IS EVEN PRIOR TO REVERSAL *Vallely v. Northern Fire and Marine Ins. Co.*, 254 U.S. 348, 41 S. Ct. 116 (1920). See also *Old Wayne Mut. I. Assoc. v. McDonough*, 204 U.S. 8, 27 S.Ct. 236 (1907); *Williamson v. Berry*, 8 How. 495, 540, 12 L. Ed, 1170, 1189, (1850); *Rose v. Himely*, 4 Cranch 241, 269, 2 L.Ed. 608, 617 (1808).

III. The District Court Cannot Reciprocally Honor the Current Order

The current Kansas Supreme Court order cannot be reciprocally honored under Missouri local rule for the following reasonss:

A. WANTING IN DUE PROCESS

Even though the respondent had filed in federal court alleging a bad faith prosecution, the state judicial branch officials made a show of refusing to provide due process. The order on its face attempts to justify the denial of full due process required where the respondent had raised Liberty interests in protected conduct exceeding a mere privilege to practice law:

i. The Disbarment Decision Violated Due Process Over Conflict of Interest

Like the Kansas Court of Appeals panel that made the original complaint, and the Disciplinary Administrator that prosecuted the complaint, the members of the Kansas Supreme Court did not reveal conflicts of interest or recuse themselves, even after the respondent had made motions for substitution of judges..*Liteky v. U.S.*, 114 S.Ct. 1147 (1994) (""Disqualification is required if an objective observer would entertain reasonable questions about the judges impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." [Emphasis added]. Id. at 1162.); *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 108 S.Ct. 2194 (1988) (what matters is not the reality of bias or prejudice but its appearance); *United States v. Sciuto,* 521 F.2d 842 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause." Id. at 845.); *United States v. Balistrieri*, 779 F.2d 1191 (7th Cir. 1985) (455(a) "is directed against the appearance of partiality, whether or not the judge is actually biased.") (it is self-executing). The failure of the Bankruptcy Judge to follow the mandatory requirements of the law is a further evidence of his appearance of partiality.

The respondent's Due Process rights were harmed by the adoption industry's control over the Kansas Disciplinary Administrator's office. The affidavits of Melinda

Walmsly and Lynn Cicle reveal much more egregious conduct was committed by Kansas adoption attorneys and ABC adoptions in concert with Stanton Hazlett's brother Alan Hazlett than was charged against the respondent and the respondent received copies of the complaints and Stanton Hazlett's department's answers. They would be evidence in an abuse of process case.

The initial complaint was made against the respondent by a judge, Hon. G. Joseph Pierron who had sat on the board of Kansas' largest commercial adoption agency, the Kansas Children Service League (KCSL). Until the respondent's disciplinary panel hearing in January of 2005, KCSL had a $33.6 million adoption contract with the state. See "Foster care agency loses contract" Lawrence journal World, January 28, 2005.

The head justice of the Kansas Supreme Court panel hearing the respondent's brief and argument. Hon. Justice Donald L. Allegrucci's wife Joyce Allegrucci, in her former capacity as assistant secretary of children and family policy for the Department of Social and Rehabilitation Services, made several appeals for additional funding for private adoption agencies in her capacity as assistant secretary of children and family policy for the Kansas Department of Social and Rehabilitation Services. See "Legislators fret over foster care, adoption" Lawrence Journal World, October 31, 2000.

This contrasts with the reaction to the obvious ethical dangers of this industry's influence by the other agency that enforces ethics, the Kansas Governmental Ethics Commission. The commission is chaired by a Kansas lawyer as are two other commissioners and its vice chairman is retired Kansas Chief Supreme Court Justice Robert Miller. On August 18, 2005 the commission ruled that Janet Schalansky, the former chief of the Kansas Department of Social and Rehabilitation Services who served

from 1999 to 2004 as SRS secretary, overseeing the state's social service programs and agency contracts with private companies, such as KCSL, for foster care and adoption services could not accept the chief executive officer position announced by KCSL the preceding month. See “Schalansky can't take job” Topeka Capital Journal. August 19, 2005.

