

1
3
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPREME COURT OF KANSAS
BEFORE
THE KANSAS BOARD FOR DISCIPLINE OF ATTORNEYS

IN THE MATTER OF

BRET D. LANDRITH,
Respondent.

Nos. DA 8893
and DA 9076

VOL U MELL
TRANSCRIPT
OF

Proceedings held in the Fatzer
Courtroom, Kansas Judicial Center, in the City
of Topeka, County of Shawnee, State of Kansas,
on the 20th day of January, 2005, beginning at
8:30 a.m., before a Panel appointed by the
Chairman of the Kansas Board for Discipline of
Attorneys consisting of, Mr. Randy Grisell,
chairman; Ms. Sally Harris, member; and Mr.
Michael Schmitt, member.

APPEARANCES

~hp RRRpnnrlRn~ ~PPRTP~ in pTRon Rnrl
pro se. Also appearing Samuel LaPari.

The Complainant appeared by Mr. Stanton
Hdzlett, Disciplinary Administrator, Office of
Disciplinary Administrator, 701 Southwest
Jackson, 1st Floor, Topeka, Kansas, 66603-3729.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

Certificate 697

WIT N E S S E S

WITNESSES ON BEHALF OF THE RESPONDENT: PAGE

JAMES L. BOLDEN
Direct Examination by Mr. Landrith 565
Examination by Chairman Grisell 588
Cross Examination by Mr. Hazlett 590
RprlirRr~ F.X.=lminRtinn hy Mr. T.Rn~rith 6nn

BRET LANDRITH
Statement by Mr. Landrith 609

WITNESSES ON BEHALF OF PANEL:

JAMES P. O'HARA
Examination by Chairman Grisell 623
Direct Examination by Mr. Landrith 625
Cross Examination by Mr. Hazlett 650
Examination by Chairman Grisell 653
Redirect Examination by Mr. Landrith 657

E X H I B I T S

RESPONDENT'S: MARKED OFFERED RECEIVED
.No. 2~ Y/9 :8.1

1 CHAIRMAN GRISELL: Mr. Landrith, call
2 your next witness.

3
4 JAMES L. BOLDEN,
5 called as a witness on behalf of the
6 respondent, was sworn, and testified as
7 follows:

8
9 DIRECT EXAMINATION

10 BY MR. LANDRITH:

11 Q. James, would you please state your name and
12 address for the record?

13 A. James L. Bolden, Junior. My address is at 418
14 Southeast Ridgeview Terrace in Topeka, Kansas.

15 Q. What kind of a home do you live in?

16 A. I live in a trailer home at Ridgewood Estates.
17 It w~o ~ very nice tr~iler court where you h~d
18 to purchase your home at one time. Now, they
19 have had new buyers, AKC has it and it seems to
20 not be as nice as it was before.

21 Q. Is it a single or double wide trailer?

22 A. It's a single wide.

23 Q. And *you* purchased some homes from Shawnee
24 County at a tax sale?

25 A. Yes, I did.

1 Q. What were the addresses?

2 A. 421 Southwest Tyler and 1146 Southwest
3 Washburn.

4 Q. Did you become-- did you ask the seller
5 questions about it?

Yes, we did-- I did.

7 Q. Who was that?

8 A. who was the seller?

9 Q. who did you ask?

10 A. It was the representative of the Shawnee County
11 counselor's office. I don't have the name In
12 front of me right now. I apologize.

13 Q. Did they say the homes could be remodeled and
14 be suitable for rental?

15 A. They did indicate that the homes could be
16 repaired.

17 Q. Did you plan to live in one of the homes?

18 A. That was an option. I hadn't decided exactly
19 how I was going to utilize the homes, but I, as
20 an entrepreneur, seen it as an investment. I
21 consider myself a very sharp entrepreneur.
22 This was an investment strategy that I had been
23 working on for 15 years or so.
24 Q. Did you make a business plan for both of these
25 homes?

1 A. Yes, I do have business plans for both homes.

2 Q. Did you get them appraised?

3 A. Yes, I had one home appraised.

Q. Why couldnrt you get the second home appraised?

5 A. Well, the HND office had talked to the
6 appraisal office in Lawrence and indicated to
7 the head guy for the other guy, not the guy
8 that was working for me, not to do anymore
9 appraising for me.

10 Q. That is a city agency?

11 A. HND, Housing and Neighborhood Development.

12 Q. Did you have a conversation with your appraiser
13 that related to you what had happened?

14 A. Yes, he did, thatrs how I understood what
15 happened.

16 Q. Did you--

17 A. He made \$500 so why wouldn't he have wanted to
18 do the appraisal.

19 CHAIRMAN GRISELL: Mr. Landrith.

20 MR. LANDRITH: Irll move on, sir.

21 CHAIRMAN GRISELL: I just ask that
22 you ask questions that are going to elicit
23 relevant testimony. We discussed this with
24 both Mr. Price's testimony, as well as this
25 particular issue with Mr. Bolden.

1 MR. LANDRITH: Yes, sir.

2 Q. (BY MR. LANDRITH) Did you become aware-- you
3 became aware-- or did you become aware that
4 they were going to be condemned, the two houses
5 you had purchased, and did you enter court--
6 did you go to the administrative court pro se
7 to try and defend them?

8 A. One of the homes did have a condemnation order
9 on it when I had purchased the home. I was
10 told, however, that the homes could be
11 repaired.

12 Q. And you went to administrative hearing and you
13 represented yourself seeking to stop the
14 condemnation and you lost that hearing. Is
15 that correct?

16 A. I went to a hearing approximately a month after
17 I purchased the home, the administrative
18 officer said I was dreaming and it could not be
19 done.

20 Q. Did you have an attorney in the administrative
hearing for either home?

22 A. At the first time-- at the first home, no, I
23 didn't think I needed one, The second home,
24 yes, I did.

25 Q. All right. Did that attorney take that appeal

1 of that administrative order to Shawnee
2 District Court for you or did you do that
3 yourself?

4 A. I had went to Shawnee District Court myself
5 initially, yes.

6 Q. Did you try to find an attorney?

7 A. I did have an attorney, he went to the second
8 administrative hearing as I indicated. After
9 that he decided he did not want to represent
10 the case, it wct::llul Lbt= L~::L iu hi::; Idw fiLm';;
11 interest. He did not want to represent me in
12 the case.

13 Q. What do you think he meant by that?

14 A. I have no idea at the time. I have a little
15 better idea now.

16 Q. Did you try to find some other attorneys?

17 A. Yes, I did.

18 Q. How many other attorneys did you contact to
19 represent you?

20 A. I had a total of three attorneys, three to four
21 attorneys before I found you.

22 Q. Did some of those attorneys represent you in
23 Shawnee District Court?

24 A. No-- yes, one, yes.

25 Q. Would that have been Carlos Romious?

1 A. That was Carlos, yes.

2 Q. Did he withdraw from representation of your
3 case ~~in~~ the post trial phase?

4 A. Yes, he did.

5 Q. Did you continue to file pro se reconsideration
6 or- -

7 A. I believe that's when I had secured you as my
8 attorney_

9 Q. That would be for the-- wasn't that-- wasn't
10 that for the notice of appeal to appeal that?

11 A. Yes, it was.

12 Q. All right. Did you file with Carlos Romious a
13 motion for new trial or did you file that alone
14 in Shawnee District Court?

15 A. Which, the-- initially? After I hired you?

16 Q. Before you hired me, did Carlos Romious file
17 your motion for--

18 A. We did file for a new trial, it was denied.

19 Q. All right. Did you ask Carlos Romious many
20 times about getting the case filed?

21 A.. Yes. Initially. yes.

22 Q. Did he turn over to you every--

23 A. It took a couple of weeks, but I believe he
24 ended up turning it over to you I believe or--
25 was it to me? Maybe it was to me. **It** was a

1 couple years back.

2 Q. Did you try to get the case file at the
3 sub-basement of Shawnee District Court?

4 I have to jog my memory. this was a couple two
5 or three years back. I really cannot swear
6 exactly what happened at that point in time. I
7 knew I had you. I believe you indicated to me
8 to go down there and get some information.

9 Q. Did in the end I have to go down and get the
10 case file?

11 A. And I believe you had problems getting it. I'm
12 not sure how all that worked.

13 Q. Did you discuss with me the case and the basis
14 for the appeal?

15 A. Yes, I did.

16 Q. Did you have theories about why you had a right
17 to keep your houses or to enjoin the city
18 from--

19 A. Well, by law I had looked up and researched
20 and, yes, I believe by law.

21 Q. Did your-- does your sister or some family
22 member work in Housing and Urban Development?

23 A. Well, I would not like to make that information
24 public.

25 Q. Did you-- were you billed for the houses being

1 torn down?

2 A. Yes, I am currently being billed for them
3 tearing down my houses.

4 Q. Did houses get torn down when an action on your
5 behalf had been filed in federal court?

6 A. We had a stay in-- we had a stay in court and
7 the houses were torn down against the stay in
8 court.

9 Q. Did you consult with me during preparation for
10 your appeal about problems I was having getting
11 your records and problems I was having in the
12 Court of Appeals?

13 A. Say that again, please?

14 Q. Did you talk to me or did I talk to you about
15 problems I was having in Shawnee District Court
16 and Court of Appeals?

17 A. Yes, you did.

18 Q. Did you come with me when I tried to docket
19 your appeal with--

20 A. Yes, I did.

21 Q. Did the ~Laff poinL oui, Lhd.L LlleL'e weL"e L'eCOL"u::;
22 missing that were required--

23 A. I knew there was some problems. I did not know
24 the legality of the problems.

25 Q. Did I--

1 A. I'm not a lawyer.

2 Q. Did I have a discussion or an argument with the
3 appellant court staff on the other side of the
4 counter?

5 A. I knew there were problems. I knew there were
6 problems.

7 Q. Did you see us discussing them?
Yes, you were discussing the situation in
9 reference to some paperwork and I believe it
10 was acquiring some paperwork.

11 Q. Did you observe anything uncivil or disorderly?

12 A. I might have been uncivil or disorderly, I
13 don't know. It was pretty frustrating to me at
14 the time.

15 Q. Did they end up taking the docketing appeal--
16 did they end up taking the docketing statement?

17 A. I believe I paid a fee and they did take it, I
18 believe.

19 Q. Did I talk to *you* about some problems the
20 appellant court was having with accepting the
21 appellant brief that I prepared for you?

22 A. Say that again, please?

23 Q. Did I talk to you about a problem the appellant
24 court was having with a brief I had prepared
25 for your appeal?

1 A. Yes, you did indicate that there was some more
2 problems.

3 Q. Did I talk to you about a show cause order,
4 that we had to do some things to get the
5 documents we were missing or they-- there was a
6 good chance that they would dismiss our appeal?

7 A. That's very possible.

8 Q. Did you assist me in preparing an amended
9 complaint in your federal court case to include
10 your Fair Housing Act claims and your civil
11 rights violation in greater detail about the
12 housing-- your right to have a house in Topeka?

13 A. Yes.

14 Q. Did you have many discussions with me about
15 whether the city's action was out of imminent
16 domain or my argument that it was police power,
17 do you recall those conversations?

18 MR. HAZLETT: I'm going to object to
19 that, Mr. Chairman, that doesn't go to what the
20 allegations are against the respondent.

21 CHAIRMAN GRISELL: Sustained..

22 Q. (BY MR. LANDRITH) Did you feel involved in my
23 representation of your cause?

24 A. Did I feel involved?

25 Q. Yes.

1 A. Yes.

2 Q. Did you get the filings I made bye-mail?

3 A. Yes, I did.

4 Q. Did you get the responses by Sherri Price by
5 e-mail?

6 A. You made sure that I was informed on how my
7 case was going, yes.

8 Q. Did you have some concerns or fears about
9 disclosing your IRS records to Sherri Price?

10 MR. HAZLETT: I'm going to object. I
11 don't see the relevance of that.

12 CHAIRMAN GRISELL: Sustained.

13 MR. LANDRITH: I would like to offer
14 some questions about that as the rebuttal
15 evidence to Mrs.-- Ms. Price's testimony that I
16 was slow in turning over all the Rule 26
17 requests. I think that was part of Mr.
18 Hazlett's case in chief.

19 MR. HAZLETT: Well, I think the
20 court's order speaks for what happened in
21 court. ~ don't think we need to relitigate
22 that issue.

23 CHAIRMAN GRISELL: I know that there
24 was some testimony on that. I don't think that
25 it's alleged that respondent violated any

1 KRPC's as a result of being slow in getting
2 discovery to Ms. Price. And certainly that's
3 not going to be the basis of any determination
4 by this panel. Is that correct?

5 MR. SCHMITT: That's true.

6 MS. HARRIS: Correct.

7 CHAIRMAN GRISELL: So there may have
8 been readonD and we certainly would accept
9 those from *you* and that evidence is not
10 material to our determination.

11 Q. (BY MR. LANDRITH) Did I notify you to come to
12 the pretrial order conference?

13 A. Yes, you did.

14 Q. Did you and I drive together to Kansas City,
15 Kansas?

16 A. Yes, we did.

17 Q. Did I suggest to you what might happen during
18 that pretrial order conference?

19 A. Yes, you indicated-- kind of briefed me before
20 we entered into there, yes.

 Q. Did I indicate that it didn't look good?

22 A. Yes, we were-- and I indicated to you that we
23 would have hope and faith in that.

24 Q. Did you receive notice directly from the court
25 to come to that pretrial order conference?

1 A. I don't recall.

2 Q. Did you receive a mailing directly from the
3 court, the Magistratefs report and
4 recommendation after that conference sometime
5 about the pretrial order conference you
6 attended?

7 A. I don't recall right now.

8 Q. Did Magistrate O'Hara question you at length
9 during that pretrial order conference about
10 your attempts to obtain attorneys?

11 A. I don't know at any length. He did mention it.

12 Q. Did you explain to him, by name, each of the
13 attorneys that you had had help you on this
14 case?

15 A. I did explain to him that I had prior attorneys
16 and neither one of them had the guts to fight
17 city hall and that you were the only attorney
18 that had the guts. I believe being a loyalist
19 to the law, maybe possibly being new to the
20 law, you believed as I did that the laws were
21 there for all Americans.

22 Q. Did you believe that the federal regulations
23 LhaL Lhe money was given to the city for under
24 HUD gave you the right to not be charged for
25 the demolition of the homes?

1 A. Correct.

2 Q. Did you have some other beliefs that state
3 statutes limited the city's ability to change
4 the standard for what a--

5 A. Correct.

6 MR. IIAZLETT, I'm going to object. I
7 think this is not relevant to the charges
8 against Mr. Landrith.

9 MR. LANDRITH: I'll move on.

10 CHAIRMAN GRISELL: He slipped in the
11 answer before your objection. I'll allow it
12 for-- so go ahead, Mr. Landrith.

13 Q. (BY MR. LANDRITH) Did you tell Magistrate
14 O'Hara that one attorney had quit representing
15 you because he had advised you that your house
16 was going to get torn down because you couldn't
17 fix the gutter?

18 A. Yes-- well, he didn't say it would get torn
19 down bccquoc I couldn't fix thc gutter. He
20 said my business plan was not accepted because
21 ~ did not show where the-- of everything ~n my
22 plan of rehabilitating the home, I did not show
23 the runoff from the gutter, the gutter runoff.

24 Q. Did he advise you that you couldn't obtain
25 approval for that plan from the city?

1 A. Without having the gutter runoff to show, which
2 pretty much irritated me. Because there was a
3 lot of work needed to be done to the house, I
4 did not feel as though they were wanting to
5 work with me the way they said they would and
6 it was a lot of frustration on my part.

7 CHAIRMAN GRISELL: Mr. Landrith, the
8 allegations in count two concerning Mr.
9 Bolden's case relate to the filing of the
10 docketing statement, the problems that were
11 incurred in attempting to file briefs, and also
12 then your actions or inactions in the federal
13 district court. So please restrict the
14 testimony to those two issues. The panel is
15 not concerned about the underlying issues
16 pertaining to the two homes or the demolition
17 of those homes.

18 MR. LANDRITH: Sir, I recognize this.
19 I have this witness out of a sequence that may
20 be optimum for understanding his testimony in
21 relation to Magistrate O'Hara's report and
22 recommendation. I will continue on from the
23 transcript. And I would like to make a motion
24 to admit that transcript as an exhibit. It was
25 furnished to the Disciplinary Administrator.

1 And I didn't realize you didn't have copies of
2 that until this morning.

3 MR. HAZLETT: Well, Mr. Landrith told
4 me this morning that he wanted to use the
5 transcript in connection with his examination
6 of Judge O'Hara, as I understood it, and I said
7 I didn't have a problem with that. And I think
8 he did provide it to me at some point. I
9 received so many documents. But as the Panel
10 noted, I still object to the line of
11 questioning because it doesn't go to the
12 relevance of the direct testimony against Mr. Landrith.

13 CHAIRMAN GRISELL: Sure. I just
14 discussed that. A couple things. So you're
15 offering as an exhibit the transcript of the
16 pretrial hearing?

17 MR. LANDRITH: Yes. The transcript
18 that I'm right now questioning Mr. Bolden from
19 and I intend to question Magistrate O'Hara
20 from.

21 CHAIRMAN GRISELL: With the
22 understanding that if you admit it then
23 the testimony of the same nature is cumulative if
24 we have the actual testimony at the-- or
25 discussion at the preliminary hearing, we

1 certainly don't need to hear testimony that's
2 redundant. I don't have any objection to
3 admission of that transcript and I don't think
4 Mr. Hazlett does either. Do you have-- do you
5 have a copy to be admitted as the exhibit, as
6 well as one for Mr. Hazlett and the Panel?

7 MR. LANDRITH: Not this morning, sir.
8 I might be able to obtain one this afternoon or
9 during our break. I might be able to find
10 somebody that can go out and get it copied.

11 CHAIRMAN GRISELL: If you expect that
12 the Panel is going to consider it, then we'll
13 need a copy and you'll need the original
14 exhibit so it can be marked and kept with the
15 other exhibits. Let me make sure I understand
16 what the number is of that exhibit, that will
17 be Respondent's Exhibit 25. That's the
18 transcript of the federal district court
19 hearing of-- what's the date on that, Mr.
20 Landrith?

21 MR. LANDRITH: November 20th, 2003.

22 CHAIRMAN GRISELL: Transcript of the
23 hearing of November 20, 2003, before Judge
24 O'Hara will be admitted.

25 The second issue you've indicated that

1 you may have had to call this witness out of
2 order, if you wish you can call Mr. Bolden back
3 after the Magistrate testifies assuming that
4 it's pertaining to relevant evidence that needs
5 to be brought to this Panel's attention.

6 MR. LANDRITH: Yes, sir.

7 CHAIRMAN GRISELL: These hearings are
8 t~exible enough that if you have testimony that
9 you wish to offer that's relevant, you can do
10 it now and we'll listen to it and assign the
11 materiality to it that's appropriate.

12 Q. (BY MR. LANDRITH) Did Magistrate O'Hara
13 address you directly during part of that
14 hearing?

15 A. What do you mean he addressed me?

16 Q. Did Magistrate stop talking to me and start
17 talking to you during that hearing?

18 A. Well, I vaguely remember that. It was, what, a
19 yCQr ago, ycar and a half, two yc~rc. There'D
20 so much that went on.

21 Q. Did he indicate to you that ~ was doing a bad
22 job representing--

23 A. Yes, he did indicate-- he did indicate that to
24 me.

25 Q. Did he suggest that you obtain advice from

1 another lawyer--

2 A. He did--

3 CHAIRMAN GRISELL: Excuse me, Mr.
4 Bolden, you will have to wait until the
5 question is asked and then answer because it's
6 very difficult for the court reporter to take
7 down the comments of two parties at one time.

8 THE WITNESS: Yes, sir. My mistake_

9 CHAIRMAN GRISELL: Thank you.

10 (BY MR. LANDRITH) I might repeat a question.
11 Did he suggest to you that you get the advice
12 of another lawyer to get redress after this
13 case was over?

14 A. Yes.

15 Q. Against your counsel, myself?

16 A. Yes.

17 Q. Did he talk about a pro se with similar facts
18 that he was familiar with and suggest that a
19 pro se litigant could do a better job than your
20 current counsel?

21 A. I believe so_

22 Q. Did you know the identity of the person that he
23 probably was referring to?

24 A. No. Well, myself.

25 MR. HAZLETT: I'm going to object as

1 the witness is still answering, but it's not
2 relevant.

3 CHAIRMAN GRISELL: Sustained.

4 Q. (BY MR. LANDRITH) How did you feel about the
5 quality of representation you were receiving
6 from me after he made those comments?

7 A. After he made the comments?

8 Q. Yeo.

9 A. Well, as I say, I was fortunate enough that you
10 would take the case. I had addressed many
11 attorneys. I never understood-- I thought I
12 understood the law, I never understood why the
13 case turned out the way it did at that time.

14 Q. Did you feel that your case-- did-- strike
15 that. Did his comments make you feel that your
16 case wasn't getting a fair consideration?

17 A. From who?

18 Q. From the court.

19 A. Well, yes.

20 Q. Why? Why did that make you feel that way?

21 A. Well, my experience in courto-- in Kanzas
22 courts.

23 Q. Have you been in other state court and other
24 federal court trials?

25 A. No, just Kansas.

1 Q. Was that Kansas state court or Kansas federal
2 court?

3 A. Shawnee County federal courts, Richard Rogers.
4 I've been in courts before, yes.

5 Q. Did you have relatives that had had court
6 act, ions?

7 A. Yes.

8 MR. HAZLI!::TT; Objection, relevance.

9 CHAIRMAN GRISELL: Sustained. Strike
10 the answer.

11 Q. (BY MR. LANDRITH) What was the result of
12 Magistrate O'Hara's report and recommendation?

13 A. I would have to look at them.

14 MR. HAZELTT: I'm going to object,
15 that's stated in the record-- in the order
16 itself.

17 CHAIRMAN GRISELL: I don't know what
18 the objection is, but it is in the record. We
19 have the complete history of how the case
20 proceeded. From the Magistrate's report and
21 recommendation I think it proceeded to jury
22 trial, didn't it? Adverse decision with
23 respect to Mr. Bolden's case and it's on appeal
24 now, if I'm not misunderstanding the status of
25 the matter. Is that correct?

1 MR. LANDRITH: Yes, sir.

2 CHAIRMAN GRISELL: Okay. Then we
3 understand the status and we don't need
4 evidence to support that because there's-- it's
5 not in controversy.

6 Q. (BY MR. LANDRITH) Were you not upset that
7 Mayor Felker was no longer a defendant?

8 MR. LANDRITH: I'll-- never mind.

9 CHAIRMAN GRISELL: Sustained. It's
10 not relevant.

11 MR. LANDRITH: sir, I--

12 CHAIRMAN GRISELL: Well, I'll listen
13 to your argument.

14 MR. LANDRITH: I think that this is
15 actually part of possibly helping the
16 Disciplinary Administrator's case and it
17 addresses the issues before us whether the
18 decision that resulted that dropped out the
19 named defendant who was injurious to Mr. Bolden.
20 And even if Mr. Bolden's potential for a money
21 judgment did not change, he may have had other
22 reasons that he may be dissatisfied with me
23 because of something I did that failed to keep
24 those defendants in the case. I don't have to
25 ask questions along that line, I could leave it

1 to Mr. Hazlett.

2 CHAIRMAN GRISELL: Sure, I'd like to
3 know his opinion on the action or inactions
4 that you may have taken in the federal district
5 court case because I was going to ask him that
6 question. Why don't you ask him directly
7 questions about your conduct and what you did
8 and whether he was dissatisfied, whether he
9 thinks you should have done something else.

10 Q. (BY MR. LANDRITH) Is there other things that
11 you think I should have done that would have
12 kept Mayor Felker as a defendant in the case?

13 A. I don't know what you could have done, I'm not
14 a lawyer.

15 Q. Were you dissatisfied with that outcome?

16 A. I was dissatisfied that Mayor Felker was not
17 kept in there and I was dissatisfied because I
18 was the only witness that testified in my case,
19 but I don't know what that had to do with.

20 Q. Are there things that I could have done to
21 have-- that I didn't do to our allegation that
22 the decision made against you was racially
23 motivated or that the Clty'S action against
24 property in your minority neighborhood was
25 racially motivated?

1 A. I think you did everything you could to prove
2 to show that. I think you were being
3 disallowed to show the truth.

4 Q. Did you believe that I had enough evidence
5 gathered to put-- to make a competent argument
on that.>

7 A. I know you did.

MR. LANDRITII: I have no further
9 questions.

10

11 EXAMINATION

12 BY CHAIRMAN GRISELL:

13 Q. Mr. Bolden?

14 A. Yes, sir.

15 Q. Mr. Landrith asked you if you felt that he was
16 competent in your representation and you
17 indicated that you felt fortunate that he took
18 the case. To me that's not an answer. So I
19 want to ask you, did you believe that Mr.
20 Landrith was competent in his representation of
you in the federal district court case?

22 A. Do I feel like he was competent?

23 Q. That's the question.

24 A. Yeah. I would have never hired him if I didn't
25 feel like he was competent.

1 Q. Of course sometimes you don't know whether
2 counsel is competent when you hire them.

3 A. Uh-huh.

4 Q. "Right when the situation progresses and you see the
5 conduct of the attorney and/or the result that
6 in and of itself may change your mind. So in
7 observing Mr. Landrith's representation of you
8 and the outcome of the case based upon the
9 comments of the Magistrate, is it your opinion
10 that Mr. Landrith was competent in his handling
11 of your case?

12 A. I did not agree entirely with the Magistrate.

13 Q. I'm not asking you whether you agreed. I'm
14 just asking whether you think Mr. Landrith was
15 competent. You were the client, we'd like to
16 know whether in your opinion you believe that
17 your attorney was competent?

18 A. Yes, I believe he was competent. I believe he
19 was new. One-- the only thing was that I did
20 not realize he was as new as he was. But, yes,
21 I believed he was competent. He read the law
22 and understood the law as I did. I have a
23 degree in college, associate degree from DeVry,
24 and I've been trained for computers, ten years
25 experience, I have 20 years mechanical

1 experience. I'm the son of Jim Bolden, the
2 owner of Little Jim's Garage in the early
3 1970s.

4 Q. Okay_ I wag conc~rn~d about your opin~_on of
5 competence.

6 A. Su I feel like I wa~ ~umpeLeuL dud I feel
7 like--

8 CHAIRMAN GRISELL: Okay. Thank you.
9 Does the panel-- within that, Mr. Hazlett?

10 MR. HAZLETT: I have a few questions.

11 CROSS EXAMINATION

12 BY MR. HAZLETT:

13 Q. Mr. Bolden, how did you meet Mr. Landrith?

14 A. Through a friend that was helping me initially
15 with my housing situation.

16 Q. Okay. Did he recommend Mr. Landrith's services
~7 ag an attornE>Y?

18 A. Yes, he did.

19 Q. So then you obviously decided to retain Mr.
20 Landrith?

21 A. Yes, I did.

22 Q. And at that point you were in the process of
23 wanting to appeal what happened to you in
24 district court?

25 A. Yes, s~r.

1 Q. So Mr. Landrith did file a docketing statement
2 in your appeal, in fact you were with him up
3 here in this building when that happened?

4 A. Yes, sir.

5 Q. Mr. Landrith later filed a brief on your behalf
6 in that case, do you recall that?

7 A. Yes, sir.

8 Q. Do you recall that the Court of Appeals issued
9 an order to Mr. Landrith saying that that brief
10 didn't~ comply with the supreme court Rules?

11 A. Yes, that's what he was indicating earlier,
12 yes.

13 Q. And there is a requirement that when the record
14 goes up before the court that the brief that is
15 filed has to go ahead and make reference to the
16 record?

17 A. Yeah, I'm not an attorney.

18 Q. I understand. Did he explain to you why the
19 court was thinking about not accepting the
20 brief?

21 A. He explained. I don't know if I had full
22 understanding of what was really going on.

23 Q. Okay. Did--

24 A. And that might have been because of my lack of
25 knowledge.

1 Q. Did he explain to you why-- well, what was your
2 understanding of why you didn't proceed with
3 the appeal, what did Mr. Landrith tell you
4 about that?

5 A. The appeal in court-- in this court?

6 O. In state court.

7 A. Oh, I had possibly made the mistake of asking
8 him not to continue with that. That was more
9 of my-- I was getting information from
10 different sources also and I was under the
11 understanding that the houses had been torn
12 down and that was what the stay was for. Well,
13 if the houses had been torn down then in lieu
14 of the stay then what do I need a stay for
15 because the houses have been torn down. So
16 that was part of my call.

17 Q. So *you* told Mr. Landrith you wanted to dismiss
18 the appeal because it was voluntarily dismissed
19 up here?

20 A. Yes, it was. That was more of my call, he
21 agreed with it.

22 Q. So then did you have a conversation with Mr.
23 Landrith about what you should do next and did
24 you decide to file an action in federal court?

25 A. Yes, sir.

1 Q. Was that on Mr. Landrith's advice that you
2 decided to do that?

3 A. Yes, Slr.

4 Q. And what did he explain that he thought you
5 could accomplish in federal court?

6 A. Well, we were hoping that we would-- the
7 federal laws that are stated on the internet,
8 which is available to the puhljc--

9 Q. Sure.

10 A. would be enforced.

11 Q. Did he indicate to you that he felt that there
was a chance or a good chance of success in
13 federal court?

14 A. Yes, sir.

15 Q. Did he indicate to you that there might be a
16 difficult-- a difficulty legally because a same
17 or similar action had been filed previously in
18 state court?

19 A. No, I don't believe-- I don't believe that he
20 indicated it would be difficult because of an
21 action in state court_ If he diri, T donlt
22 recall.

23 Q. You knew the action was brought against the
24 City of Topeka and a number of other
25 detendants. Is that correct?

1 A. Yes.

2 Q. Including former Mayor Felker?

3 A. Yes, sir.

4 Q. But ultimately when the case went to a jury
5 trial there was only one defendant, is that
corr~ct, the City of Topeka~

7 A. You mean, was Felker taken off?

8 Q. Right.

9 A. I think so. I think that that was done during
10 the pretrial, yes.

11 Q. In fact, all of the other defendants, except
12 the City of Topeka, were dismissed out of the
13 lawsuit. Is that your recollection?

14 A. I believe so, yes, sir.

15 Q. Do you know why they were dismissed out of the
16 lawsuit?

17 A. Yes, that was something the Magistrate and Bret
18 were talking about in pretrial.

19 Q. What-- as you sit her~ today, what do you
20 recall the reason being for the other
21 defendants being Li::;;ll.i~:HH~UuL of Llle Lawsultz

22 A. Well, the city is as a body, the employees of
23 the city would be underneath the City of
24 Topeka-- the body of the City of Topeka and
25 they would be protected underneath that

1 umbrella.

2 Q. Do you recall that Judge O'Hara made a decision
3 that Mr. Landrith had not properly served the
4 other defendants in the appropriate time
5 period?

A. I do recall that.

7 Q. Okay. Did Mr. Landrith discuss with you his
8 understanding or explain to you Judge O'Hara's
9 decision in that regard?

10 A. If I'm not mistaken I thought that we-- we had
11 served in the time period. It was late in the
12 game, I remember that.

13 Q. Judge O'Hara determined that service was close
14 to 100 days late, do you recall-- did Mr.
15 Landrith explain that to you?

16 A. Yeah, but I believe it was still within the
17 statute I thought.

18 Q. Do you recall that Judge O'Hara determined that
19 Mr. Landrith didn't comply with the Federal
20 Rules of Civil Procedure in serving the
21 defendants?

22 A. I know there was some talk along them lines.

23 Q. Did Mr. Landrith explain to you the legal
24 significance of the failure to serve those
25 defendants?

1 A. I thought we had served them in time still.

2 Q. Did Mr. Landrith accept responsibility for the
3 fact that the defendants in your lawsuit, other
4 than the City of Topeka, were not served
5 timely?

6 A. Could you repeat that, please?

7 Q. Did Mr. Landrith accept responsibility for the
8 fact that most of the defendants in your
9 lawsuit were not served in a timely fashion?

10 A. NO, no. We thought they were-- no, I believe
11 they were served in a timely fashion was my
12 understanding.

13 Q. You said-- Mr. Landrith asked you the question
14 about on your trip to the pretrial conference
15 apparently he told you it didn't look good in
16 your case?

17 A. Yes, he indicated some things.

18 Q. Why did he say it didn't look good.

19 A. I don't recall at this point. They were taking
20 away some of the case maybe, some of the case
21 was being taken away.

22 Q. Okay. When you were present at the pretrial
23 conference, Mr. Bolden, Judge O'Hara was not
24 very complimentary about Mr. Landrith's
25 representation?

1 A. NO, sir.

2 Q. And I appreciate the fact that you are thankful
3 that he represented you and others wouldn't.

4 A. Yes, sir.

5 Q. But what was your feeling there as Judge O'Hara
6 was making these comments about your attorney?

7 A. He was-- hey, he was kind of like our
8 presidenL, we ~eL Lwo up LiuI1::3, yuu ~eL Lu .E:Jick.
9 amongst the two and you have to live with it.

10 Q. Let me read you something from what-- in the
11 order that came out from Judge O'Hara about
12 your case. "Based on what transpired at the
13 pretrial conference plaintiff," referring to
14 you, Mr. Bolden," appears more articulate than
15 Mr. Landrith. Plaintiff may be better served
16 by representing himself, if indeed Mr. Landrith
17 was the only attorney willing to take the
18 case." What was your reaction to that comment
19 by Judge O'Hara?

20 A. My reaction initially was the fact that there
21 i~ ::3UmdUY mOLe lLelll::iu Llle Cd::e LhdL I wuultl
22 like-- that I'm here to talk about that I
23 didn't want to talk about, you know, what my
24 attorney didn't do. There was a lot of
25 things-- there was a lot of issues on the table

1 that I was there to discuss and it wasn't about
2 my attorney that I was there to discuss, so-- I
3 was there to discuss my housing. I was there
4 to discuss why I cannot invest in the property
5 and own property, that's what I was there to
6 discuss.

7 Q. And in some regard you think what happened to
8 you was racially motivated, would that be a
9 fair statement?

10 A. Well, I think that history-- if you've done any
11 history-- research in history you'll understand
12 the fact of owning property and the ability of
13 a black man to own property. I mean, this is
14 something that is nothing new to the
15 establishment. This is something that has been
16 a long going and ongoing problem in our
17 community. Ann T. has left: helping an entrepreneur
18 and I have left from being a prosperous
19 investor to now fighting as a civil rights
20 leader.

21 Q. Sure. So part of what you intended to pursue
22 or what you wanted to prove was what the City
23 of Topeka did to you was racially motivated
24 somewhat?

25 A. Not only racially motivated, but it was more of

1 the haves than the have nots for the uneducated
2 individual or the uneducated one this has been
3 happening to. So it's not-- it was not
4 specifically just about race, but it was more
5 specifically about the low income people that
6 had been affected.

7 Q. Yesterday I asked Mr. Landrith the question
8 whether he thought what Judge O'Hara did in
9 your case might have been racially motivated.
10 This is the question I asked, "Do you think
11 Judge O'Hara was acting the way he did because
12 Mr. Bolden was black?" And Mr. Landrith said,
13 "Yes." Do you concur with that?

14 A. Well, Mr. Landrith might have more knowledge
15 than I did about this.

16 Q. Well, based on your experience.

17 A. I want to be open minded. Like I say, history
18 has already shown that them types of injustice
19 go on. History has shown that, it's proven.

20 Q. I don't disagree with that. But did you and
21 Mr. Landrith have a discussion about whether or
22 not Judge O'Hara-- Judge O'Hara's actions might
23 have been racially motivated because you're
24 black?

25 A. I don't recall. As I say, I've been in the

1 federal court systems for a long time and
2 that's nothing new for me.

3 MR. HAZLETT: I don't have any
4 further questions.

5 CHAIRMAN GRISELL: Panel?

6 MS. HARRIS: I don't have any
7 questions.

8 MR. SCHMITT: No questions.

9 MR. HAZLETT: Thank you, Mr. Bolden.

10 THE WITNESS: Thank you.

11 REDIRECT EXAMINATION

12 BY MR. LANDRITH:

13 Q. Wasn't it true when you answered the question
14 that after we voluntarily withdrew your
15 appellate brief that we amended an existing
16 federal action that you already had going in
17 federal court?

18 A. Correct.

19 Q. And we had-- is it true we had civil rights
20 claims against the City for discriminating
21 against you on the housing?

22 A. Correct.

23 Q. Is it true that they were based on an employee
24 of the City named Jeff White approving HUD
25 funded loans for you?

1 A. Correct.

2 MR. HAZLETT: I'm going to object to
3 this line of questioning because it goes to the
4 underlying Mr. Bolden's case, which is why
5 we're not here.

6 CH~IRM~N GRISELL: Sustained. Could
7 we take about a ten-minute break, please.

8 MR. HAZLETT: Fine.

9 CHAIRMAN GRISELL: Thank you.

10 (THEREUPON, a short recess was had) .

11 CHAIRMAN GRISELL: Mr. Landrith, you
12 may proceed.

13 MR. LANDRITH: Yes, sJ.r. I would
14 like a leave of the court to ask a line of the
15 questioning that I was previously stopped on,
16 that is a basis for my statement, yes or no,
17 was Judge O'Hara's decision likely to have been
18 motivated by race. I have some questions to
19 ask along those lines.

20 CHAIRMAN GRISELL: Certainly.

21 Q. (BY MR. LANDRITH) Did you know a pro se
22 litigant that had a Topeka Housing or property
23 action in federal court that was before
24 Magistrate O'Hara?

25 MR. HAZLETT: I object. I don't see

1 how any other case is relevant to this case.

2 CHAIRMAN GRISELL: He may be laying a
3 foundation for inquiry concerning this
4 witness's belief that the decision by the judge
5 was racially motivated. And if that's where
6 you're going, I'll allow it. I'm not going to
7 get into the other case or the facts of that
 case.

9 Q. (BY MR. LANDRITH) I might reask that question.

10 Do you know Frank Kirtdoll?

11 A. Yes.

12 Q. Does he own property in Topeka?

13 A. Yes, sir.

14 Q. Did he file an action in federal court against
15 the City of Topeka?

16 A. Yes, sir, from my understanding.

17 Q. Is he an African American?

18 A. Yes, he is.

19 Q. Have you seen him at city hall?

20 A. Yes.

21 Q. Is that where you met the friend that referred
22 you to me?

23 A. Is that where I met the friend that referred--
24 no.

25 Q. Where did you meet him?

1 A. The friend that referred me to you?

2 MR. HAZLETT: I'm going to object,
3 this is not relevant.

4 CHAIRMAN GRISELL: Why is it relevant
5 where he met his friend that subsequently
6 referred him to you?

7 MR. LANDRITH: I was going to ask
8 some questions about Frank Kirtdoll and I
9 believe that-- or one of the bases that I
10 answered that question in choosing between yes
11 or no yesterday is my knowledge of Frank
12 Kirtdoll's similar housing civil rights based
13 claim that was proposed and seems to be the one
14 referred to by Magistrate O'Hara in the
15 transcript.

16 CHAIRMAN GRISELL: Well, the
17 testimony has been that you believe that the
18 decision by Judge O'Hara was racially
19 motivated. This witness has testified,
20 pursuant to several questions, he believes that
21 the decision was based in part upon the fact
22 that he's black, that's been established. Your
23 opinions have been put into the record. It's--
24 the basis for it, to the panel's opinion
25 anyway, is not important. We will take those

1 answers on their face as the beliefs of you and
2 Mr. Bolden and consider them.

3 MR. LANDRITH: Yes, sir.

4 Q. (BY MR. LANDRITH) When Magistrate O'Hara

COLLSE> 1F'n ynl1 T_h"t- t:hF' RuhpoF'nas had been

6 issued very late in the case beyond the limit,
7 you understood that they had just been recently
8 issued just before that pretrial order hearing?

9 A. Correct.

10 Q. Yet-- excuse me. Were you aware that there was
11 a hearing in federal court in this same case
12 before Judge Vratil substantially earlier on
13 December 24th?

14 A. Could you repeat that, please?

15 Q. Were you aware of the Christmas Eve hearing
16 before Judge Vratil by phone?

17 A. Between us?

18 Q WF'rF' you aware of that hearing that was between
19 me and Sherri Price by telephone on Christmas
20 Eve day when we first filed in federal court?

21 A. I think-- I believe you're referring to we
22 ought to try to settle it before it goes to
23 court, is that what you're referring to?

24 Q. No. When I first started to represent you and
25 we filed in federal court.

1 A. Okay.

2 Q. Did I tell you to stand-by to be able to
3 testify in Kansas City, Kansas at a callan
4 December 23rd or December 24th if I could get a
5 TRO hearing.

6 I believe so, yes .

7 Q. But you weren't called to testify for that
8 hearing, were you? I'll withdraw that
9 question. Isn't it true that when Mr.-- when
10 Magistrate O'Hara and now the Disciplinary
11 Administrator say that those subpoenas were 100
12 days late, that they're talking about a time
13 limit that started when we first filed our
14 federal action?

15 A. You're asking me?

16 Q. Is it true that-- let me try and ask this a
17 different way.

18 CHAIRMAN GRISELL: I think they were
19 summonses, weren't they, not subpoenas?

20 MR. LANDRITH: Summonses.

21 Q. (BY MR. LANDRITH) The claims that we-- weren't
22 the claims that we were seeking review on in
23 the Kansas Appellate Court amended into the
24 federal action that was already going on at
25 that time?

1 A. Yes.

2 Q. It's your understanding, isn't it, that when
3 you file a lawsuit you have to secure service
4 of process on the defendants?

5 CHAIRMAN GRISELL: This witness has
6 already testified that he's not an attorney.
7 It's the opinion of the panel that he's not
8 competent to render decisions on legal matters.
9 The issue of the summonses was addressed by the
10 federal district court judge and apparently
11 then the judge that handled the trial. We
12 understand that you have a difference of
13 opinion with respect to the ruling and that the
14 matter is now on appeal, so--

15 MR. LANDRITH: I'll move on.

16 CHAIRMAN GRISELL: Thank you.

17 Q. (BY MR. LANDRITH) When you stated to Mr.
18 Hazlett that there was so many more items you
19 wanted to talk about, did that include
20 scheduling putting on your case at that
21 pre-trial order conference?

22 A. Yes, I wanted to talk about my case is why I
23 was there.

24 Q. Were you expecting to make a schedule for when
25 hearings would take place and the next actions

1 that would happen in the court case?

2 A. Yes.

3 Q. Were you surprised that that was a pretrial
4 order conference and we didn't talk anything at
5 all about making those plans, but we instead
6 talked about these other things?

7 A. Very much surprised.

8 MR. LANDRITH: That's all the
9 questions I have.

10 CHAIRMAN GRISELL: Mr. Hazlett?

11 MR. HAZLETT: Nothing.

12 CHARIMAN GRISELL: Panel?

13 MR. SCHMITT: Nothing.

14 MS. HARRIS: No questions.

15 CHAIRMAN GRISELL: I don't have
16 anything for you. May this witness be
17 released?

18 MR. HAZLETT: Certainly.

 MR. LANDRITH: Yes, sir.

20 CHAIRMAN GRISELL: Okay. Mr. Bolden,
21 thank you for appearing, you're free to go.
22 Mr. Landrith, we may check to see if Judge
23 OlHara is here, but if not, do you have other
24 witnesses that you intend to call.

25 MR. LANDRITH: No, just myself,

1 that's the only remaining witness I have.

2 CHAIRMAN GRISELL: Would you believe
3 that-- do you think that you could go ahead and
4 testify and is that sufficient for that?

5 MR. LANDRITH: I believe so, sir. I
6 would like to ask for the aid of yesterday's
7 transcript. It looks like it was available
8 here on this question, is that--

9 MR. HAZLETT: One question was.

10 MR. LANDRITH: One question. All
11 right.

12 MR. HAZLETT: I can provide you with
13 one question.

14 MR. LANDRITH: No, that's fine.
15 Thanks.

16 CHAIRMAN GRISELL: Mr. Landrith, Mrs.
17 Larkin took notes and takes down important
18 aspects of the case, which then when we meet to
19 elaborate she has that information in case we
20 need to go back and look at something that was
21 testified. Other than probably what she had
22 concerning that particular question, it's not
23 something that's utilized by the Disciplinary
24 Administrator that you don't have access to.
25 So if there was a specific question, you know,

1 we can go back on the official transcript, but
2 I just don't want you to think that he's
3 afforded something that you're not.

4 MR. HAZLETT: Maybe I should explain
5 how that came about. I asked the court
6 reporter to provide me the last question I
7 asked-- that I asked Mr. Landrith yesterday on
8 my direct examina-cion and have jU~L LlldL IdbL
9 question and Mr. Landrith's answer and the
10 quickest way she could get it to us was to
11 mail-- to e-mail it to Gayle, so that's how I
12 got that last question.

13 CHAIRMAN GRISELL: Thank you.

14 MR. HAZLETT: And that's the only
15 question I got. And Gayle is going to provide
16 a copy of that-- what I received to Mr.
17 Landrith.

18 CHAIRMAN GRISELL: Thank you. Mr.
19 LQndrith, you have previously been sworn as a
20 witness and you'll continue under that oath at
21 this time. YOU may proceed.

22

23 BRET LANDRITH,
24 called as a witness on behalf of the
25 Respondent, was previously sworn, and testified

1 as follows:

2

3

4

5

6

7

8

9

10

MR. LANDRITH: I want to offer into evidence my statement that I participated in a case, pro se, Shawnee District Court Case 01-D-1961 where the appearance docket for Shawnee County changed a couple of times during the progress of that case and it materially impaired my ability to represent myself in my own divorce.

11

12

13

14

15

16

17

18

19

20

21

22

Motions that I filed were received by the court, but not docketed. And several days later when the hearing took place, they were still not on the appearance docket. But because I had substantial experience before Shawnee District Court and that these things happen by that time, I had with me the older certified copy of the appearance docket. And later when I showed up at the hearing, my motion and argument against dismissal of the action had not been given to the judge and had not been recorded, as I stated, by court.

23

24

The opposing parties counsel had called the judge the evening before. It's my understanding that there is considerable leeway

1 to do ex parte communications under the divorce
2 code and the statute actually expressly permits
3 it. My problem with the incident and why I
4 relate it here today is that it's an example
5 where the record changed adversely to one
6 party.

7 CHAIRMAN GRISELL: What's the time
8 frame that we're talking about here, Mr.
9 Landrith?

10 MR. LANDRITH: One proceeding took
11 place - I better check the date for sure - the
12 24th of September, 2003, and the following one
13 was in October. At the October hearing I
14 obtained a later or-- or just before the
15 October hearing I obtained a later certified
16 copy of the official appearance docket and I
17 found that the iudge's order had been backdated
18 and now appeared a date earlier than my earlier
19 certified copy. And I also saw that the court
20 had indeed received or the entries showed that
21 the court indeed had received my filings
22 several days in advance of the first hearing.

23 CHAIRMAN GRISELL: Okay. This is a
24 divorce action involving you as a party?

25 MR. LANDRITH: Yes.

1 CHAIRMAN GRISELL: If I have the
2 facts correct in looking at some of your
3 filings or your answer, was the file in Shawnee
4 County District Court and then was it
5 subsequently either a venue was changed to
6 Crawford County?

7 MR. LANDRITH: No, sir. I filed
8 first in Shawnee District Court and then no
9 action took place on it, it was dismissed. I
10 refiled it under a request for a new trial
11 rehearing and I had an argument why I met those
12 criteria, but I was not able to overcome the ex
13 parte decision on the opposing counsel's motion
14 that it be dismissed because another later
15 divorce somehow took precedence over it.

16 CHAIRMAN GRISELL: Where was the
17 subsequent divorce granted?

18 MR. LANDRITH: Crawford County,
19 Kansas. I raised those issues on an appeal and
20 the hearing panel, I believe, recused itself
21 and another hearing panel was installed and
22 they ruled against the issues that I raised
23 objecting to that.

24 CHAIRMAN GRISELL: So the divorce,
25 which was ultimately granted in Crawford

1 County, was then-- that was appealed by you and
2 the Court of Appeals rendered a decision?

3 MR. LANDRITH: I was appealing from
4 the Shawnee District Court decision. The
5 Crawford County divorce went on.

6 Ultimately the Shawnee District Court
7 decision was upheld and I was never present or
8 participated in the Crawford County divorce. I
9 was bringing up that as a judicially noticeable
10 record or fact because it's a record of the
11 divorce case, there was a transcript discussion
12 about that subject backdating records before
13 the judge in Shawnee District Court, which I
14 think contradicts Ms. Escalante's testimony
15 that that could never happen.

16 The other case that I was going to bring
17 that up that happened in was another Shawnee
18 County Court case that was a contemporary case
19 to the adoption appeal and one that I initially
20 appeared briefly and then I was replaced by
21 David Price, who went on pro se. It's David
22 Martin Price versus State of Kansas and that's
23 case-- Appellate Case No. 03-912S2-A. And I
24 believe that they have both certified
25 appearance dockets that show a confliction as

1 attachments to their docketing appeal in that
2 case. Then I was going to also state that
3 appearance docket in the Baby C case, the
4 certified version that's in the docketing
5 statement, conflicts with the first table of
6 contents for the record of appeal first
7 document submitted by Shawnee District Court
8 that list the documents for record of appeal
9 and that itself was changed once or twice
10 during the procedure.

11 MR. HAZLETT: I would object to the
12 admission of these documents starting with the
13 last ones first, the Baby Cease. Again, the
14 respondent had ample opportunity if he wanted
15 to introduce those documents at the pretrial to
16 mark them at the pretrial conference or between
17 now-- or between that time and now and he chose
18 not to do so. And I would say-- I would object
19 because it's just too late. And with respect
20 to the other documents, lack of relevancy and
21 lack of proper foundation.

22 MR. LANDRITH: Sir, I was not
23 attempting to introduce documents. I was
24 making statements and citing to a judicially
25 noticeable record.

1 CHAIRMAN GRISELL: Okay. I thought
2 you had moved to enter at least that first
3 limited transcript. I'm going to sustain the
4 objection. This panel has been very willing to
5 accept your exhibits, despite the fact that
6 they weren't exchanged prior to the hearing or
7 provided to the panel, you've been granted
8 significant leeway. These two-- at least two
9 exhibits I don't think are relevant or have any
10 probative value. We've listened to your
11 testimony and we'll consider your testimony,
12 which I think reflects what's considered in the
13 exhibits.

14 MR. LANDRITH: I counseled David
15 Price that the way that he wanted to challenge
16 determination of his parental rights would
17 likely produce an adverse outcome. I'd like to
18 state that before taking the case or filing an
19 entry of appearance that I explained to him
20 that if we make reference to misconduct that
21 occurred tha~ I underslood jus~ the prnciple
22 of systems dynamics, any organization is going
23 to respond defensively and in that defensive
24 response they are unlikely to consider many of
25 the things that we want them to consider that

1 would give us a slight chance of an outcome
2 that we were seeking. I had many hours of
3 discussion with him on that subject. I feel
4 that I counseled him adequately and that he,
5 with considerable basis to make the decision
6 on, decided that there was not much difference
7 likelihood outcome the way that I would have
8 suggested to do it and the way that he wanted
9 to.

10 He did feel that he had rights that had
11 been violated and that one of the outcomes that
12 he was seeking from that litigation was a
13 vindication of those rights. And he thought
14 that if he could not have the chance to get the
15 record and document that had happened, that I
16 would be not doing a good job of representing
17 what he wanted to have happen. I believe that
18 I independently researched the issues that he
19 felt had happened. I think that the record
20 that was cited extensively in both the
21 appellant's initial brief and reply brief give
22 material basis for deception having taken
23 place. I believe that that met the definition
24 in Kansas on its face of kidnapping--
25 kidnapping by deception. And that his child

1 was taken from him and kept to-- by another
2 party without his permission. And I understood
3 how that met that definition and I also
4 understood that he had the protected speech
5 right to make allegations of wrongdoing.

6 CHAIRMAN GRISELL: Mr. Landrith,
7 you've had a couple years to reflect upon this
8 now, do you think maybe some of the things that
9 Mr. Price told you that he believed was
10 occurring in his case actually wasn't true?

11 MR. LANDRITH: No, sir, I don't know
12 of anything that is not true. I've looked at
13 the record extensively. One of the reasons why
14 I ultimately decided to take the case was that
15 he had been very involved in his own litigation
16 and he had asked for and obtained repeatedly
17 many of the key records and documents and that
18 he had those and I was able to look at them and
19 parts of transcripts and depositions-- I guess
20 deposition transcripts that made me observe
21 those things that he was alleging happened
22 happened. I think that they happen quite
23 often. But two years later now, I know that
24 they happen regularly in Kansas.

25 CHAIRMAN GRISELL: Do you think that

1 any of your conduct in either the-- I call it
 2 the David Price matter or the Bolden matter,
 3 anything that's alleged in the complaint, do
 4 you think any of your conduct has resulted in a
 5 violation of any of the Kansas Rules of
 6 Professional Conduct?

7 MR. LANDRITH: In the comments to
 8 Rule 1.1, which is the [UL- my title~dL.iult;
 9 of obstruction, it doesn't qualify obstruction.
 10 So I think that is one of the key reasons why
 11 my pleadings deviated from what Mr. Polsesky
 12 thought would be the norm.

13 CHAIRMAN GRISELL: And, Mr. Landrith,
 14 I'm not asking you to make your closing
 15 argument, I just want to know do you believe
 16 that you violated any of the Rules of
 17 Professional Conduct in your handling of either
 18 the Price matter or the Bolden matter?

19 MR. LANDRITH: No, sir.

20 CHAIRMAN GRISELL: I appreciate that
 21 answer. continue wLt.li YUUL- Le;;;LIIIIUIY.

22 MR. LANDRITH: Yes.

23 CHAIRMAN GRISELL: Is the Judge here
 24 yet?

25 MS. LARKIN: He is not.

1 CHAIRMAN GRISELL: Thank you.

2 MR. LANDRITH: I did witness-- I was
3 present in the oral argument and I witnessed
4 Austin Vincent argue substantially that Bret
5 Landrith had done a good job representing David
6 Price in this appeal. I understood that he was
7 making those arguments because he was
8 countering an issue that I had briefed on
9 appeal that some of the things that took place,
10 nuL having access to records and not having a
11 new counsel appointed for the post trial phase,
12 deprived David Price of a very strongly
13 recognized right to representation during the
14 trial and is based on the Sixth Amendment.

15 I understood that he said something quite
16 a bit different than that during his testimony
17 here before the court and I can understand that
18 he may have personally felt what he testified
19 to yesterday was true or his true belief even
20 at the time that he testified before the
21 appellate panel and he may not have clearly
22 remembered that he used my name not Mr.
23 Wolpert's name about the representation.

24 I know that in that capacity my client
25 would believe that he has lied and committed

1 deception or perjury, but I understand that in
2 that capacity he was representing a client and
3 he was not speaking as a sworn-in witness
4 giving evidentiary testimony about his personal
5 views or beliefs. I understood that when he
6 said those things before the panel he was
7 trying to give assurance that that panel
8 obviously needed that Mr. Price's rights
9 weren't Constitutionally violated by inadequate
10 counsel.

11 CHAIRMAN GRISELL: Mr. Landrith, Mr.
12 Price in his testimony indicated that he
13 believed fraud in his definition was committed
14 by Mr. Vincent because Mr. Vincent gave some
15 answers that were contradictory to what Mr.
16 Price believed the evidence was. If you made
17 statements in your pleadings that are contrary
18 to what the evidence actually is, then are we
19 to believe that you committed fraud?

20 MR. LANDRITH: I have a
21 responsibility for knowing what the evidence
22 actually is or having a very well described
23 basis for knowing it. And I believe that the
24 starting point is the rule that the
25 Disciplinary Administrator read to me during my

1 questioning at the end of his case in chief. I
2 feel that at all times I met that basis. An
3 example where David Price would believe that
4 Austin Vincent committed fraud is when he
5 brought a record. the same as I had done
6 yesterday, that he did not disclose to opposing
7 counsel and then stated under oath giving
8 testimony that he had given notice that was not
9 ot record and that could not have established
10 what he wanted to establish with it. David
11 Price would see that as fraud. I think that
12 that would be within the bounds of deception,
13 if you were discussing kidnapping by deception.
14 But I'm not a state prosecutor and he'S not
15 being prosecuted.

16 CHAIRMAN GRISELL: What's your
17 definition of fraud?

18 MR. LANDRITH: I think if you have a
19 duty to disclose things that you don't disclose
20 that that's fraud by omission. I think that
21 making statements to deceive somebody else or
22 cause something to happen that's beyond the
23 limits of your responsibility or duty to them
24 would be fraud. So if I tell you something
25 that is going to cause you to have to act a way

1 and somebody will lose something from that--
2 that difference of action based on what I have
3 told you I think that I've committed fraud and
4 I don't know of any-- let's see, I'll try and
5 wind up here.

6 James Bolden I did counsel on the way to
7 the pretrial order conference that I did not
8 know what the pretrial order conference was
9 about. I suspected it had something to do with
10 the issuance of summons because we issued them
11 after Sherri Price for the first time objected
12 to lack of being properly served or being under
13 the jurisdiction of the court. So I suspected
14 that as much and counseled him that probably
15 Magistrate O'Hara would have some substantial
16 criticism of me. And I didn't say that in a
17 negative way against Magistrate O'Hara. I
18 explained to him that it's Magistrate O'Hara's
19 job to see that he is adequately represented
20 and he wants to make sure that you are here, I
21 am sure. so that he can verify for himself that
22 you understand how you're being represented.
23 That'd all I have to say.

24 CHAIRMAN GRISELL: I know that Mr.
Hazlett may have some questions. I think the

1 panel has a couple three, but what we'll do is
 2 bring Judge O'Hara in, have him testify, and
 3 then once he's done we'll put Mr. Landrith back
 4 on the stand for any cross examination or
 5 questions by the panel. So you can step down,
 6 Mr. Landrith, for right now.

7

8

9

10

11

12

JAMES P. O'HARA,

called as a witness on behalf of the Panel, was

testimony, direct testimony, and cross-examination.

EXAMINATION

13

BY CHAIRMAN GRISELL:

14

Q. Would you please state your name?

15

A. Yes. James P O'Hara.

16

Q. And, Mr. O'Hara, what is your profession?

17

A. I am a U.S. Magistrate Judge in Kansas City,
 18 Kansas.

19

Q. Judge, you had been listed as a possible

20

witness in this matter involving Mr. Landrith,

21

who is the respondent. And one of the exhibits

22

in this matter is your report and

23

recommendation in the case of James L. Bolden

24

versus City of Topeka, Kansas. In that order--

25

which I'd ask that Mr. Hazlett put before you?

NORA LYON & ASSOCIATES, INC.

1515 S.W. Topeka Blvd., Topeka, KS 66612

Phone: (785) 232-2545

FAX: (785) 232-2720

1 A. I actually brought a copy with me.

2 Q. It's in the exhibits and I'll be referring to
3 and counsel probably will be, Bates numbered
4 pages, but in the order specifically it's page
5 11.

6 Correct.

7 Q. Okay. That exhibit has already been admitted,
8 but some questions have arisen during the
9 hearing concerning the comments in that order
10 and the panel, I know, is interested in letting
11 to you about that order within the bounds of
12 what you're willing to discuss and then afford
13 counsel the opportunity to ask you questions.
14 We preface any discussion of the matter with
15 you knowing that your thought process in
16 rendering this decision certainly isn't
17 something that we can inquire about, at least
18 that's the status of the law, you mayor may
19 not be willing to discuss that, but we
20 understand that we're restricted by that and
21 you don't have an obligation to tell us the
22 basis for a decision, at least that's our
23 understanding and we've discussed that with
24 counsel. What I'd like to do, Judge, is allow
25 counsel to ask you questions, if they have any,

1 and I know the panel has some questions
2 concerning your comments about the competence
3 of Mr. Landrith and the handling of the Bolden
4 matter.

5 A. Very well.

6 CHAIRMAN GRISELL: And. Mr. Landrith.
7 I would afford you the opportunity to ask the
8 Judge questions at this time.

9 Q. (BY CHAIRMAN GRISELL) Offered into evidence,
10 Judge, in addition to your order is a
11 transcript of the pretrial conference. I don't
12 know if you have that before you, but if any
13 questions are asked of you from that transcript
14 I would ask that counsel give you a copy of
15 that so you can refer to it.