The decision on its face reveals tremendous bias against the respondent’s former client David Price, a key witness for James Bolden’s claims against the City of Topeka. The first ethics complaint identified the respondent’s suggestion in appellate motions on behalf of David Price that the inability to obtain access to the case record may stem from bias of non judge Shawnee District Court officials over Price’s petitioning to return to the election of judges. The self interest of judges that value an appointed judiciary over elected judges is a possible conflict of interest and the otherwise unexplainable acts of making the respondent’s observation a basis for his prosecution and the current decision’s attack on Price suggests a powerful conflict of interest that must be considered when evaluating the disbarment:

> “We merely note the inevitable presence of a possible conflict of interest between the purposes served by the Association and its conception of the public interest whenever it exercises its statutory power to initiate contempt proceedings under 750, subd. B and secures an injunction against the sale and distribution of a book critical of the profession.”

Dacey v. New York County Lawyers' Ass'n, 423 F.2d 188 at 194 (C.A.2 (N.Y.), 1970).

The Kansas Supreme Court has a strong current interest contrary to David’s Price’s advocacy for the election of judges. Hon. Justice Donald L. Allegrucci headed the court’s participation in a Judicial Council preparing a substitute reform of performance reporting in retention elections announced on December 26, 2005 to counter legislative

efforts to change the selection process for judges resulting from"…Kansas Supreme Court orders overturning the death penalty and ordering the Legislature to increase school funding. Those rulings prompted some lawmakers to propose measures that would limit the court and require legislative input in the selection of justices." The head of the Kansas Supreme Court panel hearing the respondent's case, Hon. Justice Donald L. Allegrucci chaired the Judicial Council, but did not disclose his participation in it. See "Judicial panel suggests reviews", Topeka Capital Journal December 26, 2005.

ii. The Respondent's Witnesses Named Were Promptly Retaliated Against

The respondent named Frank Williams as a witness to Stanton Hazlett's pattern and practice of not being familiar with the complaint case he is prosecuting to the point of not reading the subject cases. A few days later the state sought to seize Southwestern Bell stock on a long dormant judgment never served on Mr. Williams or revived in court beyond the statute of limitations.

The respondent's client Sam Lipari assisted the respondent the records while defending the discipline charges. In retaliation Stanton Hazlett brought another complaint against the respondent in Sam Lipari's action. Medical Supply Chain Inc. v. Neoforma et al, originally filed in the District of Missouri, Case No. 05-0210-CV-W-ODS.

Several natural parents, mothers of infants taken in Kansas and their grandparents were named as willing to testify about Stanton Hazlett's relationship to adoption attorneys and how the threat of ethics prosecutions, like Austin K. Vincent made against the respondent are used to keep Kansas licensed attorneys from zealously representing natural parents in an adoption parental rights termination. This widespread practice made it difficult and or impossible for some of the witnesses to obtain attorneys, even when

they could afford to do so. They also made ethics complaints against adoption attorneys after the disciplinary panel's PTO, but the Disciplinary Office dismissed them without investigation in either retaliation or naked discriminatory prosecution.

B. INFIRMITY OF PROOF

The disbarment should not be reciprocal because there was such an infirmity of proof as to facts found to have established the want of fair private and professional character as to give rise to a clear conviction on a court's part that it could not, consistently with its duty, accept as final the conclusion on the respondent's conduct. *Selling v. Radford*, 243 U.S. at 51, 37 S.Ct. at 379.

The Kansas Supreme Court followed the recommendation of disbarment based on 1) the facts alleged about the state appeal. 2) Magistrate O'Hara's recommendations about Bolden's federal case and 3) a generalized assertion that the respondent was without a basis in fact for his claims.