16 A. I've actually brought a copy of that with me.

17 Q. Thank you, Judge.

18 CHAIRMAN GRISELL: Mr. Landrith.

19 DIRECT EXAMINATION

20 BY MR. LANDRITH:

21. Q. Judge OIHara, I'd refer to you page 1.7 and 18
22 of that transcript-- I'm sorry, that would be
23 page 41.

24 A. One moment, please. This is the transcript
25 from the hearing or the pretrial conference I

1 should say on November 20, 2003, correct?

2 Q. Yes, Your Honor.

3 A. Page 41, counsel?

4 Q. Yes.

5 A. Thank you.

6 Q. I have a question about that. At the top
7 paragraph-- incomplete paragraph at the top you
8 are discussing civil rights cases where parties
9 represent themselves. Did you have any before
10 you at that time on housing or City of Topeka--
11 where the City of Topeka was a defendant?

12 A. I'm not certain. At any given time, however,
13 that would be probably. I don't mean to be
14 vague, but by example I can think of at least
15 one, perhaps two cases that I currently have
16 pending against the City of Topeka involving
17 housing issues in which the plaintiff is pro
18 se.

19 Q. Do you know the caption or I mean, the names
20 of the plaintiffs?

21 A. One comes to mind, Lawrence Kelly.

22 Q. Yes, sir.

23 A. That's a currently pending case.

24 Q. Before this pretrial order conference took
25 place, did you instruct your assistant to

1 contact me and arrange for James Bolden to
2 attend?

3 A. I don't have a specific recollection of that,
4 but I suspect that did occur because typically
5 we do not request that represented parties
6 appear at a final pretrial, so I would be
7 inclined to believe yes.

8 Q. During **this** pretrial order conferencp., did you
9 have concerns about the summonses not being
10 iss~ed when it was timely to do so? That may
11 be too basic, that's an obvious. I'll withdraw
12 that question.

13 A. I'm not sure if I understood it, but--

14 Q. Would the failure to serve the defendants ¹¹¹
15 the case have been the reason why you would
16 have wanted the represented party's attendance
17 in this hearing?

18 A. That was among my concerns.

19 Q. In your capacity as a Magistrate for a
20 presiding judge, are you by nature more
21 concerned with thp Ppnpral Rules of Procedure
22 than the substantive arguments and matters that
23 you are overseeing for case management or
24 pretrial conferences?

25 A. Am I more concerned about the Rules of Civil

1 Procedure than the substance of a case?

2 Q. Is your position as a Magistrate more
3 ministerial in having the bulk of the Court's
4 role of seeing that the Federal Rules of civil
5 Procedure are being complied with being your
6 duty?

7 MR. HAZLETT: I'm going to object. I
8 don't see how this is relevant to the charges
9 against Mr. Landrith in this disciplinary case.

10 CHAIRMAN GRISELL: SU~td_i_1lt:::'U..

11 Q. (BY MR. LANDRITH) My-- would you have
12 interpreted my answers to questions about not
13 complying with the rule with evidence or
14 proffers of testimony about adverse
15 circumstances, would that information have been
16 largely irrelevant to you on whether or not the
17 rules had been complied with?

18 MR. HAZLETT: I'm going to object.
19 Object, it's a compound question.

20 CHAIRMAN GRISELL: Sustained.

21 MP.. LANDRITH: I'll try and reask
22 that.

23 Q. (BY MR. LANDRITH) Was the information about
24 the lack of resources for the plaintiff
25 relevant to your decision on whether or not the

1 rules had been complied with on service of the
2 defendants?

3 MR. HAZLETT: I'm going to object
4 because now he's asking the Judge to explain
5 why he made the decision he did, which is why--
6 I mean, his thought, I--Luce:::;, which 1::; wlrerL I
7 thought we were not supposed to ask.

8 CHAIRMAN GRISELL: Well, he can ask
9 it it's-- but we understood that the Judge may
10 not be willing to discuss it, so overruled.

11 THE WITNESS: Would the reporter
12 kindly read that question back? I want to make
13 sure I understand precisely what counsel is
14 asking.

15 (THEREUPON, the court reporter
16 read back the following question:

17 "Q. (BY MR. LANDRITH) Was the
18 information about the lack of resources for the
19 pldl.uLl.[[LelevctllL Lu YUUL r.leci.::::;iuHu wheLheL
20 or not the rules had been complied with on
21 service of the defendants?"}

22 A. Yes.

23 Q. (BY MR. LANDRITH) Before you were Magistrate,
24 were you in private practice?

25 A. Yes.

1 Q. What law firm did you work for before becoming
2 a Magistrate?

3 A. Shughart, Thompson, and Kilroy.

4 Q. Were you ever a solo practitioner?

5 A. Never.

6 Q. When you worked for Shughart, Thompson, and
7 Kilroy, did your resources in handling a case
8 include access to services of a paralegal, at
9 times; a secretary, a receptionist?

10 MR. HAZLETT: I'm going to object to
11 this line of questioning. I don't see the
12 relevance to the charges against Mr. Landrith.

13 CHAIRMAN GRISELL: Sustained.

14 Q. (BY MR. LANDRITH) Did you defend insurance
15 companies when you worked in private practice?

16 MR. HAZLETT: Object to the
17 relevance.

18 CHAIRMAN GRISELL: Sustained.

19 Q. (BY MR. LANDRITH) Did you ask me during the
20 pretrial order conference if I had malpractice
21 insurance?

22 A. Yes.

23 Q. Did you believe that a Kansas lawyer should
24 have malpractice insurance?

25 A. If your question is did I believe that it would

1 be a prudent thing for both the lawyer and the
2 lawyer's clients for the lawyer to have
3 malpractice insurance, the answer would be yes.
4 If your question is. was it legally required
5 that the lawyer have legal malpractice
6 insurance, the answer to your question is no.

7 Q. Did you believe because of my handling of this
case that ~ should have malpractice insurance?

9 A. I guess my general view of whether a lawyer
10 should have malpractice insurance was formed
11 independent of my concerns about your handling
12 of the Bolden case.

13 Q. Did you feel a duty to ask James Bolden-- James
14 Bolden questions directly to determine his
15 understanding of the events and the risks his
16 cause was being subjected to?

17 A. Yes.

18 Q. What was the basis for your concern?

19 A. Well, first, it's a hic case. And, secondly, I
20 was concerned that the case was-- irrespective
21 of what the merits of the claim might be, and I
22 had formed no judgment about whether the case
23 was meritorious or not at that point, but I was
24 concerned irrespective of whatever the case
25 might have, that the case might be dismissed

1 without an adjudication of the merits because
 2 of the conduct or the inactions of his counsel
 3 and, hence, I addressed him directly for that
 4 pl_lrp0~p.

5 Q. And what was the primary reason or reasons of
 6 my inactions that jeopardized whether the case
 7 was dismissed or not?

8 A. Well, first and foremost was the issue that
 9 came up shortly before the pretrial conference.
 10 If, for example, the most meritorious claims
 11 laid against the individually sued defendants,
 12 that is the non municipality defendants who
 13 were sued in both their official and individual
 14 capacity, I was confronted with the situation
 15 where this gentleman, who was unschooled in the
 16 law, and I'm referring to Mr. Bolden, might
 17 ~lfffF'r t.hF' loss of t.hosp o laims hpC'rillSP of t.hp
 18 failure of his counsel of record to take action
 19 that I thought was clearly indicated.

20 Q. Were the factual allegations that were the
 21 basis of the pretrial order part of the merits
 22 of the claim that you considered when you
 23 determined there was a risk to-- or a
 24 possibility of risk to Mr. Bolden's interest if
 25 individual defendants were dismissed?

1 A. I'm not sure if I understand your question.

2 Q. Am I correct in understanding that when you get
3 ready to have a-- hold a pretrial order
4 conference you've had both parties submit to
5 you a proposed pretrial order plan that
6 contains the factual allegations of each party
7 and the stipulated facts of both parties?

8 A. Yes. In that by 10cal rule and by scheduling
9 order the parties' lawyers are required to
10 jointly submit a proposed pretrial order to the
11 judge who is going to handle the pretrial
12 conference and that proposed order includes,
13 and has at least for the last couple of
14 decades, sections detailing each parties'
15 factual contentions and legal theories. So I
16 did read that material in preparation for that
17 conference.

18 Q. So that material would have been your basis for
19 determining that individual defendants had
20 been-- had claims made against them and what
21 the basis of those claims were?

22 A. Was a basis, it was not the only basis.

23 Q. So that document would be complete for
24 determining whether or not some of those claims
25 were in the individual or official capacity,

1 would it not?

2 A. what do you mean by complete?

3 Q. By the time the case is laid out in a pretrial
4 order, a proposed pretrial order is submitted
5 by both parties, you would have enough
6 information there to determine if claims were
7 being made on individuals in their official
8 capacity or their individual capacity, wouldn't
9 you?

10 A. Hopefully. I mean-- and I don't~ mean to be coy
11 in addition to the proposed pretrial order,
12 which is simply a draft document, if I or
13 another judge conducting the pretrial
14 conference is unclear about what claims are in
15 the case or *lie* outside of the case, we would
16 typically look at the most recent complaint in
17 this case. I think we had a second amended
18 complaint. And we'd look at the most recent
19 answer to that pleading. And in that
20 oftentimes-- indeed oftentimes we're called
21 upon to police whether what counsel try to
22 insert into a pretrial order accurately
23 reflects what had been pled prior to that time.
24 Q. So you would usually be pretty familiar with
25 the parties' claims by that time?

1 A. Hopefully, yes.

2 Q. Is it possible that James Bolden's claims
3 against named individuals that were employees
4 of the City of Topeka were entirely official in
5 capacity?

6 MR. HAZLETT: I'm going to object. I
7 mean, Judge O'Hara didn't even hear the actual
8 trial, wouldn't know the answer to that
9 question.

10 MR. LANDKLEIGH: I believe he would.

11 MR. HAZLETT: Or if the testimony
12 occurred.

13 CHAIRMAN GRISELL: So the objection
14 is?

15 MR. HAZLETT: It's not within the
16 knowledge of the witness.

17 MR. LANDRITH: I'm asking him about
18 his knowledge of the pleadings that he
19 evaluated before the pretrial order conference.

20 CHAIRMAN GRISELL: Okay. I'll
21 overrule.

22 A. It is my recollection, Mr. Landrith, that as of
23 November 20, 2003, the second amended complaint
24 that you'd filed on behalf of Mr. Bolden
25 asserted claims against, memory serves, six

1 individuals and asserted those claims against
2 them in both their official capacity and in
3 their individual capacity. I don't know what
4 happened subsequent to the final pretrial
5 conference with respect to how the claims were
6 ultimately submitted to the jury for
7 determination.

B Q. (BY MR. LANDRITH) Isn't it true that the facts
9 alleged in the Kansas District form for
10 pretrial order stated only official capacity
11 averments of fact?

12 A. I don't believe that's accurate. You're
13 talking about the pretrial order that was
14 submitted in draft form to me prior to the
15 pretrial conference?

16 Q. Yes, sir.

17 CHAIRMAN GRISELL: Let me-- Mr.
18 Landrith, the issue of the judge's
19 understanding of the facts and his-- or the
20 trial court judge's ultimate decisions in this
21 matter is of record and we're not here today to
22 go over the judge's consideration of those
23 issues at the pretrial and have you argue that
24 he was wrong or him tell you that he was right.

25 MR. LANDRITH: I'll withdraw that

1 question and I'll try for a new line of
2 questioning. Magistrate O'Hara has
3 considerable expertise and-- but I can't make
4 use of that, I'm sure, without getting into the
5 area that we're going to question him about, so
I won't be GoINg there and I'II move on to
7 another question.

8 Q. (BY MR. LANDRITH) If the nature of the factual
9 averments or allegations of James Bolden's
10 claims were only in their official capacity,
11 there wouldn't be a monetary loss to or a risk
12 of a lesser damage award to James Bolden if he
13 only had a surviving claim against the City for
14 the conduct-- the official conduct of those
15 officials?

16 MR. HAZLETT: I'm going to object
17 because that goes to the underlying litigation
18 in the Bolden case, doesn't have anything to do
19 with the allegations against Mr. Landrith or--
20 which are essentially his competence in
handling the service of process in the federal
22 case and the comments made by the Judge in his
23 report and recommendation.

24 MR. LANDRITH: I believe that
25 Magistrate O'Hara's basis in the transcript and

1 then his recommendation and ruling is based on
 2 a perception that I had endangered a
 3 substantial judgment interest of James Bolden
 4 and he rightly was concerned a great deal about
 5 that. But I'm now trying to question him,
 6 b~cause h~ has ~xtensive knawled~e about what
 7 an insurable risk is, to see if there was
 8 dCLu.a.lly a. poLenLla.l /OL- a. mo ne t.a r y da.mdge
 9 difference in award against the city and
 10 against the city and some named individuals in
 11 their official capacity.

12 CHAIRMAN GRISELL: Weill 1111 sustain
 13 the objection. I believe the Judge has
 14 testified that he was concerned about the
 15 handling of the matter by counsel and he wanted
 16 to ensure, by asking Mr. Bolden questions, that
 17 he understood what was transpiring and that
 18 possibly some of the claims that had been filed
 19 aaainst individually named defendants probably
 20 were not going to proceed because of lack of
 21 ~erv~ce of ~ummOll~e~.

22 Q. (BY MR. LANDRITH) Did your order state that
 23 there were, for that stage of the trial,
 24 meritorious claims remaining for James Bolden
 25 against the City of Topeka?

1 A. I don't believe my report and recommendation,
2 Mr. Landrith, made any finding as to whether
3 any claim asserted by Mr. Bolden had merit or
4 nnt_

5 Q. Did you-- was it your-- your decision that--
6 did you make any decisions about whether claims
7 were sufficient or should remain as part of the
8 pretrial order in your report and
9 recommendation?

10 A. Yes. In the limited sense that I concluded
11 that absent valid issuance of process and
12 service of process on the individual defendants
13 that those claims would lack merit in the sense
14 that it wouldn't even be necessary to consider
15 them. But I did not make any determination as
16 to whether those claims or any other claims in
17 the case had merit in the sense of being able
18 to withstand a motion for summary judgment or a
19 motion to dismiss since that would be outside
20 of my jurisdiction, which is limited by
21 statute, Federal Rules of Civil Procedure and
22 local rule.

23 Q. Would you make-- or did you make the
24 determination that a pretrial order might be a
25 lesser number of claims than a plaintiff's

1 complaint?

2 A. In certain limited circumstances, basically
3 two. One, if we have a case where the parties
4 have consented to my making dispositive
5 rulings, which this case did not involve that
6 sort of consent. And then secondly, the
7 situation that I alluded to earlier where in
8 the course of framing the pretrial order I
9 would occasionally be called upon to make a
10 determination as to whether a claim that has
11 been articulated during the pretrial conference
12 procedure whether in the order or orally was
13 properly pleaded before. For example, if
14 somebody had pleaded a case based on contract
15 and then they get to the final pretrial
16 conference and they say geez we think
17 negligence would be a neat theory of relief to
18 include in the pretrial order. If the opposing
19 party were to object to the negligence theory
20 of relief, I would typically recite in the
21 pre-trial order that that's not a claim that's
22 going forward to trial and I would note that if
23 somebody wants to preserve it for review by the
24 District Judge or by the Circuit Court of Appeals
25 what happened on that issue. So in certain

1 limited circumstances I've just described I
2 would make that kind of determination as to
3 what is going to proceed.

4 Q. In this proposed pretrial order, is it true
5 that you recommended more claims proceed than
6 ultimately Judge Vratil decided should remain
7 in the pretrial order?

8 A. Yes, albeit for different reasons.

9 Q. Did you make the decision in this case to grant
10 leave to amend the complainL Lo include L:leH.Lll~
11 that were part of an issue before the Kansas
12 Court of Appeals?

13 A. I'm not sure if I understand your question.
14 Can you try it again, please?

15 Q. In federal court, am I correct in understanding
16 that by local Kansas rules that to amend a
17 complaint you would normally have to seek leave
18 of the court and provide an example of the
19 amendment before you had permission granted to
20 amend the complaint. Is that correct?

21 Unl~RR ~h~ rlefendant has not yet filed an
22 answer or a motion for summary judgment that is
23 true.

24 Q. Yes, sir. And one of-- a couple of amended
25 complaints in this case arose, did it not,

1 because additional claims that were still
2 somewhere in the Kansas court system were added
3 to this federal action. Is that correct?

4 A. I don't know the answer to all your question.
5 I do know that, I believe, Judge Vratil granted
6 leave to Mr. Bolden to file a first amended
7 complaint as a result of the injunctive relief
8 proceedings that failed in the federal district
9 court. And I do recall that later in the case,
10 upon motion by Mr. Bolden, I granted leave for
11 him to file a second amended complaint, which
12 motion was not opposed by the defense.

13 Sitting here today I frankly don't recall
14 what claims were sought to be added via the
15 second amended complaint and I have no clue and
16 suspect I never had any clue as to whether
17 those claims that were added to the case via
18 the second amended complaint bore any
19 L-eldLluu::;hlp La what, had previously been
20 pleaded in the Kansas State court systems since
21 that record-- the later record would not be
22 before me.

23 Q. Would your decision on whether or not to amend
24 a complaint in those circumstances, if you were
25 making that decision, be one for form and

1 sufficiency of stating a complaint and
2 compliance with rules, would that be the
3 primary basis for doing so?

4 MR. HILL: T.F. TIT. I'm going to object on
5 the basis of relevancy.

6 CHAIRMAN GRISELL: Sustained.

7 Q. (BY MR. LANDRITH) Did you instruct that this
8 pretrial order and recommendation that you made
9 be mailed certified mail to James Bolden
10 directly?

11 A. Yes.

12 Q. Did you make-- did you receive from me shortly
13 after this pretrial order conference a letter
14 substantiating or providing an explanation of
15 the law for some of the issues that arose or
16 that you questioned me about during the
17 pretrial conference?

18 A. I believe the answer to your question is yes,
19 if what you're referring to is the letter
20 that-- that I received subsequent to the
21 November 20 pretrial conference, which you sent
22 in response to a revised draft of the pretrial
23 order that I circulated on December 2, 2003.
24 But if what you're referring to is a letter
25 outside the context of the draft pretrial order

1 I sent out for commentary by both sides'
2 lawyers, I don't recall.

3 Q. So both parties' counsel had input on a
4 proposed draft of this order that *you* prepared
5 after this pretrial order conference?

6 A. That.' s correct.

7 Q. Do you have knowledge of statistics on civil
8 rights causes before Kansas District Court?

9 MR. HAZLETT: Objection, relevance.

10 CHAIRMAN GRISELL: Sustained.

11 Q. (BY MR. LANDRITH) Were there other bases for
12 your belief that my representation of James
13 Bolden was incompetent, besides the failure to
14 comply with the summons or the responsibility
15 of serving those on the parties?

16 A. Yes.

17 Q. Would you list those for us?

18 A. Yes. Principally they would be as follows.
19 The rambling, disjointed, and sloppy nature of
20 the pleadings which you had filed in the case.
21 Most notably the original complaint, the motion
22 for injunctive relief, the first amended
23 complaint, and the second amended complaint.

24 The next basis would be the fact that no
25 discovery was timely sought by the plaintiff

1 during the time allotted under the scheduling
 2 order that was entered only after soliciting
 3 input from both you and defense counsel.
 4 Although, I am mindful that oftentimes there
 5 are strategic, tactical, or *economic*
 6 considerations that would dictate whether and
 7 how much discovery is done in any particular
 8 case. In this particular case I do seem to
 9 recall that you essentially, for whatever
 10 reason, elected not to do any discovery **until**
 11 it was too late for that discovery to be
 12 **called by** the **opposing** side.

13 And then the last major category I think
 14 would just be the way in which you conducted
 15 yourself during the final pretrial conference
 16 itself, which was-- and I don't mean to be
 17 uncharitable. It was the worst performance
 18 I've seen by a lawyer in the 25 years that I've
 19 now been out of law school.

20 Q. Is it true that discovery-- voluntary discovery
 21 continued under the terms of the case
 22 management agreement as modified later in the
 23 pretrial order?

24 A. I'm not sure.

25 Q. I~ 1L LLU~ LhciL ~dLL uf YUUL pLeLL.i.al order

1 acknowledges that the plaintiffs had 373
2 documents to submit into evidence?

3 A. I don't recall the number. I do recall in the
4 pretrial order that there were many, many
5 documents that you and defense counsel, Sherri
6 Price, agreed would be either treated as
7 business records under the Federal Rules of
8 Evidence or even just stipulated into evidence
9 and I would imagine that those would include
10 some of the documents that you refer to.
11 Whether it was 373, I have no idea.

12 Q. Is it true that I made a request upon the city
13 for additional discovery with ten-- with--
14 before the expiration of the discovery period,
15 the enforceable discovery period?

16 A. I think I understand your question. I think
17 the record confirms that you served discovery
18 requests before the deadline for the completion
19 of all discovery stated in the scheduling
20 order. But allowing the responding party the
21 30 days plus three for mailing provided for by
22 the Federal Rules of Civil Procedure, my
23 recollection is that you failed to serve those
24 written discovery requests in a way that would
25 be defined as timely under the scheduling order

1 that was in place and that's the basis for my
2 ultimately having declined to compel the
3 defendants to respond to that discovery.
4 Whether they provided you some information
5 formally or voluntarily beyond that, as often
6 happens, I don't know.

7 Q. When you describe other pleadings, besides the
8 preLrlal order, you stated they were rambling,
9 disjointed, are you referring to that they
10 contained information that was irrelevant to
11 you and the decisions that you were making?

12 A. In part, yes.

13 Q. Would some of that information that was
14 irrelevant to you be harms inflicted on the
15 plaintiff or his witnesses?

16 A. They might have been harm that either Mr.
17 Bolden or you thought had been inflicted upon
18 him and that were **the** basis of those
19 allegations. Whether any harm was in fact
20 inflicted, I have no idea.

21 Q. Would the affidavit6 that 6upported
22 intimidation of witnesses that were on the list
23 of witnesses for this case be relevant to some
24 of the information a plaintiff could include in
25 motions before the court?

1 MR. HAZLETT: I'm going to object,
2 basis of relevance.

3 CHAIRMAN GRISELL: Sustained.

4 Q. (BY MR. LANDRITH) Did you state in another
5 federal case that-- did you cite your ruling in
6 this case that I showed a lack of competence?

7 A. I don't recall that. I may have. I mean, did
8 I I'm not sure if I'm understanding your
9 question. Did I cite the report and
10 recommendation in the Bolden case in another
11 federal case?

12 Q. Did *you* cite this order or independently state
13 that I was incompetent in an order or decision
14 made by yourself in another federal case with
15 unrelated parties and not me as counsel?

16 A. I don't recall. I may have.

17 Q. Are you familiar with the case-- I think it has
18 a funny caption, United States--

19 CHAIRMAN GRISELL: Mr. Landrith, if
20 you have an order or a finding by this Judge
21 that refers to his report and recommendation in
22 the Bolden case, give it to him to look at and
23 you can ask him questions about it.

24 MR. LANDRITH: It's not the Bolden
25 case, it's United States-- United States ex reI

1 David Price versus some Kansas judges. I think
2 the first one is McFarland.

3 CHAIRMAN GRISELL: Involving Judge
4 O'Hara?

5 MR. LANDRITH: There are several
6 cases ~n that ve~n. One of those I understood
7 that Magistrate O'Hara quoted his order in this
8 case about my competency.

9 CHAIRMAN GRISELL: Well, do you have
10 a copy of the order that you're referring to
11 that you can give to the Judge to look at so he
12 can refresh his memory?

13 MR. HAZLETT: In the meantime I'll
14 just object to this line of questioning because
15 I don't see how it's relevant to the Judge's
16 opinion in Mr. Bolden's case.

17 CHAIRMAN GRISELL: Other than itls a
18 firmly held opinion that apparently the Judge
19 is willing to express in another case.

20 MR. LANDRITH: I don't have that here
21 today and I'm not going to offer it as an
22 exhibit.

23 CHAIRMAN GRISELL: Then let's proceed
24 to another line of questioning.

25 MR. LANDRITH: I have no further

1 questions for this witness at this time.

2 CHAIRMAN GRI8ELL: Thank you. Mr.
3 Hazlett.

4 CROSS EXAMINATION

5 BY MR. HAZLETT:

6 Q. Your Honor, thank you for coming today. I just
7 have a couple questions. When asked if you
8 w~ntcd Mr.-- or rcqucotcd Mr. Bolden to appear
9 at the pretrial conference, you indicated, in
10 response to Mr. Landrith's question, that you
11 probably did, why would you have done that?

12 A. Because I was concerned that Mr. Bolden might
13 lose a meritorious claim.

14 Q. And you indicated in response to a question
15 from Mr. Landrith that you did instruct your
16 administrative assistant to send your report
17 and recommendation to Mr. Bolden by mail, why
18 would you have done that? First of all, let me
19 ask you, is that out of the ordinary?

20 A. Yes.

21 Q. And why would you have done that?

22 A. I wanted to ensure, as much as possible, that
23 Mr. Bolden, who struck me as a very nice fellow
24 during the pretrial conference, could pursue
25 his claims if he wanted to do so. He had

1 indicated to me during the final pretrial
2 conference that he had not had much success
3 finding another lawyer to take on his case and
4 that Mr. Bolden-- excuse me, Mr. Landrith was
5 the only person who was willing to aggressively
6 pursue it and it was clear to me that Mr.
7 Bolden wanted to continue pursuing the case.
8 For reasons we've discussed at length, I had
9 some real concerns about whether Mr. Landrith
10 was competent to pursue the claims and I wanted
11 Mr. Bolden to be able to make a decision
12 whether he might be better off either
13 representing himself or trying to persuade
14 another lawyer to take over the case.

15 Q. In response to Mr. Landrith you commented on a
16 number of different areas and your opinion as
17 to the competency of Mr. Landrith's
18 representation of Mr. Bolden in the case before
19 you, did you not?

20 A. Correct.

21 Q. Are you familiar with the Kansas Rules of
22 Professional conduct?

23 A. I am.

24 Q. Specifically Rule 1.1 on competency?

25 A. Yes, Sir.

1 Q. In your opinion, did Mr. Landrith's
 2 representation of Mr. Bolden meet the standard
 3 set out in KRPC 1.17

4 A. No, sir.

5 Q. You recall that Brian Molene investigated this
 m::ITFY f("lr ("lllr offici??

7 A. I now do.

8 Q. You actually met with Mr. Molene a.L oue 1-'u.iuL
 9 in time I believe, did you not?

10 A. I'm not sure if we met in person or by phone.
 11 I remember conferring with him about the case.

12 Q. Okay. His report has been offered and accepted
 13 as an exhibit in this case. I want to read one
 14 little portion of it to you written by Mr.
 15 Molene. IIn a personal interview Judge O'Hara
 16 expressed a certain compassion of Mr. Landrith
 17 noting his lack of experience and mentoring
 18 support. II Do you recall making that statement
 19 r.O r_hp--

20 A. I did. I do now recall that we met ~n person.
 21 I think at that time I was still coming oveL Lv
 22 Topeka and still-- to some extent, but I think
 23 we had lunch together and visited in person in
 24 a restaurant here in town. But I did express
 25 that comment or sentiment to Mr. Molene during

1 that interview.

2 Q. I just have-- yesterday-- I just have couple
3 more questions. Yesterday I was questioning
4 Mr. Landrith on the subject of whether he felt
5 there was any racial motivation in your
6 decision in the Bolden case and my last
7 question to him was, "So you think Judge O'Hara
8 was acting the way he did because he was
9 black?" And Mr. Landrith's response was,
10 Yes." I'd like to give you the opportunity to
11 respond to that obviously pretty serious
12 allegation.

13 A. Well, I could go on at some length and get
14 upset. I'll just state that I respectfully
15 disagree with the inference that he drew.

16 Q. Okay. Thank you, Your Honor.

17 CHAIRMAN GRISELL: Does the panel
18 have questions of Judge O'Hara?

19 MR. SCHMITT: I have no questions.

20 MS. HARRIS: I don't think so.

21 EXAMINATION

22 BY CHAIRMAN GRISELL:

23 Q. Judge, at the time that you had the pretrial
24 conference in this matter, how long had you
25 been a Federal Magistrate.

1 A. Three years and seven months.

2 Q. It's been characterized by respondent that
3 the-- what transpired at the pretrial
4 conference and the resulting report and
5 recommendation were in part a result of your
6 inexperience as a Federal Magistrate. Do you
7 think the fact that you had been a Magistrate
8 for three years led to any of the decisions
9 and/or findings in the report?

10 A. I mean, if you-- what you mean is did I come
11 down hard on Mr. Landrith because I was
12 relatively new to the bench, I would say no.

13 Q. Is it common for you, Judge, to comment in
14 reports and recommendations on the conduct of
15 counsel in the case up to the point that you
16 have in the pretrial conference?

17 A. Is it common, no, because we do very few
18 reports and recommendations in our district
19 because we believe it inefficient in terms of
20 dividing responsibility among the district
21 judges and magistrate judges. I bet I've--
22 other than perhaps Social Security matters of
23 which would probably be no more than 15 or so,
24 in the roughly five years I've now been on the
25 bench I bet I've filed fewer than five reports

1 and recommendations. And I'm confident this is
2 the only one in which I've ever felt it
3 necessary to comment on the performance of
4 counsel.

5 Q. Had you had any cases with Mr. Landrith as
6 counsel prior to the Bolden matter?

7 A. I'm not sure. I don't-- none that had
8 necessitated or involved the amount of handling
9 that this one had, but there may have been
10 other cases. ~ know he'S had at least-- he
11 indicated he had a few other cases in federal
12 court and whether I had those for purposes of
13 pretrial management at this point I really
14 don't recall, but this was the-- my most
15 memorable experience with him. I mean, if I
16 had others, they don't come to mind.

17 He-- Mr. Landrith asked me about a later
18 case where I may have commented on it and that
19 was, I believe, subsequent to this case, but I
20 don't recall much about that case. I mean, at
21 anyone time I've got 250 cases that are kind
22 of *moving* through the pipe and in the last five
23 years I've probably handled well in excess of a
24 thousand cases. So I don't come here today
25 claiming to have 100 percent recall of the

1 procedural details of each of these cases.

2 Q. Judge, I assume from time to time that you get
3 lawyers in your matters that have little
4 experience, correct?

5 A. Correct.

Q. At the time that Mr. Landrith appeared before
7 you at the pretrial conference, he had had his
8 license for approximately one year. Did it
9 appear to you that the level of professionalism
10 and understanding as an attorney exhibited at
11 the pretrial was simply a result of
12 inexperience or did it appear to **be**, as you've
13 indicated in the report, lack of understanding
14 of procedure and/or substantive law?

15 A. I think much more the latter than the former.
16 We have young lawyers, brand-new lawyers in our
17 court daily and as much as possible we try to
18 make that, I guess, a not unpleasant experience
19 for them when they come to federal court. And
20 we also have at any given time probably 20 or
21 30 cases where we've got people that are just
22 representing themselves that have no
23 familiarity with the procedures and we try to
24 at least, for want of a better term, cut them
25 some slack. But the level of difficulty that I

1 was experiencing with Mr. Landrith was much
2 different than just dealing with novice
3 lawyers.

4 I mean, when I was in private practice
5 one of the things I was in charge of doing at
6 different times was hiring new lawyers and then
7 later was in charge of supervising those
8 associates as they moved through the process to
9 when they became members of the firm. So I'm
10 mindful of the [deL LhdL new Id.wyer::;UUil'L k.llUW
11 very much, but this was a different situation
12 than just problems of a new lawyer. I've never
13 had a brand-new lawyer express views about
14 matters of procedure that I had encountered
15 with Mr. Landrith, just never had received that
16 in my private practice experience or since. I
17 had crossed over to the other side.

18 CHAIRMAN GRISELL: Panel, have any?

19 MR. SCHMITT: I have no questions.

20 MS. HARRIS: No questions.

21 CHAIRMAN GRISELL: Mr. Landrith,
22 within the scope of what Mr. Hazlett asked
23 and/or the Panel, do you have any further
24 inquiry?

25 REDIRECT EXAMINATION

1 BY MR. LANDRITH:

2 Q. Are you aware that you made rulings, Your
3 Honor, in another case I had where you were the
4 Magistrate assigned to it that was Medical
5 Supply versus General Electric?

6 A. If you're representing that, I'm willing to
7 accept that as true. I just don't know that
off the top of my head

9 Q. Do you recall whether or not, irregardless of
10 whether or not I was-- do you recall that I was
11 the plaintiff's counsel in the case, do you
12 recall that you denied discovery in that case
13 too?

14 A. That's not refreshing my memory. I don't
15 recall.

16 Q. Would you deny discovery in a case because of a
17 pendency of a dismissal motion by the opposing
18 party?

19 A. Well, I have. But as a general proposition the
20 precedent in our district and my policy that
21 the mere pendency of a dispositive motion by
22 itself is not a basis to stay discovery.
23 There's a three part test that we go through to
24 determine whether a particular case discovery
25 ought to be stayed until that dispositive

1 motion is ruled.

2 Q. But in that case, wasn't it true that Medical
3 Supply's discovery was stayed not on the basis
4 of any action or inaction of mine, but solely--

5 MR. HAZLETT: I'm going--

6 CHAIRMAN GRISELL: This isn't
7 relevant. I simply asked the question if the
8 Judge had had any prior dealings with you as
9 counsel.

10 MR. LANDRITH, I'll wrap it up.

11 CHAIRMAN GRISELL: Thank you.

12 Q. (BY MR. LANDRITH) Would some of the
13 information in those pleadings indicate a basis
14 for your understanding that my inexperience was
15 substantially less than an attorney that had
16 been an attorney for a year because of the
17 adversity I was under?

18 MR. HAZLETT: I'm going to object as
19 a compound question. When he says "those
20 pleadings," he doesn't identify which pleadings
21 he's talking about.

22 CHAIRMAN GRISELL: Sustained.
23 Although, I think the question was whether the
24 pleadings filed in the Bolden matter reflected
25 that Mr. Landrith was an inexperienced

1 attorney, was that the question?

2 Q. (BY MR. LANDRITH) Did the pleadings in what
3 you have stated as rambling or disjointed
4 provide you with information that might have
5 led you to have a basis for concluding that
6 even though I had been a licensed attorney for
7 a year that I had not been practicing regularly
8 on cases except for James Bolden's case. Is
9 that correct?

10 MR. HAZLETT: I'm going to object, a
11 compound question. It's almost impossible to
12 understand.

13 A. I don't understand the question. I mean, I'd
14 be happy to answer any questions you have, sir,
15 but I can't-- I don't understand what the heck
16 you're talking about.

17 CHAIRMAN GRISELL: Sustained.

18 Q. (BY MR. LANDRITH) Wouldn't having any income
19 or electricity be an impediment in your mind to
20 being able to conduct a law practice?

21 MR. HAZLETT: I'm going to object,
22 relevancy.

23 CHAIRMAN GRISELL: Sustained.

24 Q. (BY MR. LANDRITH) would any of that
information about my circumspectance in Lhu...

1 pleadings be relevant to your decision whether
2 I had experience commensurate with somebody
3 with a year's worth of experience?

4 A. Possibly under certain circumstances and if
5 certain procedural formalities had been
6 observed. For instance, had *you* filed a motion
7 to extend discovery or had you filed a motion
8 to extend the time for service of process based
9 on affidavits that would establish that you
10 were without the basic food, shelter, et
11 cetera, I would imagine under those
12 circumstances that it would not only be
13 possible, but likely that I would have
14 considered extending the time for discovery or
15 extending the time for service of process.

16 But with that said, sir, the mere fact
17 that a lawyer files rambling pleadings during
18 the course of a case and then later comes into
19 a final pretrial conference after discovery is
20 closed and suggests that his life is a mess,
21 under that circumstance I would not extend
22 discovery and I would not extend the time for
23 service of process.

24 Q. Isn't it true that I did not come into the
25 pretrial order conference saying my life was a

1 mess and I *did* not discuss anything relevant to
2 that?

3 A. You didn't have to say it, *it* was apparent to
4 me from your conduct during the pretrial
5 conference.

6 Q. Was any of that information that was in the
7 pleadings that were rambling considered by you
8 just now when you told the panel that in your
9 estimation I was worse than an inexperienced
10 lawyer?

11 A. Yes.

12 Q. So information about my circumstances or the
13 circumstances of my client that was irrelevant
14 for the purpose you were evaluating it for *in*
15 the proceedings before *you*, was part just now
16 when you answered to the panel that my
17 experience wasn't equal to-- or that my
18 professional conduct wasn't equal to an
19 inexperienced lawyer in your estimation of what
20 an average inexperienced lawyer's level of
21 experience is?

22 A. Yes. I mean, in the sense that if-- if a
23 pleading of that sort had been put on my desk
24 by an intern from ODe of the local law schools
25 after his or her first year of law school in my

1 current position or had it been put on my desk
 2 by a first year law clerk while I was still in
 3 private practice, that intern and clerk
 4 probably would be summarily fired as opposed to
 5 worked with any further because the quality or
 6 the lack of quality was so appalling that there
 7 was nothing salvageable.

8 Q. Sir, would that be the basis for your
 9 professional responsibility standard would be
 10 people like that who may have been interns or
 11 people newly admitted to the bar that work with
 12 you .LH YUUL fILIII?

13 A. I'm not sure if I understand your question.

14 Q. In your example you gave of a first year intern
 15 that might have filed a similar pleading that
 16 there was nothing salvageable, they would have
 17 been summarily fired. Is your experience
 18 hiring attorneys or working with new law
 19 graduates at Shughart, Thompson, and Kilroy the
 20 basis for your-- part of your standard of
 21 professional conduct that you feel I did not
 22 meet?

23 A. Well, if I'm understanding your question, the
 24 interns that we have access to through the
 25 LoCaL id.W sChroOLs conne in a lot of different

1 levels of academic quality. And we have some
2 that are near the very top of their class and
3 we have some that are literally at the very
4 bottom. When I was in private practice I think
5 in the main we enjoyed a situation where we
6 were typically able to hire people much closer
7 to the top than the bottom of the class. But I
8 meant to include in my comments earlier the
9 whole range of first year students, from those
10 in the bottom part of the class to those in the
11 top ten percent. And what I meant to convey
12 and perhaps didn't do so very artfully is the
13 quality of the written submissions by you in
14 the Bolden case and your conduct in handling
15 the pretrial conference in my judgment, and
16 realizing this is somewhat subjective, fell far
17 below anything I've ever seen from a very
18 inexperienced first year intern near the bottom
19 of his or her class.

20 Q. Wouldn't it be true in that example that a
21 first year, second year law student in that
22 example in a pleading would be largely rule
23 based or rule driven and not offer additional
24 information regarding adversity or problems
25 with the likelihood that witnesses could not

1 testify without intimidation or harassment?

2 MR. HAZLETT: Object to relevance.

3 CHAIRMAN GRISELL: I donrt know what
4 the question is. It's compound, it's
5 ambiguous, and I don't think the witness needs
6 to answer the question.

7 Q. (BY MR LANDRITH) Would a first year law
8 student base their pleading entirely or solely
9 on rules?

~0 A. I would hope not.

11 Q. Before you you had myself that you judged to be
12 incompecenL, as you stated earlier, not
13 because-- so much because I was inexperienced,
14 but because I didn't have an understanding of
15 the law, specifically the summons that wasn't
16 issued to the opposing party. Isn't it true
17 that I had an independent basis in case law
18 supplementing my argument that a person
19 appearing, without qualifying their appearance
20 or limiting their appearance, brings that party
21 into jurisdiction under the court if the court
22 is able to use an alternative state rule?

23 MR. HAZLBTT: I'm going to object
24 because all of that-- that is in the report and
25 recommendation. Those argumen~s were made.

1 Judge O'Hara made his decision.

2 MR. LANDRITH: I'm trying to ask in
3 the second part of this where he de-emphasized
4 inexperience and he said the major part was my
5 lack of understanding of the law and hers
6 having expectations that I didn't meet based on
7 his understanding of the rules, rules that I
8 researched.

9 THE WITNESS: May I answer this
10 question?

11 MR. HAZLETT: I'll withdraw my
12 objection then.

13 CHAIRMAN GRISELL: We've discussed
14 the issue. Certainly.

15 A. Sir, I think you did make an argument. And in
16 my judgment that argument was legally and
17 factually frivolous.

18 Q. And you made--

19 A. The state of the record in that case was that
20 Sherri Price entered her appearance on behalf
:21 of the city and she did not qualify her
22 appearance, irrespective of the fact that the
23 city had not been favored with process or
24 service of that process. And I found, I think,
25 in that report and recommendation and noted it

1 in the draft pretrial order that she had
2 effectively waived any objection she had on the
3 basis of process or service of process. And
4 she indicated in the final pretrial conference
5 she didn't care and tha~ was fine. I figured
6 she made a practical judgment to go forward
7 with the caBe on behalf of the city.

8 But if what yourre suggesting, sir, is
9 that there was any good faith basis in that
10 record for you to make the argument that any of
11 the six individually named defendants in the
12 second amended complaint had somehow waived
13 process or service of process through an
14 attorney making an unqualified entry of
15 appearance, I would flatly reject that. I
16 think that argument that you made was and
17 remains frivolous.

18 Q- I understand that and you did reject that, sir.
19 But unlike your first year law student that you
20 gave an example, I alBo had an independent
21 basis of City Code for Topeka that says the
22 city attorney shall represent every city
23 employee?

24 CHAIRMAN GRISELL: Okay. Mr.
25 Landrith, I donlt know if you understand what

1 welve discussed, but we're not going to go into
2 relitigation of the issue of service. You made
3 your arguments, the Judge ruled on it, it's
4 part of the record. And we're not going to go
5 back and forth with this academic discussion.

 MR_ LANDRITH~ I'll stop.

7 CHAIRMAN GRISELL: Excuse me. The
8 issue is whether or not this witness felt that
9 you were competent in your handling of the
10 matter and we have thoroughly discussed it and
11 we're not going to discuss the legal issues
12 pertaining to the summons any longer. Do you
13 understand that?

14 MR. LANDRITH: Yes, sir. I'd like
15 leave of the Court to ask if the frivolousness
16 of those arguments are the basis for his--

17 CHAIRMAN GRISELL: He's given the
18 basis of his opinion.

19 MR. LANDRITH: All right. No further
20 questions.

21 CHAIRMAN GRISELL: Do you have any
22 further inquiry?

23 MR. HAZLETT: Absolutely not.

24 CHAIRMAN GRISELL: Panel have any?

25 MR. SCHMITT: No.

1 MS. HARRIS: No.

2 CHAIRMAN GRISELL: Thank you, Judge,
3 for appearing here today at our request, we
4 appreciate it.

5 THE WITNESS: You're most certainly
6 welcome. I wish you well. Mr. Landrith.
7 irrespective of what happens. I want you to
8 understand I take no pleasure in this, but I
9 respect what these folks are charged with in
10 handling here. Thank you.

11 MR. LANDRITH: Thank you very much.

12 CHAIRMAN GRISELL: The Judge was
13 appearing at our request and he is released by
14 the Panel from any further attendance. Thank
15 you.

16 THE WITNESS: Thank you very much.

17 CHARIMAN GRISELL: Let's take about a
18 ten-minute break if that's okay.

19 (THEREUPON, a short recess was had)

20 CHARIMAN GRISELL: Mr. Landrith, at
21 the time that we had Judge O'llara take the
22 stand you were still testifying. Do you have
23 additional testimony that you wish to offer?

24 MR. LANDRITH: I have no additional
25 testimony to offer.

1 CHAIRMAN GRISELL: Okay.

2 MR. LANDRITH: I rest my case.

3 CHARIMAN GRISELL: I think the panel
4 may have had some questions of you and you're
5 sworn if you can simply stay there if it's okay
6 with the court reporter. Did you have some
7 further inquiry of--

8 MR. HAZLETT: I did then, but I've
9 changed my mind, I don't have any further
10 questions.

11 MR. SCHMITT: I don't have any
12 questions.

13 CHAIRMAN GRISELL: It doesn't appear
14 that Mr. Hazlett has any cross examination or
15 that the Panel has any questions. Did you have
16 any other witnesses that you intend to call?

17 MR. LANDRITH: NO, sir. I rest my
18 case for the defense.

19 CHAIRMAN GRISELL: Thank you. Mr.
20 Hazlett, do you have any rebuttal witnesses
21 that you intend to call?

22 MR. HAZLETT: No, I do not.

23 CHAIRMAN GRISELL: Okay. At this
24 time then I would afford counsel the
25 opportunity to make closing arguments on

1 whether or not there have been any violations
2 of KRPC based upon the allegations in the
3 complaint. After we hear arguments of counsel
4 then the Panel will take a period of time to
5 discuss whether we preliminarily think there
6 have been any violations and then we'll come
7 back and tell counsel whether there's any need
8 to make any arguments on aggravation or
9 mitigation. So, Mr. Hazlett-- and certainly
10 would appreciate when you're commenting on the
11 facts that you tell us the specific rule
12 violation that's tied to those facts.

13 MR. HAZLETT: I think I'm going to
14 talk more in generalities and I'm going to do
15 it just very shortly in closing. On the issue
16 of competence in count one, the Baby C case,
17 you have a Court of Appeals decision, which I
18 think is pretty compelling evidence in that
19 regard.

20 In the Bolden case, in count two, you
21 have Judge O'Hara's decision, the report and
22 recommendation, and his testimony today
23 regarding respondent's competence. I would
24 argue that by clear and convincing evidence in
25 both cases we have proved that allegation.

1 The allegation about statements made by
2 the respondent in his pleadings, accusations of
3 fraud, criminal activity on the part of Shawnee
4 County personnel, Court of Appeals personnel,
5 Court of Appeals judges, district court judges,
6 federal judges. the evidence presented, I
7 think, by the Disciplinary Administrator's
8 office by Judge O'Hara, Kent vincent, Judge
9 Lyle clearly disputes the allegations of
10 misconduct that the respondent has made against
11 so many different folks. And respondent simply
12 just didn't present any evidence that there was
13 any good faith basis for making the allegations
14 he made. And I'm not going to go into each and
15 every allegations because there's so many of
16 them we just can't do that in the limited time
17 we have to do this, but there was nothing
18 presented by the respondent to refute what we
19 presented. He clearly made those allegations
20 intentionally, whether he did it in concert or
21 at the direction of Mr. rricc I don't know.
22 But it doesn't really make any difference
23 because he took complete responsibility for the
24 statement he made in his allegations and the
25 allegations he made in his pleadings. And

1 today, in spite of the fact that he was given
 2 an opportunity to express some remorse or
 3 apologize for what's occurred, he chose not to
 4 do so and stood before you and indicated that
 5 he had violated no Rules of Professional
 6 Conduct.

7 I would suggest to you that the evidence
 8 shows that when the respondent practices law
 9 and handles a case and he is confronted with
 10 somebody explainin~ to him that-- or telling
 11 him that he's not doing it the right way, his
 12 opeLdLing pro ced ure 10 Lu ldoll vut dUU Lu
 13 allege that that person has done something
 14 wrong and that's happened time and time again.

15 In conclusion I'd just say that I believe
 16 the evidence presented to you is overwhelming
 17 that the respondent has violated the rules that
 18 I alleged.

19 CHAIRMAN GRISELL: Mr. Landrith.

20 MR. LANDRITH: I submit to you that
 21 the clear and convincing argument based on a
 22 decision of the appellate court fails. It's a
 23 decision on a party that was not myself and it
 24 had some findings of law and fact that were
 25 .L.1:[ul:t::u. Ly Lht:: 1:t::::Llllluuu. It was clear that

1 there was substantial evidentiary basis and
2 basis in record for each of the allegations of
3 the judge panel in their informal admonishment
4 of me in that appellate decision. That was a
5 competent appellant brief. It cited
6 extensively a record that those three judges
7 were unfamiliar with or thought irrelevant, but
8 were relevant to the assertions made. It
9 cannot be found as clear and convincing
10 evidence of misconduct for being unbased on
11 fact because it was.

12 The witnesses that testified about my
13 misconduct as charged, including allegations
14 that seeking mandamus would be a threat, cannot
15 be clear and convincing evidence of a
16 violation, just like they cannot be a basis for
17 probable cause because our legislative public
18 policy is that that's a remedy for exactly that
19 situation. And we have the guidance of the
20 Kansas Supreme Court to state that specifically
21 to use it to compel a clerk to do something is
22 appropriate. So that is no more the full part
23 of probable cause a violation has occurred than
24 if I state to you the sidewalk outside this
25 judiciary building is covered with snow, I'm

1 going to go shovel it, that that is neither
2 clear and convincing proof of a violation
3 because of course that's not a violation of any
4 statute, that's actually doing something to
5 enforce a public policy, which would be the
6 city rule that sidewalks within the city have
7 to be maintained free of snow and clear for
8 walking. And the motivation for my doing that
9 would be to increase the safety of the public
10 good that that rule sought to enforce.

11 Ms. Escalante's testimony contradicted
12 whether or not the record was available to me
13 to adequately defend my plaintiff in the
14 adoption case. It was clear from her testimony
15 that I was asking for a greater set of records
16 than she had available. She made statements
17 contradicting other testimony and contradicting
18 the record and contradicting her own testimony
19 regarding whether. or. I got it with the appearance
20 the appearance docket had been changed.

21 It's true that I stated no remorse for
22 the actions that I did because I was using my
23 best efforts and all my skills and knowledge to
24 effect the best outcome for my clients on the
25 terms that they had charged me with, the

1 objectives that they had sought from my
2 representation.

3 Magistrate O'Hara's testimony is
4 testimony that continues what you've seen here.
5 I sometimes refer to things that you do not
6 find relevant and certainly tried his patience
7 and he did not find was relevant when I was
8 before him. You have a complete transcript of
9 that. I didn't address the impropriety of
10 suggesting that an attorney, no matter how bad,
11 sue his own client while his client and he is
12 before a court forum that he is hoping to
13 somehow get a fair shake in. That was
14 devastating to his psyche, to me, and to our
15 profession. And it actually is the conduct
16 that I've been accused of rising to a level
17 that impedes the administration of justice.

18 His statements, though, were true. I
19 obviously have very little experience and I
20 could do a better job. I think I've improved
21 since that time. but I still have a long way to
22 go. I have no mitigating circumstances or
23 aggravating factors to explain.

24 CHAIRMAN GRISELL: We'll-- depending
25 on what the Panel initially determines after

1 that, we'll listen to any comments on
2 aggravation or mitigation that Mr. Hazlett or
3 you might have.

4 MR. LANDRITH: All right. And it's
5 my concern that in upholding these charges that
6 you will discourage others from taking on very
7 difficult cases against adverse odds that
8 almost never succeed and in doing so you're
9 adding costs or prohibiting other people access
10 to representation of any client.

11 And I disagree with the evidence that's
12 been put on here that somehow a pro se litigant
13 would be better off than being represented by
14 me. I think that's preposterous and like much
15 of what is stated here as clear and convincing
16 is nowhere near so.

17 So in answer to that none of the Kansas
18 Rules of Professional Conduct that I've been
19 charged with are violations that I committed.
20 The observations that appear to be violations
21 about my statements and pleadings are
22 statements about events that actually happened
23 that are the obstruction described in KRPC Rule
24 on the scope of representation of a client and
25 the responsibility of attorney to continue to

1 represent somebody even against adversity or
 2 problems and an unqualified obstruction, which
 3 includes far more than the Kansas Statute
 4 definition or it'S not a reference to the
 5 Kansas Statute the reason for obstruction of
 6 justice, but is itself the general plain
 7 meaning of obstruction.

8 The advocacy that I have been most
 9 criticized for is our responsibility as an
 10 attorney. In the case of James Bolden, by the time I started to
 11 represent him, had irreparable harm. It was
 12 unlikely that we would be able to stop, In
 13 appellate court, the demolition of his two
 14 houses. But, in fact, the City feared that we
 15 would somehow stop or delay the demolition of
 16 those two houses that he had sought to make
 17 part of a public housing project out of, so it
 18 demolished both of his homes while our appeal
 19 was pending.

21 The brief that there's been testimony
 22 about as having problems is an attempt to
 23 address that entire chain of circumstances as
 24 we continue to try and assert some rights for
 25 James Bolden. Even though our cause was on

1 that particular subject appealing, a denial of
2 injunction was entirely moot at that time.
3 James Bolden continues on. His land is still
4 going to go be used for those projects. The
5 city still in progress of finishing taking it
6 without any compensation for him. He has no
7 attorney. I cannot represent him because when
8 people are decision makers in these kinds of
9 cases, Magistrate O'Hara's perspective is the
10 norm. The adversity is not a factor in
11 deciding whether or not you meet the standards.
12 And the legal argument or choices that one
13 would make out of triage with very limited
14 resources is not a sign of exercising the
15 professional competent independent judgment
16 that we're supposed to as attorneys, but
17 instead is a sign of lack of diligence. I can
18 prevent that from happening in the future by
19 not taking those kinds of cases, but that's not
20 a clear and convincing finding of my lack of
21 diligence.

22 I've had respect for the forum that I
23 have been before, the court officials and clerk
24 officials and employees. Much of Mr. Paretsky
25 complaint that the first ethics count was based

1 on, misrepresented that or was shown to be in
2 error. Part of what I'm being charged with or
3 that the Disciplinary Administrator argues that
4 there's clear and convincing evidence of is my
5 lack of independent judgment. I have put on
6 proof that IIV~ indApRn~@ntly reviewed the
7 basis for my filings and I had a substantial
8 basis both of law and in fact for them, but
9 what we have constantly seen is that this
10 tiling, this ethics action against me on count
11 one and count two, was not independently
12 investigated by Mr. Hazlett to any measurable
13 degree.

14 The testimony put on by his own witnesses
15 was that the complaining witnesses, the people
16 that are the equivalent for some purposes to
17 his client in this action, were the ones that
18 conducted the investigation and related to him
19 the facts that he charged me on. He waR
20 unfamiliar with the citations in the brief or
21 even that there wa~ a reply brief to the an~wer
22 that corrected about every factual statement
23 and cited to the record that my opposing
24 counsel in the adoption case had filed. When
25 that happens I think that you have the problem

1 with it or I have the problem with it that
2 you're concerned about here that whether or not
3 I had independent judgment when I chose to
4 represent David Price the way he wanted to be
5 represented, I feel that the information that
6 you had before you clearly shows that I had
7 independent basis for judgment. And even in
8 the complaint attachments there were affidavits
9 of more than one person. We never had that
10 kind of independence from opposing counsel.
11 What we had was testimony of his witnesses
12 stating that they had been instructed by
13 somebody investigating the complaint, who did
14 not work for the Disciplinary Administrator and
15 who was not like Mr. Moline, an independent
16 ethics committee member, but instead were
17 actual co-workers and subordinates of the
18 complaining witness.

19 Part of the problem with the events that
20 happened in both cases was my-- and the-- In
21 the Kansas Court of Appeals, my belief that
22 when I put substantive information in a
23 pleading a judge would evaluate that. I had no
24 idea that there was even a motions attorney and
25 that many of those judges never saw any of that

1 information. But somebody that had an
2 overwhelming priority afield based on
3 compliance with rules was making determinations
4 about that information most of which was
5 irrelevant to him and then making
6 recommendations to Judge Pierron and his panel
7 and I think that ill-served both cases. I
8 think I now know more about that than most
9 people would know or we all do now and I think
10 that I could write pleadings aimed to overcome
11 that and do an appellate court practice now
12 that I understand that's what's happening.

13 So in conclusion I don't think that there
14 is clear and convincing evidence of any ethics
15 rules that the Disciplinary Administrator has
16 charged against me having been violated. In
17 terms of meeting the level of expected
18 competence for somebody with little or no
19 experience like myself on these kinds of
20 complicated cases. So in conclusion I deny
21 that there's been a violation of any ethics
22 rule.

23 CHNIRMnN CRISELL: Thank you. I>t
24 this time the Panel is going to spend some
25 time, as I've indicated, discussing whether or

1 not we believe that there may be a violation
2 and then we'll return and discuss that with
3 counsel. If we believe that there has been a
4 violation of one or more rules, we'll take any
5 evidence the parties have concerning
6 aggravation and mitigation.

7 (THEREUPON, a short recess was had)

8 CHAIRMAN GRISELL: Counsel, based
9 upon the evidence that we have heard and the
10 testimony and the exhibits, the Panel has
11 reason to believe that at least one KRPC has
12 been violated. The specific findings of the
13 Panel will be set out in a written finding,
14 which, of course, will be given to counsel and
15 then will be submitted to the Supreme Court.
16 So at this time, based upon the fact that we
17 believe that there has been at least one rule
18 violation, we'll listen to evidence and/or
19 arguments on aggravation and mitigation, which
20 we are required to do and which respondent was
21 given notice of in the original complaint. And
22 I'd ask Mr. Hazlett, if he wishes to, to
23 proceed on those issues.

24 MR. HAZLETT: Yes, I'd like to go
25 through the malices set out in the ABA

1 Standards. The ethical duty violated. I think
2 Mr. Landrith violated his duty to his client,
3 to the public, to the legal system, and to the
4 profession by his conduct. The lawyer's mental
5 state. I would argue that the respondent-- the
6 evidence shows that the respondent acted
7 intentionally and knowingly, especially in
8 placing these matters in pleadings, these
9 allegations against the various individuals.

10 The excenc of accual or pocencial injury
11 caused by the respondent's misconduct. You
12 know, with respect to his clients, we don't
13 really know, I guess, except that I think Mr.
14 Bolden's case obviously was prejudiced by the
15 way the case was handled. Now, Mr. Price's
16 case I'm not willing to concede that Mr. Price
17 ever had any-- any valid case to begin with, so
18 I don't know that you can argue that his case
19 was prejudiced. But I certainly would ask you
20 to look at the injury to Mr. Vincent's clients,
21 that was Mr. Vincent stated the amount of
22 attorney fees that ended up being paid as a
23 result of what occurred here in the matter of
24 Baby C and the obvious emotional difficulty
25 that they would have suffered as a result of

1 all of the time that this remained up in the
2 air.

3 All of the folks, individuals against
4 whom I would argue false allegations were made
5 and the discomfort that they suffered, the
6 system, all of the unnecessary work caused by
7 the respondent to simply follow the rules of
8 procedure. An example is if he goes to the
9 clerk's office and if they tell him they need
10 something that doesn't result in him getting
11 something, that results in him filing a
12 mandamus action. The response to what he
13 encounters is never the right response.

14 Aggravating circumstances talks about
15 absence of a dishonest or selfish motive. I
16 don't think anything here was motivated by a
17 selfish motive, but I do believe that the
18 conduct was dishonest. The only other way you
19 could look at it is the allegation made by the
20 respondent against various individuals was just
21 so reckless as to be almost unbelievable.

22 Pattern of misconduct, multiple offenses,
23 refusal to acknowledge wrongful nature of
24 conduct. To the contrary, he takes the
25 position that everything he did was required by

1 the Rules of Professional Conduct. I would
2 argue a total lack of recognition of what he
3 was doing and the consequences of his actions.

4 The standards that I think are
5 applicable, it's-- I'm not sure that the
6 conduct fits right into the standards, but I'm
7 going to cite some standards that I think do
8 apply to this. The lack of competence, which
9 is standard 4.5, states that disbarment is
10 generally appropriate when a lawyer's course of
11 conduct demonstrates that the lawyer does not
12 understand the most fundamental legal doctrines
13 or procedures and the lawyer's conduct causes
14 injury or potential injury to a client. Well,
15 that refers to a client again and there we're
16 talking about Mr. Bolden or we're talking about
17 Mr. Price. And I'd like to take Mr. Price out
18 of the equation. Mr. Bolden, I think there is
19 potential injury to Mr. Bolden and maybe to Mr.
20 Price too because Mr. Landrith just didn't tell
21 him from the very beginning that this is a
22 course of action that shouldn't have been
23 pursued. But the commentary below 4.5 states
24 disbarment should be imposed on lawyers who are
25 found to engage in multiple incidents of

1 incompetent behavior. Since disbarment is such
 2 a serious request it should rarely be imposed
 3 on a lawyer whose course of conduct
 4 demonstrates that he cannot or will not
 5 master the knowledge and skills necessary for
 6 minimally competent practice. And I think that
 7 applies here.