1) the facts alleged about the state appeal

The Kansas Supreme Court adopted the disciplinary panel'e recommendation of disbarment and even quoted the false statement regarding not one "iota" of evidence regarding the respodent's appeal brief for David Price after being served the underlying documentation belying the truthfulness of the report. The inaccuracy was also briefed in the respondent's response:

2) Magistrate O'Hara's recommendations

Magistrate O'Hara's report and recommendation upon which the respondent was disbarred was overruled by the trial court. Judge Vratil determined that the City of Topeka's entry of an appearance without challenging process effected service of process

and that the City was properly in the action. It is controlling law in both the Tenth and Eighth circuit that an action against city officials in their official capacity is a suit against the city itself. The argument of Magistrate O'Hara was entirely pretext. Under Rule 4's incorporation of state law service of process for the forum state.

In the absence of any basis at law for finding the respondent had failed a professional duty, the Kansas Supreme Court cannot have validly disbarred the respondent:

"There are at least two reasons why the State should not be allowed to do this. First, the moment petitioner's conviction was reversed, his continued disbarment was supported by absolutely no evidence. This was a clear deprivation of due process of law and made the disbarment at that time as void as the criminal conviction. Konigsberg v. State Bar, 353 U.S. 252, 77 S.Ct. 722, 1 L.Ed.2d 810; Thompson v. City of Louisville, 362 U.S. 199, 80 S.Ct. 624, 4 L.Ed.2d 654. Second, it is no answer to suggest, as does respondent, that this denial of due process was somehow remedied when the referee, after a hearing, denied petitioner's motion for reinstatement."

Felber v. Association of Bar of City of New York, 386 U.S. 1005 at 1006, 87 S.Ct. 1343, 18 L.Ed.2d 435 (1967).

3.) Topeka Murder Rate Under Bail Bond Substitute System

The Kansas Supreme Court's December 9th order reveals it disbarred the respondent for his client's unrelated fact based political speech on matters of a public concern during conduct (an election) to improve justice by changing the selection of judges. (The return to the election of judges was advocated by Price to end the bond substitution that kept violent felons on the street and in his neighborhood) The respondent is at a loss to conceive of a greater deviation from First Amendment jurisprudence. It is of course worse, David Price, like James Bolden was exercising protected speech on behalf of minority citizens in Topeka's highest minority neighborhoods, so the court is also eviscerating 42 § USC 1981.

The court's error in basing the respondent's disbarment on the political speech of David Price is further compounded by the fact that the legislature made competent findings of fact based on testimony each of the several times it considered and rejected a bill to allow the substitution of Own Recognizance deposits with a court for the requirements of cash bonds in K.S.A. 22-2802 and the Kansas Constitution. The bills were rejected because of the increased problems with violent criminals remaining at large.

In Shawnee County, the practice has been permitted by ministerially under Kansas Supreme Court Administrative Order No. 96/ *Smith v. State*, 264 Kan. 348, 955 P.2d 1293 at 1295 (Kan., 1998). Topeka has been among the highest violent crime per capita small cities in the nation according to FBI rankings. "Topeka ranks eighth in crime" Topeka Capital Journal, June 1, 2001, "Chief wary of report Topeka crime rate ranked worst for small metro areas" March 14, 2004, "The death of homicide." Topeka Capital Journal. January 2, 2005 detailing murders by year which can be interpreted during Shawnee bond period from mid 1980's until a decline from the effect of Maj. Walt Wywadis description of prosecuting drug related cases in federal courts.

The respondent never asserted Price was right , or even offered an opinion on the election of judges. The disbarment is retribution for describing the controversial nature of Price and why the respondent could no ethically reject representing him.