8 Two other standards which I believe apply
 9 are-- fall under violation of duties owed to
 10 the legal system. 6.1, false statements,
 11 fraud, and misrepresentation. And, again, I'm
 12 not saying this is right on point, but there's
 13 some language in this standard which I think is
 14 applicable to this situation. It talks about
 15 disbarment being appropriate in cases involving
 16 conduct that is prejudicial to the
 17 administration of justice or that involved
 18 dishonesty, fraud, deceit, or misrepresentation
 19 to the court. All of the allegations that were
 20 placed in these pleadings and that were placed
 21 before the court, which I believe have been
 22 proved to be false, I think fall under that
 23 category and I think exhibit continuing course
 24 of conduct prejudicial to the administration of
 25 justice. Abuse of legal process, standard

1 6.12-- and the false statement standard was
 2 6.1. I'm not sure if I said that. 6.12, abuse
 3 of process. I mean, throughout the entire
 4 proceedings-- I guess we could call it the
 5 abuse of lack of process maybe in the Bolden
 6 case, but all of the inconvenience people were
 7 subjected to throughout these cases I think and
 8 throughout this proceeding, I mean the way the
 9 respondent handled subpoenas in this proceeding
 10 to these individuals it was with the [unlawful]
 11 costs to the individuals, without serving them
 12 properly. Judge Lyle coming up here without
 13 being forwarded costs. I think abuse of legal
 14 process applies as well.

15 I think all three standards suggest
 16 disbarment and I would urge the Panel to make
 17 that recommendation to the court.

18 CHAIRMAN GRISELL: So the
 19 recommendation of the Disciplinary
 20 Administrator is disbarment?

21 MR. HAZLETT: Yes.

22 CHAIRMAN GRISELL: Mr. Landrith.

23 MR. LANDRITH: My Illinois law
 24 that gives me the knowledge that in the Baby C
 25 case the recognized rights of parties were Baby

1 C, Baby C's natural father, Baby's C extended
2 natural family. At the time I took
3 representation of David Price, David Price had
4 filed a premature notice of appeal on his own
5 that terminated the adoption and stopped the
6 termination of his parental rights. The only
7 rights that we can consider under the law in
8 that case-- the only rights that are clearly
9 expressed in the law in that case is Baby C's
10 rights. Case law overwhelmingly assigns for
11 Baby C an interest in being with his natural
12 father. His natural father had a preeminent
13 right that was recognized by the requirement
14 that he have appointed counsel both for
15 pretrial and post trial phases.

16 CHAIRMAN GRISELL: Mr. Landrith, this
17 stage of the proceeding is for you to offer
18 evidence or arguments concerning mitigation.
And you probably received a copy of the
20 complaint.

21 MR. LANDRITH: Yes, sir.

22 CHAIRMAN GRISELL: And in that
23 complaint it set out the standards that this
24 Panel refers to and the criteria when we're
25 considering mitigation. And so I would ask you

1 to refer to the circumstances as set out in and
2 whatrs provided in the complaint and what Mr.
3 Hazlett referred to as you go down the list
4 first, tell us if they apply and tell us why
5 they do or don't. If you need a copy, I can
6 provide you one.

7 MR. HAZLETT: I have one right here.

8 CHATRMAN GRTSF.LJ.: It's page 12 of
9 the complaint.

10 MR. LANDRITH: I would like to
11 conclude my statements about third parties that
12 were injured by my activities. (Name stricken)
13 and her husband were not recognized by my
14 actions in violation of the code.

15 CHAIRMAN GRISELL: Strike the name of
16 those parties, if you would, please. It's an
17 adoption proceeding and at least from our
18 standpoint we donlt wish to offer their names
19 into the record.

20 MR. LANDRITH: Another example used
21 by the Disciplinary Administra~or wa~ my
22 inability to obtain subpoenas, that was-- an
23 example I would like to point to. I followed
24 the rule of 216. I first asked the
25 Disciplinary Administrator-- and I brought it

1 up in the pretrial order for this about
2 obtaining those records and then I sought to
3 obtain it from the clerk under the rule.

4 CHAIRMAN GRISELL: Mr. Landrith, it's
5 not part of the complaint and it was argument
6 by Mr. Hazlett. It's not relevant to our
7 determination.

8 MR. LANDRITH: Yes, sir. In terms of
9 aggravating circumstances. I have no evidence
~0 except for I do, under G, refuse to acknowledge
11 the wrongful nature of my conduct in that I
12 made a good faith, non-dishonest appraisal of
13 the laws that applied in each and every
14 pleading.

15 In mitigation I have no prior
16 disciplinary record. Absence of dishonest or
17 selfish motive. The first case was a pro bono
18 case, the second case is a contingency fee
19 case. Personal or emotional problems if such
20 misfortunes have contributed to a violation of
21 Model Rules of Professional Conduct. The
22 extent of adversity I described in my pleadings
23 was the conduct of the other party against
24 myself, my client, and my witnesses. I have
25 none that would fall in the category of this

1 rule. Timely good faith effort to make
2 restitution or rectify consequences of
3 misconduct. I'm not aware of any demands of
4 restitution or sums of money or-- in fact, the
5 testimony of Ms. Price that there was an award
6 of sanctions in that case that included
7 monetary sanctions is incorrect in my belief.

8 The present-- E, present or past attitude
9 of the attorney as shown by his or her
10 cooperation in the hearing and his or her full
11 and free acknowledgment of the transgressions.
12 I very quickly responded to both complaints. I
13 provided all the information asked of me.
14 Sometimes duplicative. I was open and honest
15 in all phases of the investigation. I think
16 that other than the few objections I raised,
17 maybe two or three, before this panel I've not
18 objected to or failed to provide any
19 information or objected to anybody else
20 providing any information in the entirety of
21 these proceedings.

22 G, previous good character and reputation
23 in the community, including any letters from
24 clients, friends, and lawyers in support of the
25 character and general reputation of the

1 attorney. I have only the testimony of my two
2 clients. I did not offer any others. H, I
3 have no physical disability. I, mental
4 disability or chemical dependency, including
5 alcoholism or drug abusive, none of both. J,
6 delay in disciplinary proceedings. I have not
7 sought to delay or obstruct these proceedings.
8 K, imposition of other penalties or sanctions.
9 Again, I know of no penalties or sanctions
10 arising in cases or these two cases. M.
11 Remoteness of prior offenses would be
12 inapplicable. I have no prior offense. And.
13 any statement by the complainant expressing
14 satisfaction with restitution and requesting no
15 discipline, I know of no such statement by
16 either complainant. I think the complainant is
17 essentially the state. Factors which are not
18 considered- -

19 CHAIRMAN GRISELL: Those matters
20 which we don't consider as aggravating or
21 mitigation.

22 MR. LANDRITH: So I conclude my
23 testimony on aggravating or mitigating
24 circumstances.

CHAIRMAN GRISELL: Were the panel to

1 find that there was a violation of one or more
 2 rules we then have an obligation, as I
 3 understand it, to recommend a discipline to the
 4 Supreme Court within the scope of what's set
 5 out in the rules or something that we believe
 6 is reasonable. Do you have any recommendation,
 7 were we to find a violation, as to the
 R ~ppropriate discipline to be imposed?

9 MR. LANDRITH: I raised my concerns
 10 and I ;still think they' l-e ve.LY Lelevd.uL, yuu
 11 are finding fault with the content of my
 12 speech, it's speech about what I perceived and
 13 had voluminous evidence was a violation of the
 14 statute, some of which were actually criminal.
 15 My fear is that some of our forms of discipline
 16 may, in fact, be further restraints against
 17 those kinds of speeches. I guess I don't have
 18 any thoughts further. I'm considering things
 19 like supervised probation and things like that,
 20 so I guess I have no further comments or
 21 suggestions in particular.

22 MS. HARRIS: Okay. Just so that you
 23 Know, the Panel, in or:deL Lu t.:ol.l~iu.t:::L
 24 supervised probation, has to have-- a
 25 supervised probation plan would have had to

1 have been forwarded to us before the start of
2 this hearing pursuant to the rules. And unless
3 I'm mistaken there has been no probationary
4 plan forwarded to us prior to the start of this
5 hearing, unless I didn't get a copy of it.

6 MR. LANDRITH: I understood that and
7 it was included in each and every
8 correspondence from the Office of the
9 Disciplinary Administrator. I chose not to
10 forward a supervised probation plan because the
11 likely outcome of this proceeding was
12 disbarment. And, second, a supervised
13 probation would create difficulties both for
14 myself and my expression of speech and I think
15 would cause problems for whoever I sought to be
16 a supervised probation person. Not because I
17 would challenge limits, but because of-- I
18 think that there's a lot of representational
19 damage from association. I've seen endless
20 part of that, so I don't think that's a
21 solution.

22 CHAIRMAN GRISELL: Okay. Thank you.
23 If counsel has nothing further at this point,
24 the Panel will close the hearing. As I've
25 indicated, the Panel will deliberate on this

1 matter and its findings will be issued in a
2 written finding and submitted to counsel and
3 then counsel will proceed as set out in the
4 Supreme Court Rules. Thank you.

1 IN THE SUPREME COURT OF KANSAS
2 BEFORE
3 THE KANSAS BOARD FOR DISCIPLINE OF ATTORNEYS

4 IN THE MATTER OF)
5 BRET D. LANDRITH,) Nos. DA 8893
6 ----- Respondent.) and DA 9076

7 V O L U M E III
8 T R A N S C R I P T
9 O F

10 Proceedings held in the Fatzer
11 Courtroom, Kansas Judicial Center, in the City
12 of Topeka, County of Shawnee, State of Kansas,
13 on the 20th day of January, 2005, beginning at
14 8:30 a.m., before a Panel appointed by the
15 Chairman of the Kansas Board for Discipline of
16 Attorneys consisting of, Mr. Randy Grisell,
17 Chairman; Ms. Sally Harris, member; and Mr.
18 Michael Schmitt, member.

19 APPEARANCES

20 The Respondent appeared in person and
21 pro se. Also appearing Samuel LaPari.

22 The Complainant appeared by Mr. Stanton
23 Hazlett, Disciplinary Administrator, Office of
24 Disciplinary Administrator, 701 Southwest
25 Jackson, 1st Floor, Topeka, Kansas, 66603-3729.

I N D E X

Certificate 697

W I T N E S S E S

WITNESSES ON BEHALF OF THE RESPONDENT: PAGE

JAMES L. BOLDEN
 Direct Examination by Mr. Landrith 565
 Examination by Chairman Grisell 588
 Cross Examination by Mr. Hazlett 590
 Redirect Examination by Mr. Landrith 600

BRET LANDRITH
 Statement by Mr. Landrith 609

WITNESSES ON BEHALF OF PANEL:

JAMES P. O'HARA
 Examination by Chairman Grisell 623
 Direct Examination by Mr. Landrith 625
 Cross Examination by Mr. Hazlett 650
 Examination by Chairman Grisell 653
 Redirect Examination by Mr. Landrith 657

E X H I B I T S

RESPONDENT'S:	MARKED	OFFERED	RECEIVED
NO. 25	--	579	581

NORA LYON & ASSOCIATES, INC.

1515 S.W. Topeka Blvd., Topeka, KS 66612

Phone: (785) 232-2545

FAX: (785) 232-2720

1 CHAIRMAN GRISELL: Mr. Landrith, call
2 your next witness.

3
4 JAMES L. BOLDEN,
5 called as a witness on behalf of the
6 Respondent, was sworn, and testified as
7 follows:
8

9 DIRECT EXAMINATION

10 BY MR. LANDRITH:

11 Q. James, would you please state your name and
12 address for the record?

13 A. James L. Bolden, Junior. My address is at 418
14 Southeast Ridgeview Terrace in Topeka, Kansas.

15 Q. What kind of a home do you live in?

16 A. I live in a trailer home at Ridgewood Estates.
17 It was a very nice trailer court where you had
18 to purchase your home at one time. Now, they
19 have had new buyers, ARC has it and it seems to
20 not be as nice as it was before.

21 Q. Is it a single or double wide trailer?

22 A. It's a single wide.

23 Q. And you purchased some homes from Shawnee
24 County at a tax sale?

25 A. Yes, I did.

1 Q. What were the addresses?

2 A. 421 Southwest Tyler and 1146 Southwest
3 Washburn.

4 Q. Did you become-- did you ask the seller
5 questions about it?

6 A. Yes, we did-- I did.

7 Q. Who was that?

8 A. Who was the seller?

9 Q. Who did you ask?

10 A. It was the representative of the Shawnee County
11 counselor's office. I don't have the name in
12 front of me right now. I apologize.

13 Q. Did they say the homes could be remodeled and
14 be suitable for rental?

15 A. They did indicate that the homes could be
16 repaired.

17 Q. Did you plan to live in one of the homes?

18 A. That was an option. I hadn't decided exactly
19 how I was going to utilize the homes, but I, as
20 an entrepreneur, seen it as an investment. I
21 consider myself a very sharp entrepreneur.
22 This was an investment strategy that I had been
23 working on for 15 years or so.

24 Q. Did you make a business plan for both of these
25 homes?

1 A. Yes, I do have business plans for both homes.

2 Q. Did you get them appraised?

3 A. Yes, I had one home appraised.

4 Q. Why couldn't you get the second home appraised?

5 A. Well, the HND office had talked to the
6 appraisal office in Lawrence and indicated to
7 the head guy for the other guy, not the guy
8 that was working for me, not to do anymore
9 appraising for me.

10 Q. That is a city agency?

11 A. HND, Housing and Neighborhood Development.

12 Q. Did you have a conversation with your appraiser
13 that related to you what had happened?

14 A. Yes, he did, that's how I understood what
15 happened.

16 Q. Did you--

17 A. He made \$500 so why wouldn't he have wanted to
18 do the appraisal.

19 CHAIRMAN GRISELL: Mr. Landrith.

20 MR. LANDRITH: I'll move on, sir.

21 CHAIRMAN GRISELL: I just ask that
22 you ask questions that are going to elicit
23 relevant testimony. We discussed this with
24 both Mr. Price's testimony, as well as this
25 particular issue with Mr. Bolden.

1 MR. LANDRITH: Yes, sir.

2 Q. (BY MR. LANDRITH) Did you become aware-- you
3 became aware-- or did you become aware that
4 they were going to be condemned, the two houses
5 you had purchased, and did you enter court--
6 did you go to the administrative court pro se
7 to try and defend them?

8 A. One of the homes did have a condemnation order
9 on it when I had purchased the home. I was
10 told, however, that the homes could be
11 repaired.

12 Q. And you went to administrative hearing and you
13 represented yourself seeking to stop the
14 condemnation and you lost that hearing. Is
15 that correct?

16 A. I went to a hearing approximately a month after
17 I purchased the home, the administrative
18 officer said I was dreaming and it could not be
19 done.

20 Q. Did you have an attorney in the administrative
21 hearing for either home?

22 A. At the first time-- at the first home, no, I
23 didn't think I needed one. The second home,
24 yes, I did.

25 Q. All right. Did that attorney take that appeal

1 of that administrative order to Shawnee
2 District Court for you or did you do that
3 yourself?

4 A. I had went to Shawnee District Court myself
5 initially, yes.

6 Q. Did you try to find an attorney?

7 A. I did have an attorney, he went to the second
8 administrative hearing as I indicated. After
9 that he decided he did not want to represent
10 the case, it was not the best in his law firm's
11 interest. He did not want to represent me in
12 the case.

13 Q. What do you think he meant by that?

14 A. I have no idea at the time. I have a little
15 better idea now.

16 Q. Did you try to find some other attorneys?

17 A. Yes, I did.

18 Q. How many other attorneys did you contact to
19 represent you?

20 A. I had a total of three attorneys, three to four
21 attorneys before I found you.

22 Q. Did some of those attorneys represent you in
23 Shawnee District Court?

24 A. No-- yes, one, yes.

25 Q. Would that have been Carlos Romious?

1 A. That was Carlos, yes.

2 Q. Did he withdraw from representation of your
3 case in the post trial phase?

4 A. Yes, he did.

5 Q. Did you continue to file pro se reconsideration
6 or--

7 A. I believe that's when I had secured you as my
8 attorney.

9 Q. That would be for the-- wasn't that-- wasn't
10 that for the notice of appeal to appeal that?

11 A. Yes, it was.

12 Q. All right. Did you file with Carlos Romious a
13 motion for new trial or did you file that alone
14 in Shawnee District Court?

15 A. Which, the-- initially? After I hired you?

16 Q. Before you hired me, did Carlos Romious file
17 your motion for--

18 A. We did file for a new trial, it was denied.

19 Q. All right. Did you ask Carlos Romious many
20 times about getting the case filed?

21 A. Yes. Initially, yes.

22 Q. Did he turn over to you every--

23 A. It took a couple of weeks, but I believe he
24 ended up turning it over to you I believe or--
25 was it to me? Maybe it was to me. It was a

1 couple years back.

2 Q. Did you try to get the case file at the
3 sub-basement of Shawnee District Court?

4 A. I have to jog my memory, this was a couple two
5 or three years back. I really cannot swear
6 exactly what happened at that point in time. I
7 knew I had you. I believe you indicated to me
8 to go down there and get some information.

9 Q. Did in the end I have to go down and get the
10 case file?

11 A. And I believe you had problems getting it. I'm
12 not sure how all that worked.

13 Q. Did you discuss with me the case and the basis
14 for the appeal?

15 A. Yes, I did.

16 Q. Did you have theories about why you had a right
17 to keep your houses or to enjoin the city
18 from--

19 A. Well, by law I had looked up and researched
20 and, yes, I believe by law.

21 Q. Did your-- does your sister or some family
22 member work in Housing and Urban Development?

23 A. Well, I would not like to make that information
24 public.

25 Q. Did you-- were you billed for the houses being

1 torn down?

2 A. Yes, I am currently being billed for them
3 tearing down my houses.

4 Q. Did houses get torn down when an action on your
5 behalf had been filed in federal court?

6 A. We had a stay in-- we had a stay in court and
7 the houses were torn down against the stay in
8 court.

9 Q. Did you consult with me during preparation for
10 your appeal about problems I was having getting
11 your records and problems I was having in the
12 Court of Appeals?

13 A. Say that again, please?

14 Q. Did you talk to me or did I talk to you about
15 problems I was having in Shawnee District Court
16 and Court of Appeals?

17 A. Yes, you did.

18 Q. Did you come with me when I tried to docket
19 your appeal with--

20 A. Yes, I did.

21 Q. Did the staff point out that there were records
22 missing that were required--

23 A. I knew there was some problems. I did not know
24 the legality of the problems.

25 Q. Did I--

1 A. I'm not a lawyer.

2 Q. Did I have a discussion or an argument with the
3 appellant court staff on the other side of the
4 counter?

5 A. I knew there were problems. I knew there were
6 problems.

7 Q. Did you see us discussing them?

8 A. Yes, you were discussing the situation in
9 reference to some paperwork and I believe it
10 was acquiring some paperwork.

11 Q. Did you observe anything uncivil or disorderly?

12 A. I might have been uncivil or disorderly, I
13 don't know. It was pretty frustrating to me at
14 the time.

15 Q. Did they end up taking the docketing appeal--
16 did they end up taking the docketing statement?

17 A. I believe I paid a fee and they did take it, I
18 believe.

19 Q. Did I talk to you about some problems the
20 appellant court was having with accepting the
21 appellant brief that I prepared for you?

22 A. Say that again, please?

23 Q. Did I talk to you about a problem the appellant
24 court was having with a brief I had prepared
25 for your appeal?

1 A. Yes, you did indicate that there was some more
2 problems.

3 Q. Did I talk to you about a show cause order,
4 that we had to do some things to get the
5 documents we were missing or they-- there was a
6 good chance that they would dismiss our appeal?

7 A. That's very possible.

8 Q. Did you assist me in preparing an amended
9 complaint in your federal court case to include
10 your Fair Housing Act claims and your civil
11 rights violation in greater detail about the
12 housing-- your right to have a house in Topeka?

13 A. Yes.

14 Q. Did you have many discussions with me about
15 whether the city's action was out of imminent
16 domain or my argument that it was police power,
17 do you recall those conversations?

18 MR. HAZLETT: I'm going to object to
19 that, Mr. Chairman, that doesn't go to what the
20 allegations are against the respondent.

21 CHAIRMAN GRISELL: Sustained.

22 Q. (BY MR. LANDRITH) Did you feel involved in my
23 representation of your cause?

24 A. Did I feel involved?

25 Q. Yes.

1 A. Yes.

2 Q. Did you get the filings I made by e-mail?

3 A. Yes, I did.

4 Q. Did you get the responses by Sherri Price by
5 e-mail?

6 A. You made sure that I was informed on how my
7 case was going, yes.

8 Q. Did you have some concerns or fears about
9 disclosing your IRS records to Sherri Price?

10 MR. HAZLETT: I'm going to object. I
11 don't see the relevance of that.

12 CHAIRMAN GRISELL: Sustained.

13 MR. LANDRITH: I would like to offer
14 some questions about that as the rebuttal
15 evidence to Mrs.-- Ms. Price's testimony that I
16 was slow in turning over all the Rule 26
17 requests. I think that was part of Mr.
18 Hazlett's case in chief.

19 MR. HAZLETT: Well, I think the
20 court's order speaks for what happened in
21 court. I don't think we need to relitigate
22 that issue.

23 CHAIRMAN GRISELL: I know that there
24 was some testimony on that. I don't think that
25 it's alleged that respondent violated any

1 KRPC's as a result of being slow in getting
2 discovery to Ms. Price. And certainly that's
3 not going to be the basis of any determination
4 by this panel. Is that correct?

5 MR. SCHMITT: That's true.

6 MS. HARRIS: Correct.

7 CHAIRMAN GRISELL: So there may have
8 been reasons and we certainly would accept
9 those from you and that evidence is not
10 material to our determination.

11 Q. (BY MR. LANDRITH) Did I notify you to come to
12 the pretrial order conference?

13 A. Yes, you did.

14 Q. Did you and I drive together to Kansas City,
15 Kansas?

16 A. Yes, we did.

17 Q. Did I suggest to you what might happen during
18 that pretrial order conference?

19 A. Yes, you indicated-- kind of briefed me before
20 we entered into there, yes.

21 Q. Did I indicate that it didn't look good?

22 A. Yes, we were-- and I indicated to you that we
23 would have hope and faith in that.

24 Q. Did you receive notice directly from the court
25 to come to that pretrial order conference?

1 A. I don't recall.

2 Q. Did you receive a mailing directly from the
3 court, the Magistrate's report and
4 recommendation after that conference sometime
5 about the pretrial order conference you
6 attended?

7 A. I don't recall right now.

8 Q. Did Magistrate O'Hara question you at length
9 during that pretrial order conference about
10 your attempts to obtain attorneys?

11 A. I don't know at any length. He did mention it.

12 Q. Did you explain to him, by name, each of the
13 attorneys that you had had help you on this
14 case?

15 A. I did explain to him that I had prior attorneys
16 and neither one of them had the guts to fight
17 city hall and that you were the only attorney
18 that had the guts. I believe being a loyalist
19 to the law, maybe possibly being new to the
20 law, you believed as I did that the laws were
21 there for all Americans.

22 Q. Did you believe that the federal regulations
23 that the money was given to the city for under
24 HUD gave you the right to not be charged for
25 the demolition of the homes?

1 A. Correct.

2 Q. Did you have some other beliefs that state
3 statutes limited the city's ability to change
4 the standard for what a--

5 A. Correct.

6 MR. HAZLETT: I'm going to object. I
7 think this is not relevant to the charges
8 against Mr. Landrith.

9 MR. LANDRITH: I'll move on.

10 CHAIRMAN GRISELL: He slipped in the
11 answer before your objection. I'll allow it
12 for-- so go ahead, Mr. Landrith.

13 Q. (BY MR. LANDRITH) Did you tell Magistrate
14 O'Hara that one attorney had quit representing
15 you because he had advised you that your house
16 was going to get torn down because you couldn't
17 fix the gutter?

18 A. Yes-- well, he didn't say it would get torn
19 down because I couldn't fix the gutter. He
20 said my business plan was not accepted because
21 I did not show where the-- of everything in my
22 plan of rehabilitating the home, I did not show
23 the runoff from the gutter, the gutter runoff.

24 Q. Did he advise you that you couldn't obtain
25 approval for that plan from the city?

1 A. Without having the gutter runoff to show, which
2 pretty much irritated me. Because there was a
3 lot of work needed to be done to the house, I
4 did not feel as though they were wanting to
5 work with me the way they said they would and
6 it was a lot of frustration on my part.

7 CHAIRMAN GRISELL: Mr. Landrith, the
8 allegations in count two concerning Mr.
9 Bolden's case relate to the filing of the
10 docketing statement, the problems that were
11 incurred in attempting to file briefs, and also
12 then your actions or inactions in the federal
13 district court. So please restrict the
14 testimony to those two issues. The panel is
15 not concerned about the underlying issues
16 pertaining to the two homes or the demolition
17 of those homes.

18 MR. LANDRITH: Sir, I recognize this.
19 I have this witness out of a sequence that may
20 be optimum for understanding his testimony in
21 relationship to Magistrate O'Hara's report and
22 recommendation. I will continue on from the
23 transcript. And I would like to make a motion
24 to admit that transcript as an exhibit. It was
25 furnished to the Disciplinary Administrator.

1 And I didn't realize you didn't have copies of
2 that until this morning.

3 MR. HAZLETT: Well, Mr. Landrith told
4 me this morning that he wanted to use the
5 transcript in connection with his examination
6 of Judge O'Hara, as I understood it, and I said
7 I didn't have a problem with that. And I think
8 he did provide it to me at some point. I
9 received so many documents. But as the Panel
10 noted, I still object to this line of
11 questioning because it doesn't go to the
12 relevance of the charges against Mr. Landrith.

13 CHAIRMAN GRISELL: Sure. I just
14 discussed that. A couple things. So you're
15 offering as an exhibit the transcript of the
16 pretrial hearing?

17 MR. LANDRITH: Yes. The transcript
18 that I'm right now questioning Mr. Bolden from
19 and I intend to question Magistrate O'Hara
20 from.

21 CHAIRMAN GRISELL: With the
22 understanding that if you admit it then
23 testimony of the same nature is cumulative if
24 we have the actual testimony at the-- or
25 discussion at the pretrial hearing, we

1 certainly don't need to hear testimony that's
2 redundant. I don't have any objection to
3 admission of that transcript and I don't think
4 Mr. Hazlett does either. Do you have-- do you
5 have a copy to be admitted as the exhibit, as
6 well as one for Mr. Hazlett and the Panel?

7 MR. LANDRITH: Not this morning, sir.
8 I might be able to obtain one this afternoon or
9 during our break. I might be able to find
10 somebody that can go out and get it copied.

11 CHAIRMAN GRISELL: If you expect that
12 the Panel is going to consider it, then we'll
13 need a copy and you'll need the original
14 exhibit so it can be marked and kept with the
15 other exhibits. Let me make sure I understand
16 what the number is of that exhibit, that will
17 be Respondent's Exhibit 25. That's the
18 transcript of the federal district court
19 hearing of-- what's the date on that, Mr.
20 Landrith?

21 MR. LANDRITH: November 20th, 2003.

22 CHAIRMAN GRISELL: Transcript of the
23 hearing of November 20, 2003, before Judge
24 O'Hara will be admitted.

25 The second issue you've indicated that

1 you may have had to call this witness out of
2 order, if you wish you can call Mr. Bolden back
3 after the Magistrate testifies assuming that
4 it's pertaining to relevant evidence that needs
5 to be brought to this Panel's attention.

6 MR. LANDRITH: Yes, sir.

7 CHAIRMAN GRISELL: These hearings are
8 flexible enough that if you have testimony that
9 you wish to offer that's relevant, you can do
10 it now and we'll listen to it and assign the
11 materiality to it that's appropriate.

12 Q. (BY MR. LANDRITH) Did Magistrate O'Hara
13 address you directly during part of that
14 hearing?

15 A. What do you mean he addressed me?

16 Q. Did Magistrate stop talking to me and start
17 talking to you during that hearing?

18 A. Well, I vaguely remember that. It was, what, a
19 year ago, year and a half, two years. There's
20 so much that went on.

21 Q. Did he indicate to you that I was doing a bad
22 job representing--

23 A. Yes, he did indicate-- he did indicate that to
24 me.

25 Q. Did he suggest that you obtain advice from

1 another lawyer--

2 A. He did--

3 CHAIRMAN GRISELL: Excuse me, Mr.
4 Bolden, you will have to wait until the
5 question is asked and then answer because it's
6 very difficult for the court reporter to take
7 down the comments of two parties at one time.

8 THE WITNESS: Yes, sir. My mistake.

9 CHAIRMAN GRISELL: Thank you.

10 Q. (BY MR. LANDRITH) I might repeat a question.
11 Did he suggest to you that you get the advice
12 of another lawyer to get redress after this
13 case was over?

14 A. Yes.

15 Q. Against your counsel, myself?

16 A. Yes.

17 Q. Did he talk about a pro se with similar facts
18 that he was familiar with and suggest that a
19 pro se litigant could do a better job than your
20 current counsel?

21 A. I believe so.

22 Q. Did you know the identity of the person that he
23 probably was referring to?

24 A. No. Well, myself.

25 MR. HAZLETT: I'm going to object as

1 the witness is still answering, but it's not
2 relevant.

3 CHAIRMAN GRISELL: Sustained.

4 Q. (BY MR. LANDRITH) How did you feel about the
5 quality of representation you were receiving
6 from me after he made those comments?

7 A. After he made the comments?

8 Q. Yes.

9 A. Well, as I say, I was fortunate enough that you
10 would take the case. I had addressed many
11 attorneys. I never understood-- I thought I
12 understood the law, I never understood why the
13 case turned out the way it did at that time.

14 Q. Did you feel that your case-- did-- strike
15 that. Did his comments make you feel that your
16 case wasn't getting a fair consideration?

17 A. From who?

18 Q. From the court.

19 A. Well, yes.

20 Q. Why? Why did that make you feel that way?

21 A. Well, my experience in courts in Kansas
22 courts.

23 Q. Have you been in other state court and other
24 federal court trials?

25 A. No, just Kansas.

1 Q. Was that Kansas state court or Kansas federal
2 court?

3 A. Shawnee County federal courts, Richard Rogers.
4 I've been in courts before, yes.

5 Q. Did you have relatives that had had court
6 actions?

7 A. Yes.

8 MR. HAZLETT: Objection, relevance.

9 CHAIRMAN GRISELL: Sustained. Strike
10 the answer.

11 Q. (BY MR. LANDRITH) What was the result of
12 Magistrate O'Hara's report and recommendation?

13 A. I would have to look at them.

14 MR. HAZLETT: I'm going to object,
15 that's stated in the record-- in the order
16 itself.

17 CHAIRMAN GRISELL: I don't know what
18 the objection is, but it is in the record. We
19 have the complete history of how the case
20 proceeded. From the Magistrate's report and
21 recommendation I think it proceeded to jury
22 trial, didn't it? Adverse decision with
23 respect to Mr. Bolden's case and it's on appeal
24 now, if I'm not misunderstanding the status of
25 the matter. Is that correct?

1 MR. LANDRITH: Yes, sir.

2 CHAIRMAN GRISELL: Okay. Then we
3 understand the status and we don't need
4 evidence to support that because there's-- it's
5 not in controversy.

6 Q. (BY MR. LANDRITH) Were you not upset that
7 Mayor Felker was no longer a defendant?

8 MR. HAZLETT: I'll-- never mind.

9 CHAIRMAN GRISELL: Sustained. It's
10 not relevant.

11 MR. LANDRITH: Sir, I--

12 CHAIRMAN GRISELL: Well, I'll listen
13 to your argument.

14 MR. LANDRITH: I think that this is
15 actually part of possibly helping the
16 Disciplinary Administrator's case and it
17 addresses the issues before us whether the
18 decision that resulted that dropped out the
19 named defendants was injurious to Mr. Bolden.
20 And even if Mr. Bolden's potential for a money
21 judgment did not change, he may have had other
22 reasons that he may be dissatisfied with me
23 because of something I did that failed to keep
24 those defendants in the case. I don't have to
25 ask questions along that line, I could leave it

1 to Mr. Hazlett.

2 CHAIRMAN GRISELL: Sure, I'd like to
3 know his opinion on the action or inactions
4 that you may have taken in the federal district
5 court case because I was going to ask him that
6 question Why don't you ask him directly
7 questions about your conduct and what you did
8 and whether he was dissatisfied, whether he
9 thinks you should have done something else.

10 Q. (BY MR. LANDRITH) Is there other things that
11 you think I should have done that would have
12 kept Mayor Felker as a defendant in the case?

13 A. I don't know what you could have done, I'm not
14 a lawyer.

15 Q. Were you dissatisfied with that outcome?

16 A. I was dissatisfied that Mayor Felker was not
17 kept in there and I was dissatisfied because I
18 was the only witness that testified in my case,
19 but I don't know what that had to do with.

20 Q. Are there things that I could have done to
21 have-- that I didn't do to our allegation that
22 the decision made against you was racially
23 motivated or that the city's action against
24 property in your minority neighborhood was
25 racially motivated?

1 A. I think you did everything you could to prove
2 to show that. I think you were being
3 disallowed to show the truth.

4 Q. Did you believe that I had enough evidence
5 gathered to put-- to make a competent argument
6 on that?

7 A. I know you did.

8 MR. LANDRITH: I have no further
9 questions.
10

11 EXAMINATION

12 BY CHAIRMAN GRISELL:

13 Q. Mr. Bolden?

14 A. Yes, sir.

15 Q. Mr. Landrith asked you if you felt that he was
16 competent in your representation and you
17 indicated that you felt fortunate that he took
18 the case. To me that's not an answer. So I
19 want to ask you, did you believe that Mr.
20 Landrith was competent in his representation of
21 you in the federal district court case?

22 A. Do I feel like he was competent?

23 Q. That's the question.

24 A. Yeah. I would have never hired him if I didn't
25 feel like he was competent.

1 Q. Of course sometimes you don't know whether
2 counsel is competent when you hire them.

3 A. Uh-huh.

4 Q. But then as a case progresses and you see the
5 conduct of the attorney and/or the result that
6 in and of itself may change your mind. So in
7 observing Mr. Landrith's representation of you
8 and the outcome of the case based upon the
9 comments of the Magistrate, is it your opinion
10 that Mr. Landrith was competent in his handling
11 of your case?

12 A. I did not agree entirely with the Magistrate.

13 Q. I'm not asking you whether you agreed. I'm
14 just asking whether you think Mr. Landrith was
15 competent. You were the client, we'd like to
16 know whether in your opinion you believe that
17 your attorney was competent?

18 A. Yes, I believe he was competent. I believe he
19 was new. One-- the only thing was that I did
20 not realize he was as new as he was. But, yes,
21 I believed he was competent. He read the law
22 and understood the law as I did. I have a
23 degree in college, associate degree from DeVry,
24 and I've been trained for computers, ten years
25 experience, I have 20 years mechanical

1 experience. I'm the son of Jim Bolden, the
2 owner of Little Jim's Garage in the early
3 1970s.

4 Q. Okay. I was concerned about your opinion of
5 competence.

6 A. So I feel like I was competent and I feel
7 like--

8 CHAIRMAN GRISELL: Okay. Thank you.
9 Does the panel-- within that, Mr. Hazlett?

10 MR. HAZLETT: I have a few questions.

11 CROSS EXAMINATION

12 BY MR. HAZLETT:

13 Q. Mr. Bolden, how did you meet Mr. Landrith?

14 A. Through a friend that was helping me initially
15 with my housing situation.

16 Q. Okay. Did he recommend Mr. Landrith's services
17 as an attorney?

18 A. Yes, he did.

19 Q. So then you obviously decided to retain Mr.
20 Landrith?

21 A. Yes, I did.

22 Q. And at that point you were in the process of
23 wanting to appeal what happened to you in
24 district court?

25 A. Yes, sir.

1 Q. So Mr. Landrith did file a docketing statement
2 in your appeal, in fact you were with him up
3 here in this building when that happened?

4 A. Yes, sir.

5 Q. Mr. Landrith later filed a brief on your behalf
6 in that case, do you recall that?

7 A. Yes, sir.

8 Q. Do you recall that the Court of Appeals issued
9 an order to Mr. Landrith saying that that brief
10 didn't comply with the Supreme Court rules?

11 A. Yes, that's what he was indicating earlier,
12 yes.

13 Q. And there is a requirement that when the record
14 goes up before the court that the brief that is
15 filed has to go ahead and make reference to the
16 record?

17 A. Yeah, I'm not an attorney.

18 Q. I understand. Did he explain to you why the
19 court was thinking about not accepting the
20 brief?

21 A. He explained. I don't know if I had full
22 understanding of what was really going on.

23 Q. Okay. Did--

24 A. And that might have been because of my lack of
25 knowledge.

1 Q. Did he explain to you why-- well, what was your
2 understanding of why you didn't proceed with
3 the appeal, what did Mr. Landrith tell you
4 about that?

5 A. The appeal in court-- in this court?

6 Q. In state court.

7 A. Oh, I had possibly made the mistake of asking
8 him not to continue with that. That was more
9 of my-- I was getting information from
10 different sources also and I was under the
11 understanding that the houses had been torn
12 down and that was what the stay was for. Well,
13 if the houses had been torn down then in lieu
14 of the stay then what do I need a stay for
15 because the houses have been torn down. So
16 that was part of my call.

17 Q. So you told Mr. Landrith you wanted to dismiss
18 the appeal because it was voluntarily dismissed
19 up here?

20 A. Yes, it was. That was more of my call, he
21 agreed with it.

22 Q. So then did you have a conversation with Mr.
23 Landrith about what you should do next and did
24 you decide to file an action in federal court?

25 A. Yes, sir.

1 Q. Was that on Mr. Landrith's advice that you
2 decided to do that?

3 A. Yes, sir.

4 Q. And what did he explain that he thought you
5 could accomplish in federal court?

6 A. Well, we were hoping that we would-- the
7 federal laws that are stated on the internet,
8 which is available to the public--

9 Q. Sure.

10 A. -- would be enforced.

11 Q. Did he indicate to you that he felt that there
12 was a chance or a good chance of success in
13 federal court?

14 A. Yes, sir.

15 Q. Did he indicate to you that there might be a
16 difficult-- a difficulty legally because a same
17 or similar action had been filed previously in
18 state court?

19 A. No, I don't believe-- I don't believe that he
20 indicated it would be difficult because of an
21 action in state court. If he did, I don't
22 recall.

23 Q. You knew the action was brought against the
24 City of Topeka and a number of other
25 defendants. Is that correct?

1 A. Yes.

2 Q. Including former Mayor Felker?

3 A. Yes, sir.

4 Q. But ultimately when the case went to a jury
5 trial there was only one defendant, is that
6 correct, the City of Topeka?

7 A. You mean, was Felker taken off?

8 Q. Right.

9 A. I think so. I think that that was done during
10 the pretrial, yes.

11 Q. In fact, all of the other defendants, except
12 the City of Topeka, were dismissed out of the
13 lawsuit. Is that your recollection?

14 A. I believe so, yes, sir.

15 Q. Do you know why they were dismissed out of the
16 lawsuit?

17 A. Yes, that was something the Magistrate and Bret
18 were talking about in pretrial.

19 Q. What-- as you sit here today, what do you
20 recall the reason being for the other
21 defendants being dismissed out of the lawsuit?

22 A. Well, the city is as a body, the employees of
23 the city would be underneath the City of
24 Topeka-- the body of the City of Topeka and
25 they would be protected underneath that

1 umbrella.

2 Q. Do you recall that Judge O'Hara made a decision
3 that Mr. Landrith had not properly served the
4 other defendants in the appropriate time
5 period?

6 A. I do recall that.

7 Q. Okay. Did Mr. Landrith discuss with you his
8 understanding or explain to you Judge O'Hara's
9 decision in that regard?

10 A. If I'm not mistaken I thought that we-- we had
11 served in the time period. It was late in the
12 game, I remember that.

13 Q. Judge O'Hara determined that service was close
14 to 100 days late, do you recall-- did Mr.
15 Landrith explain that to you?

16 A. Yeah, but I believe it was still within the
17 statute I thought.

18 Q. Do you recall that Judge O'Hara determined that
19 Mr. Landrith didn't comply with the Federal
20 Rules of Civil Procedure in serving the
21 defendants?

22 A. I know there was some talk along them lines.

23 Q. Did Mr. Landrith explain to you the legal
24 significance of the failure to serve those
25 defendants?

1 A. I thought we had served them in time still.

2 Q. Did Mr. Landrith accept responsibility for the
3 fact that the defendants in your lawsuit, other
4 than the City of Topeka, were not served
5 timely?

6 A. Could you repeat that, please?

7 Q. Did Mr. Landrith accept responsibility for the
8 fact that most of the defendants in your
9 lawsuit were not served in a timely fashion?

10 A. No, no. We thought they were-- no, I believe
11 they were served in a timely fashion was my
12 understanding.

13 Q. You said-- Mr. Landrith asked you the question
14 about on your trip to the pretrial conference
15 apparently he told you it didn't look good in
16 your case?

17 A. Yes, he indicated some things.

18 Q. Why did he say it didn't look good.

19 A. I don't recall at this point. They were taking
20 away some of the case maybe, some of the case
21 was being taken away.

22 Q. Okay. When you were present at the pretrial
23 conference, Mr. Bolden, Judge O'Hara was not
24 very complimentary about Mr. Landrith's
25 representation?

1 A. No, sir.

2 Q. And I appreciate the fact that you are thankful
3 that he represented you and others wouldn't.

4 A. Yes, sir.

5 Q. But what was your feeling there as Judge O'Hara
6 was making these comments about your attorney?

7 A. He was-- hey, he was kind of like our
8 president, we get two options, you get to pick
9 amongst the two and you have to live with it.

10 Q. Let me read you something from what-- in the
11 order that came out from Judge O'Hara about
12 your case. "Based on what transpired at the
13 pretrial conference plaintiff," referring to
14 you, Mr. Bolden," appears more articulate than
15 Mr. Landrith. Plaintiff may be better served
16 by representing himself, if indeed Mr. Landrith
17 was the only attorney willing to take the
18 case." What was your reaction to that comment
19 by Judge O'Hara?

20 A. My reaction initially was the fact that there
21 is so many more items in the case that I would
22 like-- that I'm here to talk about that I
23 didn't want to talk about, you know, what my
24 attorney didn't do. There was a lot of
25 things-- there was a lot of issues on the table

1 that I was there to discuss and it wasn't about
2 my attorney that I was there to discuss, so-- I
3 was there to discuss my housing. I was there
4 to discuss why I cannot invest in the property
5 and own property, that's what I was there to
6 discuss.

7 Q. And in some regard you think what happened to
8 you was racially motivated, would that be a
9 fair statement?

10 A. Well, I think that history-- if you've done any
11 history-- research in history you'll understand
12 the fact of owning property and the ability of
13 a black man to own property. I mean, this is
14 something that is nothing new to the
15 establishment. This is something that has been
16 a long going and ongoing problem in our
17 society. And I have left being an entrepreneur
18 and I have left from being a prosperous
19 investor to now fighting as a civil rights
20 leader.

21 Q. Sure. So part of what you intended to pursue
22 or what you wanted to prove was what the City
23 of Topeka did to you was racially motivated
24 somewhat?

25 A. Not only racially motivated, but it was more of

1 the haves than the have nots for the uneducated
2 individual or the uneducated one this has been
3 happening to. So it's not-- it was not
4 specifically just about race, but it was more
5 specifically about the low income people that
6 had been affected.

7 Q. Yesterday I asked Mr. Landrith the question
8 whether he thought what Judge O'Hara did in
9 your case might have been racially motivated.
10 This is the question I asked, "So you think
11 Judge O'Hara was acting the way he did because
12 Mr. Bolden was black?" And Mr. Landrith said,
13 "Yes." Do you concur with that?

14 A. Well, Mr. Landrith might have more knowledge
15 than I did about this.

16 Q. Well, based on your experience.

17 A. I want to be open minded. Like I say, history
18 has already shown that them types of injustice
19 go on. History has shown that, it's proven.

20 Q. I don't disagree with that. But did you and
21 Mr. Landrith have a discussion about whether or
22 not Judge O'Hara-- Judge O'Hara's actions might
23 have been racially motivated because you're
24 black?

25 A. I don't recall. As I say, I've been in the

1 federal court systems for a long time and
2 that's nothing new for me.

3 MR. HAZLETT: I don't have any
4 further questions.

5 CHAIRMAN GRISELL: Panel?

6 MS. HARRIS: I don't have any
7 questions.

8 MR. SCHMITT: No questions.

9 MR. HAZLETT: Thank you, Mr. Bolden.

10 THE WITNESS: Thank you.

11 REDIRECT EXAMINATION

12 BY MR. LANDRITH:

13 Q. Wasn't it true when you answered the question
14 that after we voluntarily withdrew your
15 appellate brief that we amended an existing
16 federal action that you already had going in
17 federal court?

18 A. Correct.

19 Q. And we had-- is it true we had civil rights
20 claims against the City for discriminating
21 against you on the housing?

22 A. Correct.

23 Q. Is it true that they were based on an employee
24 of the City named Jeff White approving HUD
25 funded loans for you?

1 A. Correct.

2 MR. HAZLETT: I'm going to object to
3 this line of questioning because it goes to the
4 underlying Mr. Bolden's case, which is why
5 we're not here.

6 CHAIRMAN GRISELL: Sustained. Could
7 we take about a ten-minute break, please.

8 MR. HAZLETT: Fine.

9 CHAIRMAN GRISELL: Thank you.

10 (THEREUPON, a short recess was had).

11 CHAIRMAN GRISELL: Mr. Landrith, you
12 may proceed.

13 MR. LANDRITH: Yes, sir. I would
14 like a leave of the court to ask a line of the
15 questioning that I was previously stopped on,
16 that is a basis for my statement, yes or no,
17 was Judge O'Hara's decision likely to have been
18 motivated by race. I have some questions to
19 ask along those lines.

20 CHAIRMAN GRISELL: Certainly.

21 Q. (BY MR. LANDRITH) Did you know a pro se
22 litigant that had a Topeka Housing or property
23 action in federal court that was before
24 Magistrate O'Hara?

25 MR. HAZLETT: I object. I don't see

1 how any other case is relevant to this case.

2 CHAIRMAN GRISELL: He may be laying a
3 foundation for inquiry concerning this
4 witness's belief that the decision by the judge
5 was racially motivated. And if that's where
6 you're going, I'll allow it. I'm not going to
7 get into the other case or the facts of that
8 case

9 Q. (BY MR. LANDRITH) I might reask that question.

10 Do you know Frank Kirtdoll?

11 A. Yes.

12 Q. Does he own property in Topeka?

13 A. Yes, sir.

14 Q. Did he file an action in federal court against
15 the City of Topeka?

16 A. Yes, sir, from my understanding.

17 Q. Is he an African American?

18 A. Yes, he is.

19 Q. Have you seen him at city hall?

20 A. Yes.

21 Q. Is that where you met the friend that referred
22 you to me?

23 A. Is that where I met the friend that referred--
24 no.

25 Q. Where did you meet him?

1 A. The friend that referred me to you?

2 MR. HAZLETT: I'm going to object,
3 this is not relevant.

4 CHAIRMAN GRISELL: Why is it relevant
5 where he met his friend that subsequently
6 referred him to you?

7 MR. LANDRITH: I was going to ask
8 some questions about Frank Kirtdoll and I
9 believe that-- or one of the bases that I
10 answered that question in choosing between yes
11 or no yesterday is my knowledge of Frank
12 Kirtdoll's similar housing civil rights based
13 claim that was pro se and seems to be the one
14 referred to by Magistrate O'Hara in the
15 transcript.

16 CHAIRMAN GRISELL: Well, the
17 testimony has been that you believe that the
18 decision by Judge O'Hara was racially
19 motivated. This witness has testified,
20 pursuant to several questions, he believes that
21 the decision was based in part upon the fact
22 that he's black, that's been established. Your
23 opinions have been put into the record. It's--
24 the basis for it, to the panel's opinion
25 anyway, is not important. We will take those

1 answers on their face as the beliefs of you and
2 Mr. Bolden and consider them.

3 MR. LANDRITH: Yes, sir.

4 Q. (BY MR. LANDRITH) When Magistrate O'Hara
5 counseled you that the subpoenas had been
6 issued very late in the case beyond the limit,
7 you understood that they had just been recently
8 issued just before that pretrial order hearing?

9 A. Correct.

10 Q. Yet-- excuse me. Were you aware that there was
11 a hearing in federal court in this same case
12 before Judge Vratil substantially earlier on
13 December 24th?

14 A. Could you repeat that, please?

15 Q. Were you aware of the Christmas Eve hearing
16 before Judge Vratil by phone?

17 A. Between us?

18 Q. Were you aware of that hearing that was between
19 me and Sherri Price by telephone on Christmas
20 Eve day when we first filed in federal court?

21 A. I think-- I believe you're referring to we
22 ought to try to settle it before it goes to
23 court, is that what you're referring to?

24 Q. No. When I first started to represent you and
25 we filed in federal court.

1 A. Okay.

2 Q. Did I tell you to stand-by to be able to
3 testify in Kansas City, Kansas at a call on
4 December 23rd or December 24th if I could get a
5 TRO hearing.

6 A. I believe so, yes.

7 Q. But you weren't called to testify for that
8 hearing, were you? I'll withdraw that
9 question. Isn't it true that when Mr.-- when
10 Magistrate O'Hara and now the Disciplinary
11 Administrator say that those subpoenas were 100
12 days late, that they're talking about a time
13 limit that started when we first filed our
14 federal action?

15 A. You're asking me?

16 Q. Is it true that-- let me try and ask this a
17 different way.

18 CHAIRMAN GRISELL: I think they were
19 summonses, weren't they, not subpoenas?

20 MR. LANDRITH: Summonses.

21 Q. (BY MR. LANDRITH) The claims that we-- weren't
22 the claims that we were seeking review on in
23 the Kansas Appellate Court amended into the
24 federal action that was already going on at
25 that time?

1 A. Yes.

2 Q. It's your understanding, isn't it, that when
3 you file a lawsuit you have to secure service
4 of process on the defendants?

5 CHAIRMAN GRISELL: This witness has
6 already testified that he's not an attorney.
7 It's the opinion of the panel that he's not
8 competent to render decisions on legal matters.
9 The issue of the summonses was addressed by the
10 federal district court judge and apparently
11 then the judge that handled the trial. We
12 understand that you have a difference of
13 opinion with respect to the ruling and that the
14 matter is now on appeal, so--

15 MR. LANDRITH: I'll move on.

16 CHAIRMAN GRISELL: Thank you.

17 Q. (BY MR. LANDRITH) When you stated to Mr.
18 Hazlett that there was so many more items you
19 wanted to talk about, did that include
20 scheduling putting on your case at that
21 pretrial order conference?

22 A. Yes, I wanted to talk about my case is why I
23 was there.

24 Q. Were you expecting to make a schedule for when
25 hearings would take place and the next actions

1 that would happen in the court case?

2 A. Yes.

3 Q. Were you surprised that that was a pretrial
4 order conference and we didn't talk anything at
5 all about making those plans, but we instead
6 talked about these other things?

7 A. Very much surprised.

8 MR. LANDRITH: That's all the
9 questions I have.

10 CHAIRMAN GRISELL: Mr. Hazlett?

11 MR. HAZLETT: Nothing.

12 CHARIMAN GRISELL: Panel?

13 MR. SCHMITT: Nothing.

14 MS. HARRIS: No questions.

15 CHAIRMAN GRISELL: I don't have
16 anything for you. May this witness be
17 released?

18 MR. HAZLETT: Certainly.

19 MR. LANDRITH: Yes, sir.

20 CHAIRMAN GRISELL: Okay. Mr. Bolden,
21 thank you for appearing, you're free to go.
22 Mr. Landrith, we may check to see if Judge
23 O'Hara is here, but if not, do you have other
24 witnesses that you intend to call.

25 MR. LANDRITH: No, just myself,

1 that's the only remaining witness I have.

2 CHAIRMAN GRISELL: Would you believe
3 that-- do you think that you could go ahead and
4 testify and is 20 minutes sufficient for that?

5 MR. LANDRITH: I believe so, sir. I
6 was going to ask for the aid of yesterday's
7 transcript. It looks like it was available
8 here on this question, is that--

9 MR. HAZLETT: One question was.

10 MR. LANDRITH: One question. All
11 right.

12 MR. HAZLETT: I can provide you with
13 one question.

14 MR. LANDRITH: No, that's fine.
15 Thanks.

16 CHAIRMAN GRISELL: Mr. Landrith, Mrs.
17 Larkin takes notes and takes down important
18 aspects of the case, which then when we meet to
19 deliberate she has that information in case we
20 need to go back and look at something that was
21 testified. Other than probably what she had
22 concerning that particular question, it's not
23 something that's utilized by the Disciplinary
24 Administrator that you don't have access to.
25 So if there was a specific question, you know,

1 we can go back on the official transcript, but
2 I just don't want you to think that he's
3 afforded something that you're not.

4 MR. HAZLETT: Maybe I should explain
5 how that came about. I asked the court
6 reporter to provide me the last question I
7 asked-- that I asked Mr. Landrith yesterday on
8 my direct examination and have just that last
9 question and Mr. Landrith's answer and the
10 quickest way she could get it to us was to
11 mail-- to e-mail it to Gayle, so that's how I
12 got that last question.

13 CHAIRMAN GRISELL: Thank you.

14 MR. HAZLETT: And that's the only
15 question I got. And Gayle is going to provide
16 a copy of that-- what I received to Mr.
17 Landrith.

18 CHAIRMAN GRISELL: Thank you. Mr.
19 Landrith, you have previously been sworn as a
20 witness and you'll continue under that oath at
21 this time. You may proceed.

22
23 BRET LANDRITH,
24 called as a witness on behalf of the
25 Respondent, was previously sworn, and testified

1 as follows:

2
3 MR. LANDRITH: I want to offer into
4 evidence my statement that I participated in a
5 case, pro se, Shawnee District Court Case
6 01-D-1961 where the appearance docket for
7 Shawnee County changed a couple of times during
8 the progress of that case and it materially
9 impaired my ability to represent myself in my
10 own divorce.

11 Motions that I filed were received by the
12 court, but not docketed. And several days
13 later when the hearing took place, they were
14 still not on the appearance docket. But
15 because I had substantial experience before
16 Shawnee District Court and that these things
17 happen by that time, I had with me the older
18 certified copy of the appearance docket. And
19 later when I showed up at the hearing, my
20 motion and argument against dismissal of the
21 action had not been given to the judge and had
22 not been recorded, as I stated, by court.

23 The opposing parties counsel had called
24 the judge the evening before. It's my
25 understanding that there is considerable leeway

1 to do ex parte communications under the divorce
2 code and the statute actually expressly permits
3 it. My problem with the incident and why I
4 relate it here today is that it's an example
5 where the record changed adversely to one
6 party.

7 CHAIRMAN GRISELL: What's the time
8 frame that we're talking about here, Mr.
9 Landrith?

10 MR. LANDRITH: One proceeding took
11 place - I better check the date for sure - the
12 24th of September, 2003, and the following one
13 was in October. At the October hearing I
14 obtained a later or-- or just before the
15 October hearing I obtained a later certified
16 copy of the official appearance docket and I
17 found that the judge's order had been backdated
18 and now appeared a date earlier than my earlier
19 certified copy. And I also saw that the court
20 had indeed received or the entries showed that
21 the court indeed had received my filings
22 several days in advance of the first hearing.

23 CHAIRMAN GRISELL: Okay. This is a
24 divorce action involving you as a party?

25 MR. LANDRITH: Yes.

1 CHAIRMAN GRISELL: If I have the
2 facts correct in looking at some of your
3 filings or your answer, was the file in Shawnee
4 County District Court and then was it
5 subsequently either a venue was changed to
6 Crawford County?

7 MR. LANDRITH: No, sir. I filed
8 first in Shawnee District Court and then no
9 action took place on it, it was dismissed. I
10 refiled it under a request for a new trial
11 rehearing and I had an argument why I met those
12 criteria, but I was not able to overcome the ex
13 parte decision on the opposing counsel's motion
14 that it be dismissed because another later
15 divorce somehow took precedence over it.

16 CHAIRMAN GRISELL: Where was the
17 subsequent divorce granted?

18 MR. LANDRITH: Crawford County,
19 Kansas. I raised those issues on an appeal and
20 the hearing panel, I believe, recused itself
21 and another hearing panel was installed and
22 they ruled against the issues that I raised
23 objecting to that.

24 CHAIRMAN GRISELL: So the divorce,
25 which was ultimately granted in Crawford

1 County, was then-- that was appealed by you and
2 the Court of Appeals rendered a decision?

3 MR. LANDRITH: I was appealing from
4 the Shawnee District Court decision. The
5 Crawford County divorce went on.

6 Ultimately the Shawnee District Court
7 decision was upheld and I was never present or
8 participated in the Crawford County divorce. I
9 was bringing up that as a judicially noticeable
10 record or fact because it's a record of the
11 divorce case, there was a transcript discussion
12 about that subject backdating records before
13 the judge in Shawnee District Court, which I
14 think contradicts Ms. Escalante's testimony
15 that that could never happen.

16 The other case that I was going to bring
17 that up that happened in was another Shawnee
18 County Court case that was a contemporary case
19 to the adoption appeal and one that I initially
20 appeared briefly and then I was replaced by
21 David Price, who went on pro se. It's David
22 Martin Price versus State of Kansas and that's
23 case-- Appellate Case No. 03-91252-A. And I
24 believe that they have both certified
25 appearance dockets that show a confliction as

1 attachments to their docketing appeal in that
2 case. Then I was going to also state that
3 appearance docket in the Baby C case, the
4 certified version that's in the docketing
5 statement, conflicts with the first table of
6 contents for the record of appeal first
7 document submitted by Shawnee District Court
8 that list the documents for record of appeal
9 and that itself was changed once or twice
10 during the procedure.

11 MR. HAZLETT: I would object to the
12 admission of these documents starting with the
13 last ones first, the Baby C case. Again, the
14 respondent had ample opportunity if he wanted
15 to introduce those documents at the pretrial to
16 mark them at the pretrial conference or between
17 now-- or between that time and now and he chose
18 not to do so. And I would say-- I would object
19 because it's just too late. And with respect
20 to the other documents, lack of relevancy and
21 lack of proper foundation.

22 MR. LANDRITH: Sir, I was not
23 attempting to introduce documents. I was
24 making statements and citing to a judicially
25 noticeable record.

1 CHAIRMAN GRISELL: Okay. I thought
2 you had moved to enter at least that first
3 limited transcript. I'm going to sustain the
4 objection. This panel has been very willing to
5 accept your exhibits, despite the fact that
6 they weren't exchanged prior to the hearing or
7 provided to the panel, you've been granted
8 significant leeway. These two-- at least two
9 exhibits I don't think are relevant or have any
10 probative value. We've listened to your
11 testimony and we'll consider your testimony,
12 which I think reflects what's considered in the
13 exhibits.

14 MR. LANDRITH: I counseled David
15 Price that the way that he wanted to challenge
16 determination of his parental rights would
17 likely produce an adverse outcome. I'd like to
18 state that before taking the case or filing an
19 entry of appearance that I explained to him
20 that if we make reference to misconduct that
21 occurred that I understood just the principle
22 of systems dynamics, any organization is going
23 to respond defensively and in that defensive
24 response they are unlikely to consider many of
25 the things that we want them to consider that

1 would give us a slight chance of an outcome
2 that we were seeking. I had many hours of
3 discussion with him on that subject. I feel
4 that I counseled him adequately and that he,
5 with considerable basis to make the decision
6 on, decided that there was not much difference
7 likelihood outcome the way that I would have
8 suggested to do it and the way that he wanted
9 to.

10 He did feel that he had rights that had
11 been violated and that one of the outcomes that
12 he was seeking from that litigation was a
13 vindication of those rights. And he thought
14 that if he could not have the chance to get the
15 record and document that had happened, that I
16 would be not doing a good job of representing
17 what he wanted to have happen. I believe that
18 I independently researched the issues that he
19 felt had happened. I think that the record
20 that was cited extensively in both the
21 appellant's initial brief and reply brief give
22 material basis for deception having taken
23 place. I believe that that met the definition
24 in Kansas on its face of kidnapping--
25 kidnapping by deception. And that his child

1 was taken from him and kept to-- by another
2 party without his permission. And I understood
3 how that met that definition and I also
4 understood that he had the protected speech
5 right to make allegations of wrongdoing.

6 CHAIRMAN GRISELL: Mr. Landrith,
7 you've had a couple years to reflect upon this
8 now, do you think maybe some of the things that
9 Mr. Price told you that he believed was
10 occurring in his case actually wasn't true?

11 MR. LANDRITH: No, sir, I don't know
12 of anything that is not true. I've looked at
13 the record extensively. One of the reasons why
14 I ultimately decided to take the case was that
15 he had been very involved in his own litigation
16 and he had asked for and obtained repeatedly
17 many of the key records and documents and that
18 he had those and I was able to look at them and
19 parts of transcripts and depositions-- I guess
20 deposition transcripts that made me observe
21 those things that he was alleging happened
22 happened. I think that they happen quite
23 often. But two years later now, I know that
24 they happen regularly in Kansas.