C. GRAVE INJUSTICE

The Kansas Supreme Court attempted to usurp and deny the respondent and his client's federal rights in ongoing litigation in US District courts. This usurption is gravely unjust:

> "A judgment may in some instances be void for lack of subject matter jurisdiction. E.g. id.; In re Four Seasons Securities Laws Litigation, 502 F.2d 834, 842 (10th Cir. 1974). "However, this occurs only where there is a plain usurpation of power, when a court wrongfully extends its jurisdiction beyond the scope of its authority." Kansas City Southern Ry. Co. v. Great Lakes Carbon Corp., 624 F.2d 822, 825 (8th Cir. 1980) (citations omitted); Nemaizer v. Baker, 793 F.2d 58, 65 (2d Cir. 1986) (observing that collateral attack is permitted under Rule 60(b)(4) where there is "a clear usurpation of power by a district court, and not an error of law in determining whether it has jurisdiction") (citations omitted)."

Gschwind v. Cessna Aircraft Co., 232 F.3d 1342 at 1346 (10th Cir., 2000)

The decision on its face demonstrates Kansas has disregarded fundamental controling federal case law on the respondent's actions on behalf of clients in federal court. In attacking the respondent contrary to the state's own substantial precedents, the decision is not a judgment but a lawless act:

> "It is the prostration of all law and government; a defiance of the laws; a resort to the methods of vengeance of those who recognize no law, no society, no government. Of all classes and professions, the lawyer is most sacredly bound to uphold the laws. He is their sworn servant; and for him, of all men in the world, to repudiate and override the laws, to trample them under foot, and to ignore the very bands of society, argues recreancy to his position and office, and sets a pernicious example to the insubordinate and dangerous elements of the body politic. It manifests a want of fidelity to the system of lawful government which he has sworn to uphold and preserve."

Ex parte Wall., 107 U.S. 265 at 274, 2 S.Ct. 569, 27 L.Ed. 552 (1883).

This principle of law was stated by the U.S. Supreme Court as "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply **VOID, AND THIS IS EVEN PRIOR TO REVERSAL**." [Emphasis added]. *Vallely v. Northern Fire and Marine Ins. Co.*, 254 U.S. 348, 41 S. Ct. 116 (1920). See also *Old Wayne Mut. I. Assoc. v.*

McDonough, 204 U.S. 8, 27 S.Ct. 236 (1907); *Williamson v. Berry, 8 How*. 495, 540, 12 L. Ed, 1170, 1189, (1850); *Rose v. Himely*, 4 *Cranch* 241, 269, 2 L.Ed. 608, 617 (1808).

The Kansas Supreme Court findings of fact demonstrate an infirmity of proof and a lack of Due Process, preventing the grant of reciprocal discipline:

> "If the disciplinary proceedings derive from state court action, federal courts are not totally free to ignore the original state proceedings." Abrams, 521 F.2d at 1099-1100 (citing *Theard v. United States*, 354 U.S. 278 (1957)). Instead, they must "examine the state proceeding for consistency with the requirements of due process, adequacy of proof and absence of any indication that imposing discipline would result in grave injustice." In re Jacobs, 44 F.3d 84, 88 (2d Cir. 1994) (citing Selling v. Radford, 243 U.S. 46, 51 (1917))"

In re Surrick (3rd Cir., 2003).

d. SUBSTANTIALLY DIFFERENT DISCIPLINE

The District Court of Missouri would not impose discipline against an attorney for complying with the governing rules of professional conduct.

The District Court of Missouri would not impose discipline against an attorney for bringing the testimony of minority citizens against white city government officials.

The District Court of Missouri would not impose discipline against an attorney for filing non frivolous claims.

CONCLUSION

The respondent respectfully requests that the court stay or lift its temporary suspension of the respondent and postpone any order to show cause until after there is a final ruling from the Kansas Supreme Court.

Respectfully submitted,

S/ Bret D. Landrith

_____

Bret D. Landrith # KS00500
Kansas Supreme Court ID # 20380
Apt. # G33,
2961 SW Central Park, Topeka, KS 66611
1-785-267-4084
landrithlaw@cox.net

CERTIFICATE OF SERVICE

I Bret D. Landrith certify I have provided a copy of this answer show cause order on February 15, 2006 via hand delivery.

S/ Bret D. Landrith
_____
Bret D. Landrith