25 CHAIRMAN GRISELL: Do you think that

1 any of your conduct in either the-- I call it
2 the David Price matter or the Bolden matter,
3 anything that's alleged in the complaint, do
4 you think any of your conduct has resulted in a
5 violation of any of the Kansas Rules of
6 Professional Conduct?

7 MR. LANDRITH: In the comments to
8 Rule 1.1, which is the basis for my allegations
9 of obstruction, it doesn't qualify obstruction.
10 So I think that is one of the key reasons why
11 my pleadings deviated from what Mr. Polsesky
12 thought would be the norm.

13 CHAIRMAN GRISELL: And, Mr. Landrith,
14 I'm not asking you to make your closing
15 argument, I just want to know do you believe
16 that you violated any of the Rules of
17 Professional Conduct in your handling of either
18 the Price matter or the Bolden matter?

19 MR. LANDRITH: No, sir.

20 CHAIRMAN GRISELL: I appreciate that
21 answer. Continue with your testimony.

22 MR. LANDRITH: Yes.

23 CHAIRMAN GRISELL: Is the Judge here
24 yet?

25 MS. LARKIN: He is not.

1 CHAIRMAN GRISELL: Thank you.

2 MR. LANDRITH: I did witness-- I was
3 present in the oral argument and I witnessed
4 Austin Vincent argue substantially that Bret
5 Landrith had done a good job representing David
6 Price in this appeal. I understood that he was
7 making those arguments because he was
8 countering an issue that I had briefed on
9 appeal that some of the things that took place,
10 not having access to records and not having a
11 new counsel appointed for the post trial phase,
12 deprived David Price of a very strongly
13 recognized right to representation during the
14 trial and is based on the Sixth Amendment.

15 I understood that he said something quite
16 a bit different than that during his testimony
17 here before the court and I can understand that
18 he may have personally felt what he testified
19 to yesterday was true or his true belief even
20 at the time that he testified before the
21 appellate panel and he may not have clearly
22 remembered that he used my name not Mr.
23 Wolpert's name about the representation.

24 I know that in that capacity my client
25 would believe that he has lied and committed

1 deception or perjury, but I understand that in
2 that capacity he was representing a client and
3 he was not speaking as a sworn-in witness
4 giving evidentiary testimony about his personal
5 views or beliefs. I understood that when he
6 said those things before the panel he was
7 trying to give assurance that that panel
8 obviously needed that Mr. Price's rights
9 weren't Constitutionally violated by inadequate
10 counsel.

11 CHAIRMAN GRISELL: Mr. Landrith, Mr.
12 Price in his testimony indicated that he
13 believed fraud in his definition was committed
14 by Mr. Vincent because Mr. Vincent gave some
15 answers that were contradictory to what Mr.
16 Price believed the evidence was. If you made
17 statements in your pleadings that are contrary
18 to what the evidence actually is, then are we
19 to believe that you committed fraud?

20 MR. LANDRITH: I have a
21 responsibility for knowing what the evidence
22 actually is or having a very well described
23 basis for knowing it. And I believe that the
24 starting point is the rule that the
25 Disciplinary Administrator read to me during my

questioning at the end of his case in chief. I feel that at all times I met that basis. An example where David Price would believe that Austin Vincent committed fraud is when he brought a record, the same as I had done yesterday, that he did not disclose to opposing counsel and then stated under oath giving testimony that he had given notice that was not of record and that could not have established what he wanted to establish with it. David Price would see that as fraud. I think that that would be within the bounds of deception, if you were discussing kidnapping by deception. But I'm not a state prosecutor and he's not being prosecuted.

CHAIRMAN GRISELL: What's your definition of fraud?

MR. LANDRITH: I think if you have a duty to disclose things that you don't disclose that that's fraud by omission. I think that making statements to deceive somebody else or cause something to happen that's beyond the limits of your responsibility or duty to them would be fraud. So if I tell you something that is going to cause you to have to act a way

1 and somebody will lose something from that--
2 that difference of action based on what I have
3 told you I think that I've committed fraud and
4 I don't know of any-- let's see, I'll try and
5 wind up here.

6 James Bolden I did counsel on the way to
7 the pretrial order conference that I did not
8 know what the pretrial order conference was
9 about. I suspected it had something to do with
10 the issuance of summons because we issued them
11 after Sherri Price for the first time objected
12 to lack of being properly served or being under
13 the jurisdiction of the court. So I suspected
14 that as much and counseled him that probably
15 Magistrate O'Hara would have some substantial
16 criticism of me. And I didn't say that in a
17 negative way against Magistrate O'Hara. I
18 explained to him that it's Magistrate O'Hara's
19 job to see that he is adequately represented
20 and he wants to make sure that you are here, I
21 am sure. so that he can verify for himself that
22 you understand how you're being represented.
23 That's all I have to say.

24 CHAIRMAN GRISELL: I know that Mr.
25 Hazielt may have some questions. I think the

1 panel has a couple three, but what we'll do is
2 bring Judge O'Hara in, have him testify, and
3 then once he's done we'll put Mr. Landrith back
4 on the stand for any cross examination or
5 questions by the panel. So you can step down,
6 Mr. Landrith, for right now.

7
8 JAMES P. O'HARA,
9 called as a witness on behalf of the Panel, was
10 sworn, and testified as follows:

11
12 EXAMINATION

13 BY CHAIRMAN GRISELL:

14 Q. Would you please state your name?

15 A. Yes. James P O'Hara.

16 Q. And, Mr. O'Hara, what is your profession?

17 A. I am a U.S. Magistrate Judge in Kansas City,
18 Kansas.

19 Q. Judge, you had been listed as a possible
20 witness in this matter involving Mr. Landrith,
21 who is the respondent. And one of the exhibits
22 in this matter is your report and
23 recommendation in the case of James L. Bolden
24 versus City of Topeka, Kansas. In that order--
25 which I'd ask that Mr. Hazlett put before you?

1 A. I actually brought a copy with me.

2 Q. It's in the exhibits and I'll be referring to
3 and counsel probably will be, Bates numbered
4 pages, but in the order specifically it's page
5 11.

6 A Correct.

7 Q. Okay. That exhibit has already been admitted,
8 but some questions have arisen during the
9 hearing concerning the comments in that order
10 and the Panel, I know, is interested in talking
11 to you about that order within the bounds of
12 what you're willing to discuss and then afford
13 counsel the opportunity to ask you questions.
14 We preface any discussion of the matter with
15 you knowing that your thought process in
16 rendering this decision certainly isn't
17 something that we can inquire about, at least
18 that's the status of the law, you may or may
19 not be willing to discuss that, but we
20 understand that we're restricted by that and
21 you don't have an obligation to tell us the
22 basis for a decision, at least that's our
23 understanding and we've discussed that with
24 counsel. What I'd like to do, Judge, is allow
25 counsel to ask you questions, if they have any,

1 and I know the panel has some questions
2 concerning your comments about the competence
3 of Mr. Landrith and the handling of the Bolden
4 matter.

5 A. Very well.

6 CHAIRMAN GRISELL: And. Mr. Landrith.
7 I would afford you the opportunity to ask the
8 Judge questions at this time.

9 Q. (BY CHAIRMAN GRISELL) Offered into evidence,
10 Judge, in addition to your order is a
11 transcript of the pretrial conference. I don't
12 know if you have that before you, but if any
13 questions are asked of you from that transcript
14 I would ask that counsel give you a copy of
15 that so you can refer to it.

16 A. I've actually brought a copy of that with me.

17 Q. Thank you, Judge.

18 CHAIRMAN GRISELL: Mr. Landrith.

19 DIRECT EXAMINATION

20 BY MR. LANDRITH:

21 Q. Judge O'Hara, I'd refer to you page 17 and 18
22 of that transcript-- I'm sorry, that would be
23 page 41.

24 A. One moment, please. This is the transcript
25 from the hearing or the pretrial conference I

1 should say on November 20, 2003, correct?

2 Q. Yes, Your Honor.

3 A. Page 41, counsel?

4 Q. Yes.

5 A. Thank you.

6 Q. I have a question about that. At the top
7 paragraph-- incomplete paragraph at the top you
8 are discussing civil rights cases where parties
9 represent themselves. Did you have any before
10 you at that time on housing or City of Topeka--
11 where the City of Topeka was a defendant?

12 A. I'm not certain. At any given time, however,
13 that would be probably. I don't mean to be
14 vague, but by example I can think of at least
15 one, perhaps two cases that I currently have
16 pending against the City of Topeka involving
17 housing issues in which the plaintiff is pro
18 se.

19 Q. Do you know the caption or I mean, the names
20 of the plaintiffs?

21 A. One comes to mind, Lawrence Kelly.

22 Q. Yes, sir.

23 A. That's a currently pending case.

24 Q. Before this pretrial order conference took
25 place, did you instruct your assistant to

1 contact me and arrange for James Bolden to
2 attend?

3 A. I don't have a specific recollection of that,
4 but I suspect that did occur because typically
5 we do not request that represented parties
6 appear at a final pretrial, so I would be
7 inclined to believe yes.

8 Q. During this pretrial order conference, did you
9 have concerns about the summonses not being
10 issued when it was timely to do so? That may
11 be too basic, that's an obvious. I'll withdraw
12 that question.

13 A. I'm not sure if I understood it, but--

14 Q. Would the failure to serve the defendants in
15 the case have been the reason why you would
16 have wanted the represented party's attendance
17 in this hearing?

18 A. That was among my concerns.

19 Q. In your capacity as a Magistrate for a
20 presiding judge, are you by nature more
21 concerned with the Federal Rules of Procedure
22 than the substantive arguments and matters that
23 you are overseeing for case management or
24 pretrial conferences?

25 A. Am I more concerned about the Rules of Civil

1 Procedure than the substance of a case?

2 Q. Is your position as a Magistrate more
3 ministerial in having the bulk of the Court's
4 role of seeing that the Federal Rules of Civil
5 Procedure are being complied with being your
6 duty?

7 MR. HAZLETT: I'm going to object. I
8 don't see how this is relevant to the charges
9 against Mr. Landrith in this disciplinary case.

10 CHAIRMAN GRISELL: Sustained.

11 Q. (BY MR. LANDRITH) My-- would you have
12 interpreted my answers to questions about not
13 complying with the rule with evidence or
14 proffers of testimony about adverse
15 circumstances, would that information have been
16 largely irrelevant to you on whether or not the
17 rules had been complied with?

18 MR. HAZLETT: I'm going to object.
19 Object, it's a compound question.

20 CHAIRMAN GRISELL: Sustained.

21 MR. LANDRITH: I'll try and reask
22 that.

23 Q. (BY MR. LANDRITH) Was the information about
24 the lack of resources for the plaintiff
25 relevant to your decision on whether or not the

1 rules had been complied with on service of the
2 defendants?

3 MR. HAZLETT: I'm going to object
4 because now he's asking the Judge to explain
5 why he made the decision he did, which is why--
6 I mean, his thought process, which is what I
7 thought we were not supposed to ask.

8 CHAIRMAN GRISELL: Well, he can ask
9 it it's-- but we understood that the Judge may
10 not be willing to discuss it, so overruled.

11 THE WITNESS: Would the reporter
12 kindly read that question back? I want to make
13 sure I understand precisely what counsel is
14 asking.

15 (THEREUPON, the court reporter
16 read back the following question:

17 "Q. (BY MR. LANDRITH) Was the
18 information about the lack of resources for the
19 plaintiff relevant to your decision on whether
20 or not the rules had been complied with on
21 service of the defendants?")

22 A. Yes.

23 Q. (BY MR. LANDRITH) Before you were Magistrate,
24 were you in private practice?

25 A. Yes.

1 Q. What law firm did you work for before becoming
2 a Magistrate?

3 A. Shughart, Thompson, and Kilroy.

4 Q. Were you ever a solo practitioner?

5 A. Never.

6 Q. When you worked for Shughart, Thompson, and
7 Kilroy, did your resources in handling a case
8 include access to services of a paralegal, at
9 times; a secretary, a receptionist?

10 MR. HAZLETT: I'm going to object to
11 this line of questioning. I don't see the
12 relevance to the charges against Mr. Landrith.

13 CHAIRMAN GRISELL: Sustained.

14 Q. (BY MR. LANDRITH) Did you defend insurance
15 companies when you worked in private practice?

16 MR. HAZLETT: Object to the
17 relevance.

18 CHAIRMAN GRISELL: Sustained.

19 Q. (BY MR. LANDRITH) Did you ask me during the
20 pretrial order conference if I had malpractice
21 insurance?

22 A. Yes.

23 Q. Did you believe that a Kansas lawyer should
24 have malpractice insurance?

25 A. If your question is did I believe that it would

1 be a prudent thing for both the lawyer and the
2 lawyer's clients for the lawyer to have
3 malpractice insurance, the answer would be yes.
4 If your question is, was it legally required
5 that the lawyer have legal malpractice
6 insurance, the answer to your question is no.

7 Q. Did you believe because of my handling of this
8 case that I should have malpractice insurance?

9 A. I guess my general view of whether a lawyer
10 should have malpractice insurance was formed
11 independent of my concerns about your handling
12 of the Bolden case.

13 Q. Did you feel a duty to ask James Bolden-- James
14 Bolden questions directly to determine his
15 understanding of the events and the risks his
16 cause was being subjected to?

17 A. Yes.

18 Q. What was the basis for your concern?

19 A. Well, first, it's his case. And, secondly, I
20 was concerned that the case was-- irrespective
21 of what the merits of the claim might be, and I
22 had formed no judgment about whether the case
23 was meritorious or not at that point, but I was
24 concerned irrespective of whatever the case
25 might have, that the case might be dismissed

1 without an adjudication of the merits because
2 of the conduct or the inactions of his counsel
3 and, hence, I addressed him directly for that
4 purpose.

5 Q. And what was the primary reason or reasons of
6 my inactions that jeopardized whether the case
7 was dismissed or not?

8 A. Well, first and foremost was the issue that
9 came up shortly before the pretrial conference.
10 If, for example, the most meritorious claims
11 laid against the individually sued defendants,
12 that is the non municipality defendants who
13 were sued in both their official and individual
14 capacity, I was confronted with the situation
15 where this gentleman, who was unschooled in the
16 law, and I'm referring to Mr. Bolden, might
17 suffer the loss of those claims because of the
18 failure of his counsel of record to take action
19 that I thought was clearly indicated.

20 Q. Were the factual allegations that were the
21 basis of the pretrial order part of the merits
22 of the claim that you considered when you
23 determined there was a risk to-- or a
24 possibility of risk to Mr. Bolden's interest if
25 individual defendants were dismissed?

1 A. I'm not sure if I understand your question.

2 Q. Am I correct in understanding that when you get
3 ready to have a-- hold a pretrial order
4 conference you've had both parties submit to
5 you a proposed pretrial order plan that
6 contains the factual allegations of each party
7 and the stipulated facts of both parties?

8 A. yes. in that by local rule and by scheduling
9 order the parties' lawyers are required to
10 jointly submit a proposed pretrial order to the
11 judge who is going to handle the pretrial
12 conference and that proposed order includes,
13 and has at least for the last couple of
14 decades, sections detailing each parties'
15 factual contentions and legal theories. So I
16 did read that material in preparation for that
17 conference.

18 Q. So that material would have been your basis for
19 determining that individual defendants had
20 been-- had claims made against them and what
21 the basis of those claims were?

22 A. Was a basis, it was not the only basis.

23 Q. So that document would be complete for
24 determining whether or not some of those claims
25 were in the individual or official capacity,

1 would it not?

2 A. What do you mean by complete?

3 Q. By the time the case is laid out in a pretrial
4 order, a proposed pretrial order is submitted
5 by both parties, you would have enough
6 information there to determine if claims were
7 being made on individuals in their official
8 capacity or their individual capacity, wouldn't
9 you?

10 A. Hopefully. I mean-- and I don't mean to be coy
11 in addition to the proposed pretrial order,
12 which is simply a draft document, if I or
13 another judge conducting the pretrial
14 conference is unclear about what claims are in
15 the case or lie outside of the case, we would
16 typically look at the most recent complaint in
17 this case. I think we had a second amended
18 complaint. And we'd look at the most recent
19 answer to that pleading. And in that
20 oftentimes-- indeed oftentimes we're called
21 upon to police whether what counsel try to
22 insert into a pretrial order accurately
23 reflects what had been pled prior to that time.

24 Q. So you would usually be pretty familiar with
25 the parties' claims by that time?

1 A. Hopefully, yes.

2 Q. Is it possible that James Bolden's claims
3 against named individuals that were employees
4 of the City of Topeka were entirely official in
5 capacity?

6 MR. HAZLETT: I'm going to object. I
7 mean, Judge O'Hara didn't even hear the actual
8 trial, wouldn't know the answer to that
9 question.

10 MR. LANDRITH: I believe he would.

11 MR. HAZLETT: Or if the testimony
12 occurred.

13 CHAIRMAN GRISELL: So the objection
14 is?

15 MR. HAZLETT: It's not within the
16 knowledge of the witness.

17 MR. LANDRITH: I'm asking him about
18 his knowledge of the pleadings that he
19 evaluated before the pretrial order conference.

20 CHAIRMAN GRISELL: Okay. I'll
21 overrule.

22 A. It is my recollection, Mr. Landrith, that as of
23 November 20, 2003, the second amended complaint
24 that you'd filed on behalf of Mr. Bolden
25 asserted claims against, memory serves, six

1 individuals and asserted those claims against
2 them in both their official capacity and in
3 their individual capacity. I don't know what
4 happened subsequent to the final pretrial
5 conference with respect to how the claims were
6 ultimately submitted to the jury for
7 determination.

8 Q. (BY MR. LANDRITH) Isn't it true that the facts
9 alleged in the Kansas District form for
10 pretrial order stated only official capacity
11 averments of fact?

12 A. I don't believe that's accurate. You're
13 talking about the pretrial order that was
14 submitted in draft form to me prior to the
15 pretrial conference?

16 Q. Yes, sir.

17 CHAIRMAN GRISELL: Let me-- Mr.
18 Landrith, the issue of the judge's
19 understanding of the facts and his-- or the
20 trial court judge's ultimate decisions in this
21 matter is of record and we're not here today to
22 go over the judge's consideration of those
23 issues at the pretrial and have you argue that
24 he was wrong or him tell you that he was right.

25 MR. LANDRITH: I'll withdraw that

1 question and I'll try for a new line of
2 questioning. Magistrate O'Hara has
3 considerable expertise and-- but I can't make
4 use of that, I'm sure, without getting into the
5 area that we're going to question him about, so
6 I won't be going there and I'll move on to
7 another question.

8 Q. (BY MR. LANDRITH) If the nature of the factual
9 averments or allegations of James Bolden's
10 claims were only in their official capacity,
11 there wouldn't be a monetary loss to or a risk
12 of a lesser damage award to James Bolden if he
13 only had a surviving claim against the City for
14 the conduct-- the official conduct of those
15 officials?

16 MR. HAZLETT: I'm going to object
17 because that goes to the underlying litigation
18 in the Bolden case, doesn't have anything to do
19 with the allegations against Mr. Landrith or--
20 which are essentially his competence in
21 handling the service of process in the federal
22 case and the comments made by the Judge in his
23 report and recommendation.

24 MR. LANDRITH: I believe that
25 Magistrate O'Hara's basis in the transcript and

1 then his recommendation and ruling is based on
2 a perception that I had endangered a
3 substantial judgment interest of James Bolden
4 and he rightly was concerned a great deal about
5 that. But I'm now trying to question him,
6 because he has extensive knowledge about what
7 an insurable risk is, to see if there was
8 actually a potential for a monetary damage
9 difference in award against the city and
10 against the city and some named individuals in
11 their official capacity.

12 CHAIRMAN GRISELL: We'll I'll sustain
13 the objection. I believe the Judge has
14 testified that he was concerned about the
15 handling of the matter by counsel and he wanted
16 to ensure, by asking Mr. Bolden questions, that
17 he understood what was transpiring and that
18 possibly some of the claims that had been filed
19 against individually named defendants probably
20 were not going to proceed because of lack of
21 service of summonses.

22 Q. (BY MR. LANDRITH) Did your order state that
23 there were, for that stage of the trial,
24 meritorious claims remaining for James Bolden
25 against the City of Topeka?

1 A. I don't believe my report and recommendation,
2 Mr. Landrith, made any finding as to whether
3 any claim asserted by Mr. Bolden had merit or
4 not.

5 Q. Did you-- was it your-- your decision that--
6 did you make any decisions about whether claims
7 were sufficient or should remain as part of the
8 pretrial order in your report and
9 recommendation?

10 A. Yes. In the limited sense that I concluded
11 that absent valid issuance of process and
12 service of process on the individual defendants
13 that those claims would lack merit in the sense
14 that it wouldn't even be necessary to consider
15 them. But I did not make any determination as
16 to whether those claims or any other claims in
17 the case had merit in the sense of being able
18 to withstand a motion for summary judgment or a
19 motion to dismiss since that would be outside
20 of my jurisdiction, which is limited by
21 statute, Federal Rules of Civil Procedure and
22 local rule.

23 Q. Would you make-- or did you make the
24 determination that a pretrial order might be a
25 lesser number of claims than a plaintiff's

1 complaint?

2 A. In certain limited circumstances, basically
3 two. One, if we have a case where the parties
4 have consented to my making dispositive
5 rulings, which this case did not involve that
6 sort of consent. And then secondly, the
7 situation that I alluded to earlier where in
8 the course of framing the pretrial order I
9 would occasionally be called upon to make a
10 determination as to whether a claim that has
11 been articulated during the pretrial conference
12 procedure whether in the order or orally was
13 properly pleaded before. For example, if
14 somebody had pleaded a case based on contract
15 and then they get to the final pretrial
16 conference and they say geez we think
17 negligence would be a neat theory of relief to
18 include in the pretrial order. If the opposing
19 party were to object to the negligence theory
20 of relief, I would typically recite in the
21 pretrial order that that's not a claim that's
22 going forward to trial and I would note that if
23 somebody wants to preserve it for review by the
24 Direct Judge or by the Circuit Court of Appeals
25 what happened on that issue. So in certain

1 limited circumstances I've just described I
2 would make that kind of determination as to
3 what is going to proceed.

4 Q. In this proposed pretrial order, is it true
5 that you recommended more claims proceed than
6 ultimately Judge Vratil decided should remain
7 in the pretrial order?

8 A. Yes, albeit for different reasons.

9 Q. Did you make the decision in this case to grant
10 leave to amend the complaint to include claims
11 that were part of an issue before the Kansas
12 Court of Appeals?

13 A. I'm not sure if I understand your question.
14 Can you try it again, please?

15 Q. In federal court, am I correct in understanding
16 that by local Kansas rules that to amend a
17 complaint you would normally have to seek leave
18 of the court and provide an example of the
19 amendment before you had permission granted to
20 amend the complaint. Is that correct?

21 A. Unless the defendant has not yet filed an
22 answer or a motion for summary judgment that is
23 true.

24 Q. Yes, sir. And one of-- a couple of amended
25 complaints in this case arose, did it not,

1 because additional claims that were still
2 somewhere in the Kansas court system were added
3 to this federal action. Is that correct?

4 A. I don't know the answer to all your question.
5 I do know that, I believe, Judge Vratil granted
6 leave to Mr. Bolden to file a first amended
7 complaint as a result of the injunctive relief
8 proceedings that failed in the federal district
9 court. And I do recall that later in the case,
10 upon motion by Mr. Bolden, I granted leave for
11 him to file a second amended complaint, which
12 motion was not opposed by the defense.

13 Sitting here today I frankly don't recall
14 what claims were sought to be added via the
15 second amended complaint and I have no clue and
16 suspect I never had any clue as to whether
17 those claims that were added to the case via
18 the second amended complaint bore any
19 relationship to what had previously been
20 pleaded in the Kansas State court systems since
21 that record-- the later record would not be
22 before me.

23 Q. Would your decision on whether or not to amend
24 a complaint in those circumstances, if you were
25 making that decision, be one for form and

1 sufficiency of stating a complaint and
2 compliance with rules, would that be the
3 primary basis for doing so?

4 MR. HAZLETT: I'm going to object on
5 the basis of relevancy.

6 CHAIRMAN GRISELL: Sustained.

7 Q. (BY MR. LANDRITH) Did you instruct that this
8 pretrial order and recommendation that you made
9 be mailed certified mail to James Bolden
10 directly?

11 A. Yes.

12 Q. Did you make-- did you receive from me shortly
13 after this pretrial order conference a letter
14 substantiating or providing an explanation of
15 the law for some of the issues that arose or
16 that you questioned me about during the
17 pretrial order?

18 A. I believe the answer to your question is yes,
19 if what you're referring to is the letter
20 that-- that I received subsequent to the
21 November 20 pretrial conference, which you sent
22 in response to a revised draft of the pretrial
23 order that I circulated on December 2, 2003.
24 But if what you're referring to is a letter
25 outside the context of the draft pretrial order

1 I sent out for commentary by both sides'
2 lawyers, I don't recall.

3 Q. So both parties' counsel had input on a
4 proposed draft of this order that you prepared
5 after this pretrial order conference?

6 A. That's correct

7 Q. Do you have knowledge of statistics on civil
8 rights causes before Kansas District Court?

9 MR. HAZLETT: Objection, relevance.

10 CHAIRMAN GRISELL: Sustained.

11 Q. (BY MR. LANDRITH) Were there other bases for
12 your belief that my representation of James
13 Bolden was incompetent, besides the failure to
14 comply with the summons or the responsibility
15 of serving those on the parties?

16 A. Yes.

17 Q. Would you list those for us?

18 A. Yes. Principally they would be as follows.
19 The rambling, disjointed, and sloppy nature of
20 the pleadings which you had filed in the case.
21 Most notably the original complaint, the motion
22 for injunctive relief, the first amended
23 complaint, and the second amended complaint.

24 The next basis would be the fact that no
25 discovery was timely sought by the plaintiff

1 during the time allotted under the scheduling
2 order that was entered only after soliciting
3 input from both you and defense counsel.

4 Although, I am mindful that oftentimes there
5 are strategic, tactical, or economic
6 considerations that would dictate whether and
7 how much discovery is done in any particular
8 case. In this particular case I do seem to
9 recall that you essentially, for whatever
10 reason, elected not to do any discovery until
11 it was too late for that discovery to be
12 answered by the opposing side.

13 And then the last major category I think
14 would just be the way in which you conducted
15 yourself during the final pretrial conference
16 itself, which was-- and I don't mean to be
17 uncharitable. It was the worst performance
18 I've seen by a lawyer in the 25 years that I've
19 now been out of law school.

20 Q. Is it true that discovery-- voluntary discovery
21 continued under the terms of the case
22 management agreement as modified later in the
23 pretrial order?

24 A. I'm not sure.

25 Q. Is it true that part of your pretrial order

1 acknowledges that the plaintiffs had 373
2 documents to submit into evidence?

3 A. I don't recall the number. I do recall in the
4 pretrial order that there were many, many
5 documents that you and defense counsel, Sherri
6 Price, agreed would be either treated as
7 business records under the Federal Rules of
8 Evidence or even just stipulated into evidence
9 and I would imagine that those would include
10 some of the documents that you refer to.
11 Whether it was 373, I have no idea.

12 Q. Is it true that I made a request upon the city
13 for additional discovery with ten-- with--
14 before the expiration of the discovery period,
15 the enforceable discovery period?

16 A. I think I understand your question. I think
17 the record confirms that you served discovery
18 requests before the deadline for the completion
19 of all discovery stated in the scheduling
20 order. But allowing the responding party the
21 30 days plus three for mailing provided for by
22 the Federal Rules of Civil Procedure, my
23 recollection is that you failed to serve those
24 written discovery requests in a way that would
25 be defined as timely under the scheduling order

1 that was in place and that's the basis for my
2 ultimately having declined to compel the
3 defendants to respond to that discovery.

4 Whether they provided you some information
5 formally or voluntarily beyond that, as often
6 happens, I don't know.

7 Q. When you describe other pleadings, besides the
8 pretrial order, you stated they were rambling,
9 disjointed, are you referring to that they
10 contained information that was irrelevant to
11 you and the decisions that you were making?

12 A. In part, yes.

13 Q. Would some of that information that was
14 irrelevant to you be harms inflicted on the
15 plaintiff or his witnesses?

16 A. They might have been harm that either Mr.
17 Bolden or you thought had been inflicted upon
18 him and that were the basis of those
19 allegations. Whether any harm was in fact
20 inflicted, I have no idea.

21 Q. Would the affidavits that supported
22 intimidation of witnesses that were on the list
23 of witnesses for this case be relevant to some
24 of the information a plaintiff could include in
25 motions before the court?

1 MR. HAZLETT: I'm going to object,
2 basis of relevance.

3 CHAIRMAN GRISELL: Sustained.

4 Q. (BY MR. LANDRITH) Did you state in another
5 federal case that-- did you cite your ruling in
6 this case that I showed a lack of competence?

7 A. I don't recall that. I may have. I mean, did
8 I I'm not sure if I'm understanding your
9 question. Did I cite the report and
10 recommendation in the Bolden case in another
11 federal case?

12 Q. Did you cite this order or independently state
13 that I was incompetent in an order or decision
14 made by yourself in another federal case with
15 unrelated parties and not me as counsel?

16 A. I don't recall. I may have.

17 Q. Are you familiar with the case-- I think it has
18 a funny caption, United States--

19 CHAIRMAN GRISELL: Mr. Landrith, if
20 you have an order or a finding by this Judge
21 that refers to his report and recommendation in
22 the Bolden case, give it to him to look at and
23 you can ask him questions about it.

24 MR. LANDRITH: It's not the Bolden
25 case, it's United States-- United States ex rel

1 David Price versus some Kansas judges. I think
2 the first one is McFarland.

3 CHAIRMAN GRISELL: Involving Judge
4 O'Hara?

5 MR. LANDRITH: There are several
6 cases in that vein. One of those I understood
7 that Magistrate O'Hara quoted his order in this
8 case about my competency.

9 CHAIRMAN GRISELL: Well, do you have
10 a copy of the order that you're referring to
11 that you can give to the Judge to look at so he
12 can refresh his memory?

13 MR. HAZLETT: In the meantime I'll
14 just object to this line of questioning because
15 I don't see how it's relevant to the Judge's
16 opinion in Mr. Bolden's case.

17 CHAIRMAN GRISELL: Other than it's a
18 firmly held opinion that apparently the Judge
19 is willing to express in another case.

20 MR. LANDRITH: I don't have that here
21 today and I'm not going to offer it as an
22 exhibit.

23 CHAIRMAN GRISELL: Then let's proceed
24 to another line of questioning.

25 MR. LANDRITH: I have no further

1 questions for this witness at this time.

2 CHAIRMAN GRISELL: Thank you. Mr.
3 Hazlett.

4 CROSS EXAMINATION

5 BY MR. HAZLETT:

6 Q. Your Honor, thank you for coming today. I just
7 have a couple questions. When asked if you
8 wanted Mr.-- or requested Mr. Bolden to appear
9 at the pretrial conference, you indicated, in
10 response to Mr. Landrith's question, that you
11 probably did, why would you have done that?

12 A. Because I was concerned that Mr. Bolden might
13 lose a meritorious claim.

14 Q. And you indicated in response to a question
15 from Mr. Landrith that you did instruct your
16 administrative assistant to send your report
17 and recommendation to Mr. Bolden by mail, why
18 would you have done that? First of all, let me
19 ask you, is that out of the ordinary?

20 A. Yes.

21 Q. And why would you have done that?

22 A. I wanted to ensure, as much as possible, that
23 Mr. Bolden, who struck me as a very nice fellow
24 during the pretrial conference, could pursue
25 his claims if he wanted to do so. He had

1 indicated to me during the final pretrial
2 conference that he had not had much success
3 finding another lawyer to take on his case and
4 that Mr. Bolden-- excuse me, Mr. Landrith was
5 the only person who was willing to aggressively
6 pursue it and it was clear to me that Mr.
7 Bolden wanted to continue pursuing the case.
8 For reasons we've discussed at length, I had
9 some real concerns about whether Mr. Landrith
10 was competent to pursue the claims and I wanted
11 Mr. Bolden to be able to make a decision
12 whether he might be better off either
13 representing himself or trying to persuade
14 another lawyer to take over the case.

15 Q. In response to Mr. Landrith you commented on a
16 number of different areas and your opinion as
17 to the competency of Mr. Landrith's
18 representation of Mr. Bolden in the case before
19 you, did you not?

20 A. Correct.

21 Q. Are you familiar with the Kansas Rules of
22 Professional Conduct?

23 A. I am.

24 Q. Specifically Rule 1.1 on competency?

25 A. Yes, sir.

1 Q. In your opinion, did Mr. Landrith's
2 representation of Mr. Bolden meet the standard
3 set out in KRPC 1.1?

4 A. No, sir.

5 Q. You recall that Brian Molene investigated this
6 matter for our office?

7 A. I now do.

8 Q. You actually met with Mr. Molene at one point
9 in time I believe, did you not?

10 A. I'm not sure if we met in person or by phone.
11 I remember conferring with him about the case.

12 Q. Okay. His report has been offered and accepted
13 as an exhibit in this case. I want to read one
14 little portion of it to you written by Mr.
15 Molene. "In a personal interview Judge O'Hara
16 expressed a certain compassion of Mr. Landrith
17 noting his lack of experience and mentoring
18 support." Do you recall making that statement
19 to the--

20 A. I did. I do now recall that we met in person.
21 I think at that time I was still coming over to
22 Topeka and still-- to some extent, but I think
23 we had lunch together and visited in person in
24 a restaurant here in town. But I did express
25 that comment or sentiment to Mr. Molene during

1 that interview.

2 Q. I just have-- yesterday-- I just have couple
3 more questions. Yesterday I was questioning
4 Mr. Landrith on the subject of whether he felt
5 there was any racial motivation in your
6 decision in the Bolden case and my last
7 question to him was, "So you think Judge O'Hara
8 was acting the way he did because he was
9 black?" And Mr. Landrith's response was,
10 "yes." I'd like to give you the opportunity to
11 respond to that obviously pretty serious
12 allegation.

13 A. Well, I could go on at some length and get
14 upset. I'll just state that I respectfully
15 disagree with the inference that he drew.

16 Q. Okay. Thank you, Your Honor.

17 CHAIRMAN GRISELL: Does the panel
18 have questions of Judge O'Hara?

19 MR. SCHMITT: I have no questions.

20 MS. HARRIS: I don't think so.

21 EXAMINATION

22 BY CHAIRMAN GRISELL:

23 Q. Judge, at the time that you had the pretrial
24 conference in this matter, how long had you
25 been a Federal Magistrate.

1 A. Three years and seven months.

2 Q. It's been characterized by respondent that
3 the-- what transpired at the pretrial
4 conference and the resulting report and
5 recommendation were in part a result of your
6 inexperience as a Federal Magistrate. Do you
7 think the fact that you had been a Magistrate
8 for three years led to any of the decisions
9 and/or findings in the report?

10 A. I mean, if you-- what you mean is did I come
11 down hard on Mr. Landrith because I was
12 relatively new to the bench, I would say no.

13 Q. Is it common for you, Judge, to comment in
14 reports and recommendations on the conduct of
15 counsel in the case up to the point that you
16 have in the pretrial conference?

17 A. Is it common, no, because we do very few
18 reports and recommendations in our district
19 because we believe it inefficient in terms of
20 dividing responsibility among the district
21 judges and magistrate judges. I bet I've--
22 other than perhaps Social Security matters of
23 which would probably be no more than 15 or 20,
24 in the roughly five years I've now been on the
25 bench I bet I've filed fewer than five reports

1 and recommendations. And I'm confident this is
2 the only one in which I've ever felt it
3 necessary to comment on the performance of
4 counsel.

5 Q. Had you had any cases with Mr. Landrith as
6 counsel prior to the Bolden matter?

7 A. I'm not sure. I don't-- none that had
8 necessitated or involved the amount of handling
9 that this one had, but there may have been
10 other cases. I know he's had at least-- he
11 indicated he had a few other cases in federal
12 court and whether I had those for purposes of
13 pretrial management at this point I really
14 don't recall, but this was the-- my most
15 memorable experience with him. I mean, if I
16 had others, they don't come to mind.

17 He-- Mr. Landrith asked me about a later
18 case where I may have commented on it and that
19 was, I believe, subsequent to this case, but I
20 don't recall much about that case. I mean, at
21 any one time I've got 250 cases that are kind
22 of moving through the pipe and in the last five
23 years I've probably handled well in excess of a
24 thousand cases. So I don't come here today
25 claiming to have 100 percent recall of the

1 procedural details of each of these cases.

2 Q. Judge, I assume from time to time that you get
3 lawyers in your matters that have little
4 experience, correct?

5 A. Correct.

6 Q At the time that Mr Landrith appeared before
7 you at the pretrial conference, he had had his
8 license for approximately one year. Did it
9 appear to you that the level of professionalism
10 and understanding as an attorney exhibited at
11 the pretrial was simply a result of
12 inexperience or did it appear to be, as you've
13 indicated in the report, lack of understanding
14 of procedure and/or substantive law?

15 A. I think much more the latter than the former.
16 We have young lawyers, brand-new lawyers in our
17 court daily and as much as possible we try to
18 make that, I guess, a not unpleasant experience
19 for them when they come to federal court. And
20 we also have at any given time probably 20 or
21 30 cases where we've got people that are just
22 representing themselves that have no
23 familiarity with the procedures and we try to
24 at least, for want of a better term, cut them
25 some slack. But the level of difficulty that I

1 was experiencing with Mr. Landrith was much
2 different than just dealing with novice
3 lawyers.

4 I mean, when I was in private practice
5 one of the things I was in charge of doing at
6 different times was hiring new lawyers and then
7 later was in charge of supervising those
8 associates as they moved through the process to
9 when they became members of the firm. So I'm
10 mindful of the fact that new lawyers don't know
11 very much, but this was a different situation
12 than just problems of a new lawyer. I've never
13 had a brand-new lawyer express views about
14 matters of procedure that I had encountered
15 with Mr. Landrith, just never had received that
16 in my private practice experience or since. I
17 had crossed over to the other side.

18 CHAIRMAN GRISELL: Panel, have any?

19 MR. SCHMITT: I have no questions.

20 MS. HARRIS: No questions.

21 CHAIRMAN GRISELL: Mr. Landrith,
22 within the scope of what Mr. Hazlett asked
23 and/or the Panel, do you have any further
24 inquiry?

25 REDIRECT EXAMINATION

1 BY MR. LANDRITH:

2 Q. Are you aware that you made rulings, Your
3 Honor, in another case I had where you were the
4 Magistrate assigned to it that was Medical
5 Supply versus General Electric?

6 A. If you're representing that, I'm willing to
7 accept that as true. I just don't know that
8 off the top of my head

9 Q. Do you recall whether or not, irregardless of
10 whether or not I was-- do you recall that I was
11 the plaintiff's counsel in the case, do you
12 recall that you denied discovery in that case
13 too?

14 A. That's not refreshing my memory. I don't
15 recall.

16 Q. Would you deny discovery in a case because of a
17 pendency of a dismissal motion by the opposing
18 party?

19 A. Well, I have. But as a general proposition the
20 precedent in our district and my policy that
21 the mere pendency of a dispositive motion by
22 itself is not a basis to stay discovery.
23 There's a three part test that we go through to
24 determine whether a particular case discovery
25 ought to be stayed until that dispositive

1 motion is ruled.

2 Q. But in that case, wasn't it true that Medical
3 Supply's discovery was stayed not on the basis
4 of any action or inaction of mine, but solely--

5 MR. HAZLETT: I'm going--

6 CHAIRMAN GRISELL: This isn't
7 relevant. I simply asked the question if the
8 Judge had had any prior dealings with you as
9 counsel.

10 MR. LANDRITH. I'll wrap it up.

11 CHAIRMAN GRISELL: Thank you.

12 Q. (BY MR. LANDRITH) Would some of the
13 information in those pleadings indicate a basis
14 for your understanding that my inexperience was
15 substantially less than an attorney that had
16 been an attorney for a year because of the
17 adversity I was under?

18 MR. HAZLETT: I'm going to object as
19 a compound question. When he says "those
20 pleadings," he doesn't identify which pleadings
21 he's talking about.

22 CHAIRMAN GRISELL: Sustained.
23 Although, I think the question was whether the
24 pleadings filed in the Bolden matter reflected
25 that Mr. Landrith was an inexperienced

1 attorney, was that the question?

2 Q. (BY MR. LANDRITH) Did the pleadings in what
3 you have stated as rambling or disjointed
4 provide you with information that might have
5 led you to have a basis for concluding that
6 even though I had been a licensed attorney for
7 a year that I had not been practicing regularly
8 on cases except for James Bolden's case. Is
9 that correct?

10 MR. HAZLETT: I'm going to object, a
11 compound question. It's almost impossible to
12 understand.

13 A. I don't understand the question. I mean, I'd
14 be happy to answer any questions you have, sir,
15 but I can't-- I don't understand what the heck
16 you're talking about.

17 CHAIRMAN GRISELL: Sustained.

18 Q. (BY MR. LANDRITH) Wouldn't having any income
19 or electricity be an impediment in your mind to
20 being able to conduct a law practice?

21 MR. HAZLETT: I'm going to object,
22 relevancy.

23 CHAIRMAN GRISELL: Sustained.

24 Q. (BY MR. LANDRITH) Would any of that
25 information about my circumstances in those

1 pleadings be relevant to your decision whether
2 I had experience commensurate with somebody
3 with a year's worth of experience?

4 A. Possibly under certain circumstances and if
5 certain procedural formalities had been
6 observed. For instance, had you filed a motion
7 to extend discovery or had you filed a motion
8 to extend the time for service of process based
9 on affidavits that would establish that you
10 were without the basic food, shelter, et
11 cetera, I would imagine under those
12 circumstances that it would not only be
13 possible, but likely that I would have
14 considered extending the time for discovery or
15 extending the time for service of process.

16 But with that said, sir, the mere fact
17 that a lawyer files rambling pleadings during
18 the course of a case and then later comes into
19 a final pretrial conference after discovery is
20 closed and suggests that his life is a mess,
21 under that circumstance I would not extend
22 discovery and I would not extend the time for
23 service of process.

24 Q. Isn't it true that I did not come into the
25 pretrial order conference saying my life was a

1 mess and I did not discuss anything relevant to
2 that?

3 A. You didn't have to say it, it was apparent to
4 me from your conduct during the pretrial
5 conference.

6 Q. Was any of that information that was in the
7 pleadings that were rambling considered by you
8 just now when you told the panel that in your
9 estimation I was worse than an inexperienced
10 lawyer?

11 A. Yes.

12 Q. So information about my circumstances or the
13 circumstances of my client that was irrelevant
14 for the purpose you were evaluating it for in
15 the proceedings before you, was part just now
16 when you answered to the panel that my
17 experience wasn't equal to-- or that my
18 professional conduct wasn't equal to an
19 inexperienced lawyer in your estimation of what
20 an average inexperienced lawyer's level of
21 experience is?

22 A. Yes. I mean, in the sense that if-- if a
23 pleading of that sort had been put on my desk
24 by an intern from one of the local law schools
25 after his or her first year of law school in my

1 current position or had it been put on my desk
2 by a first year law clerk while I was still in
3 private practice, that intern and clerk
4 probably would be summarily fired as opposed to
5 worked with any further because the quality or
6 the lack of quality was so appalling that there
7 was nothing salvageable.

8 Q. Sir, would that be the basis for your
9 professional responsibility standard would be
10 people like that who may have been interns or
11 people newly admitted to the bar that work with
12 you in your firm?

13 A. I'm not sure if I understand your question.

14 Q. In your example you gave of a first year intern
15 that might have filed a similar pleading that
16 there was nothing salvageable, they would have
17 been summarily fired. Is your experience
18 hiring attorneys or working with new law
19 graduates at Shughart, Thompson, and Kilroy the
20 basis for your-- part of your standard of
21 professional conduct that you feel I did not
22 meet?

23 A. Well, if I'm understanding your question, the
24 interns that we have access to through the
25 local law schools come in a lot of different

1 levels of academic quality. And we have some
2 that are near the very top of their class and
3 we have some that are literally at the very
4 bottom. When I was in private practice I think
5 in the main we enjoyed a situation where we
6 were typically able to hire people much closer
7 to the top than the bottom of the class. But I
8 meant to include in my comments earlier the
9 whole range of first year students, from those
10 in the bottom part of the class to those in the
11 top ten percent. And what I meant to convey
12 and perhaps didn't do so very artfully is the
13 quality of the written submissions by you in
14 the Bolden case and your conduct in handling
15 the pretrial conference in my judgment, and
16 realizing this is somewhat subjective, fell far
17 below anything I've ever seen from a very
18 inexperienced first year intern near the bottom
19 of his or her class.

20 Q. Wouldn't it be true in that example that a
21 first year, second year law student in that
22 example in a pleading would be largely rule
23 based or rule driven and not offer additional
24 information regarding adversity or problems
25 with the likelihood that witnesses could not

1 testify without intimidation or harassment?

2 MR. HAZLETT: Object to relevance.

3 CHAIRMAN GRISELL: I don't know what
4 the question is. It's compound, it's
5 ambiguous, and I don't think the witness needs
6 to answer the question.

7 Q. (BY MR LANDRITH) Would a first year law
8 student base their pleading entirely or solely
9 on rules?

10 A. I would hope not.

11 Q. Before you you had myself that you judged to be
12 incompetent, as you stated earlier, not
13 because-- so much because I was inexperienced,
14 but because I didn't have an understanding of
15 the law, specifically the summons that wasn't
16 issued to the opposing party. Isn't it true
17 that I had an independent basis in case law
18 supplementing my argument that a person
19 appearing, without qualifying their appearance
20 or limiting their appearance, brings that party
21 into jurisdiction under the court if the court
22 is able to use an alternative state rule?

23 MR. HAZLETT: I'm going to object
24 because all of that-- that is in the report and
25 recommendation. Those arguments were made.

1 Judge O'Hara made his decision.

2 MR. LANDRITH: I'm trying to ask in
3 the second part of this where he de-emphasized
4 inexperience and he said the major part was my
5 lack of understanding of the law and he's
6 having expectations that I didn't meet based on
7 his understanding of the rules, rules that I
8 researched.

9 THE WITNESS: May I answer this
10 question?

11 MR. HAZLETT: I'll withdraw my
12 objection then.

13 CHAIRMAN GRISELL: We've discussed
14 the issue. Certainly.

15 A. Sir, I think you did make an argument. And in
16 my judgment that argument was legally and
17 factually frivolous.

18 Q. And you made--

19 A. The state of the record in that case was that
20 Sherri Price entered her appearance on behalf
21 of the city and she did not qualify her
22 appearance, irrespective of the fact that the
23 city had not been favored with process or
24 service of that process. And I found, I think,
25 in that report and recommendation and noted it

1 in the draft pretrial order that she had
2 effectively waived any objection she had on the
3 basis of process or service of process. And
4 she indicated in the final pretrial conference
5 she didn't care and that was fine. I figured
6 she made a practical judgment to go forward
7 with the case on behalf of the city.

8 But if what you're suggesting, sir, is
9 that there was any good faith basis in that
10 record for you to make the argument that any of
11 the six individually named defendants in the
12 second amended complaint had somehow waived
13 process or service of process through an
14 attorney making an unqualified entry of
15 appearance, I would flatly reject that. I
16 think that argument that you made was and
17 remains frivolous.

18 Q. I understand that and you did reject that, sir.
19 But unlike your first year law student that you
20 gave an example, I also had an independent
21 basis of City Code for Topeka that says the
22 city attorney shall represent every city
23 employee?

24 CHAIRMAN GRISELL: Okay. Mr.
25 Landrith, I don't know if you understand what

1 we've discussed, but we're not going to go into
2 relitigation of the issue of service. You made
3 your arguments, the Judge ruled on it, it's
4 part of the record. And we're not going to go
5 back and forth with this academic discussion.

6 MR. LANDRITH: I'll stop.

7 CHAIRMAN GRISELL: Excuse me. The
8 issue is whether or not this witness felt that
9 you were competent in your handling of the
10 matter and we have thoroughly discussed it and
11 we're not going to discuss the legal issues
12 pertaining to the summons any longer. Do you
13 understand that?

14 MR. LANDRITH: Yes, sir. I'd like
15 leave of the Court to ask if the frivolousness
16 of those arguments are the basis for his--

17 CHAIRMAN GRISELL: He's given the
18 basis of his opinion.

19 MR. LANDRITH: All right. No further
20 questions.

21 CHAIRMAN GRISELL: Do you have any
22 further inquiry?

23 MR. HAZLETT: Absolutely not.

24 CHAIRMAN GRISELL: Panel have any?

25 MR. SCHMITT: No.

1 MS. HARRIS: No.

2 CHAIRMAN GRISELL: Thank you, Judge,
3 for appearing here today at our request, we
4 appreciate it.

5 THE WITNESS: You're most certainly
6 welcome. I wish you well, Mr Landrith,
7 irrespective of what happens. I want you to
8 understand I take no pleasure in this, but I
9 respect what these folks are charged with in
10 handling here. Thank you.

11 MR. LANDRITH: Thank you very much.

12 CHAIRMAN GRISELL: The Judge was
13 appearing at our request and he is released by
14 the Panel from any further attendance. Thank
15 you.

16 THE WITNESS: Thank you very much.

17 CHARIMAN GRISELL: Let's take about a
18 ten-minute break if that's okay.

19 (THEREUPON, a short recess was had).

20 CHARIMAN GRISELL: Mr. Landrith, at
21 the time that we had Judge O'Hara take the
22 stand you were still testifying. Do you have
23 additional testimony that you wish to offer?

24 MR. LANDRITH: I have no additional
25 testimony to offer.

1 CHAIRMAN GRISELL: Okay.

2 MR. LANDRITH: I rest my case.

3 CHARIMAN GRISELL: I think the panel
4 may have had some questions of you and you're
5 sworn if you can simply stay there if it's okay
6 with the court reporter. Did you have some
7 further inquiry of--

8 MR. HAZLETT: I did then, but I've
9 changed my mind, I don't have any further
10 questions.

11 MR. SCHMITT: I don't have any
12 questions.

13 CHAIRMAN GRISELL: It doesn't appear
14 that Mr. Hazlett has any cross examination or
15 that the Panel has any questions. Did you have
16 any other witnesses that you intend to call?

17 MR. LANDRITH: No, sir. I rest my
18 case for the defense.

19 CHAIRMAN GRISELL: Thank you. Mr.
20 Hazlett, do you have any rebuttal witnesses
21 that you intend to call?

22 MR. HAZLETT: No, I do not.

23 CHAIRMAN GRISELL: Okay. At this
24 time then I would afford counsel the
25 opportunity to make closing arguments on

1 whether or not there have been any violations
2 of KRPC based upon the allegations in the
3 complaint. After we hear arguments of counsel
4 then the Panel will take a period of time to
5 discuss whether we preliminarily think there
6 have been any violations and then we'll come
7 back and tell counsel whether there's any need
8 to make any arguments on aggravation or
9 mitigation. So, Mr. Hazlett-- and certainly
10 would appreciate when you're commenting on the
11 facts that you tell us the specific rule
12 violation that's tied to those facts.

13 MR. HAZLETT: I think I'm going to
14 talk more in generalities and I'm going to do
15 it just very shortly in closing. On the issue
16 of competence in count one, the Baby C case,
17 you have a Court of Appeals decision, which I
18 think is pretty compelling evidence in that
19 regard.

20 In the Bolden case, in count two, you
21 have Judge O'Hara's decision, the report and
22 recommendation, and his testimony today
23 regarding respondent's competence. I would
24 argue that by clear and convincing evidence in
25 both cases we have proved that allegation.

1 The allegation about statements made by
2 the respondent in his pleadings, accusations of
3 fraud, criminal activity on the part of Shawnee
4 County personnel, Court of Appeals personnel,
5 Court of Appeals judges, district court judges,
6 federal judges, the evidence presented, I
7 think, by the Disciplinary Administrator's
8 Office by Judge O'Hara, Kent Vincent, Judge
9 Lyle clearly disputes the allegations of
10 misconduct that the respondent has made against
11 so many different folks. And respondent simply
12 just didn't present any evidence that there was
13 any good faith basis for making the allegations
14 he made. And I'm not going to go into each and
15 every allegations because there's so many of
16 them we just can't do that in the limited time
17 we have to do this, but there was nothing
18 presented by the respondent to refute what we
19 presented. He clearly made those allegations
20 intentionally, whether he did it in concert or
21 at the direction of Mr. Price I don't know.
22 But it doesn't really make any difference
23 because he took complete responsibility for the
24 statement he made in his allegations and the
25 allegations he made in his pleadings. And

1 today, in spite of the fact that he was given
2 an opportunity to express some remorse or
3 apologize for what's occurred, he chose not to
4 do so and stood before you and indicated that
5 he had violated no Rules of Professional
6 Conduct.

7 I would suggest to you that the evidence
8 shows that when the respondent practices law
9 and handles a case and he is confronted with
10 somebody explaining to him that-- or telling
11 him that he's not doing it the right way, his
12 operating procedure is to lash out and to
13 allege that that person has done something
14 wrong and that's happened time and time again.

15 In conclusion I'd just say that I believe
16 the evidence presented to you is overwhelming
17 that the respondent has violated the rules that
18 I alleged.

19 CHAIRMAN GRISELL: Mr. Landrith.

20 MR. LANDRITH: I submit to you that
21 the clear and convincing argument based on a
22 decision of the appellate court fails. It's a
23 decision on a party that was not myself and it
24 had some findings of law and fact that were
25 refuted by the testimony. It was clear that

1 there was substantial evidentiary basis and
2 basis in record for each of the allegations of
3 the judge panel in their informal admonishment
4 of me in that appellate decision. That was a
5 competent appellant brief. It cited
6 extensively a record that those three judges
7 were unfamiliar with or thought irrelevant, but
8 were relevant to the assertions made. It
9 cannot be found as clear and convincing
10 evidence of misconduct for being unbased in
11 fact because it was.

12 The witnesses that testified about my
13 misconduct as charged, including allegations
14 that seeking mandamus would be a threat, cannot
15 be clear and convincing evidence of a
16 violation, just like they cannot be a basis for
17 probable cause because our legislative public
18 policy is that that's a remedy for exactly that
19 situation. And we have the guidance of the
20 Kansas Supreme Court to state that specifically
21 to use it to compel a clerk to do something is
22 appropriate. So that is no more the full part
23 of probable cause a violation has occurred than
24 if I state to you the sidewalk outside this
25 judiciary building is covered with snow, I'm

1 going to go shovel it, that that is neither
2 clear and convincing proof of a violation
3 because of course that's not a violation of any
4 statute, that's actually doing something to
5 enforce a public policy, which would be the
6 city rule that sidewalks within the city have
7 to be maintained free of snow and clear for
8 walking. And the motivation for my doing that
9 would be to increase the safety of the public
10 good that that rule sought to enforce.

11 Ms. Escalante's testimony contradicted
12 whether or not the record was available to me
13 to adequately defend my plaintiff in the
14 adoption case. It was clear from her testimony
15 that I was asking for a greater set of records
16 than she had available. She made statements
17 contradicting other testimony and contradicting
18 the record and contradicting her own testimony
19 regarding whether or not it was possible that
20 the appearance docket had been changed.

21 It's true that I stated no remorse for
22 the actions that I did because I was using my
23 best efforts and all my skills and knowledge to
24 effect the best outcome for my clients on the
25 terms that they had charged me with, the

1 objectives that they had sought from my
2 representation.

3 Magistrate O'Hara's testimony is
4 testimony that continues what you've seen here.
5 I sometimes refer to things that you do not
6 find relevant and certainly tried his patience
7 and he did not find was relevant when I was
8 before him. You have a complete transcript of
9 that. I didn't address the impropriety of
10 suggesting that an attorney, no matter how bad,
11 sue his own client while his client and he is
12 before a court forum that he is hoping to
13 somehow get a fair shake in. That was
14 devastating to his psyche, to me, and to our
15 profession. And it actually is the conduct
16 that I've been accused of rising to a level
17 that impedes the administration of justice.

18 His statements, though, were true. I
19 obviously have very little experience and I
20 could do a better job. I think I've improved
21 since that time, but I still have a long way to
22 go. I have no mitigating circumstances or
23 aggravating factors to explain.

24 CHAIRMAN GRISELL: We'll-- depending
25 on what the Panel initially determines after

1 that, we'll listen to any comments on
2 aggravation or mitigation that Mr. Hazlett or
3 you might have.

4 MR. LANDRITH: All right. And it's
5 my concern that in upholding these charges that
6 you will discourage others from taking on very
7 difficult cases against adverse odds that
8 almost never succeed and in doing so you're
9 adding costs or prohibiting other people access
10 to representation of any kind.

11 And I disagree with the evidence that's
12 been put on here that somehow a pro se litigant
13 would be better off than being represented by
14 me. I think that's preposterous and like much
15 of what is stated here as clear and convincing
16 is no where near so.

17 So in answer to that none of the Kansas
18 Rules of Professional Conduct that I've been
19 charged with are violations that I committed.
20 The observations that appear to be violations
21 about my statements and pleadings are
22 statements about events that actually happened
23 that are the obstruction described in KRPC Rule
24 on the scope of representation of a client and
25 the responsibility of attorney to continue to

1 represent somebody even against adversity or
2 problems and an unqualified obstruction, which
3 includes far more than the Kansas Statute
4 definition or it's not a reference to the
5 Kansas Statute the reason for obstruction of
6 justice, but is itself the general plain
7 meaning of obstruction.

8 The advocacy that I have been most
9 criticized for is our responsibility as an
10 attorney in the preamble to the Kansas Rules.
11 James Bolden, by the time I started to
12 represent him, had irreparable harm. It was
13 unlikely that we would be able to stop, in
14 appellate court, the demolition of his two
15 houses. But, in fact, the City feared that we
16 would somehow stop or delay the demolition of
17 those two houses that he had sought to make
18 part of a public housing project out of, so it
19 demolished both of his homes while our appeal
20 was pending.

21 The brief that there's been testimony
22 about as having problems is an attempt to
23 address that entire chain of circumstances as
24 we continue to try and assert some rights for
25 James Bolden. Even though our cause was on

1 that particular subject appealing, a denial of
2 injunction was entirely moot at that time.
3 James Bolden continues on. His land is still
4 going to go be used for those projects. The
5 city still in progress of finishing taking it
6 without any compensation for him. He has no
7 attorney. I cannot represent him because when
8 people are decision makers in these kinds of
9 cases, Magistrate O'Hara's perspective is the
10 norm. The adversity is not a factor in
11 deciding whether or not you meet the standards.
12 And the legal argument or choices that one
13 would make out of triage with very limited
14 resources is not a sign of exercising the
15 professional competent independent judgment
16 that we're supposed to as attorneys, but
17 instead is a sign of lack of diligence. I can
18 prevent that from happening in the future by
19 not taking those kinds of cases, but that's not
20 a clear and convincing finding of my lack of
21 diligence.

22 I've had respect for the forum that I
23 have been before, the court officials and clerk
24 officials and employees. Much of Mr. Paretsky
25 complaint that the first ethics count was based

1 on, misrepresented that or was shown to be in
2 error. Part of what I'm being charged with or
3 that the Disciplinary Administrator argues that
4 there's clear and convincing evidence of is my
5 lack of independent judgment. I have put on
6 proof that I've independently reviewed the
7 basis for my filings and I had a substantial
8 basis both of law and in fact for them, but
9 what we have constantly seen is that this
10 filing, this ethics action against me on count
11 one and count two, was not independently
12 investigated by Mr. Hazlett to any measurable
13 degree.

14 The testimony put on by his own witnesses
15 was that the complaining witnesses, the people
16 that are the equivalent for some purposes to
17 his client in this action, were the ones that
18 conducted the investigation and related to him
19 the facts that he charged me on. He was
20 unfamiliar with the citations in the brief or
21 even that there was a reply brief to the answer
22 that corrected about every factual statement
23 and cited to the record that my opposing
24 counsel in the adoption case had filed. When
25 that happens I think that you have the problem

1 with it or I have the problem with it that
2 you're concerned about here that whether or not
3 I had independent judgment when I chose to
4 represent David Price the way he wanted to be
5 represented, I feel that the information that
6 you had before you clearly shows that I had
7 independent basis for judgment. And even in
8 the complaint attachments there were affidavits
9 of more than one person. We never had that
10 kind of independence from opposing counsel.
11 What we had was testimony of his witnesses
12 stating that they had been instructed by
13 somebody investigating the complaint, who did
14 not work for the Disciplinary Administrator and
15 who was not like Mr. Moline, an independent
16 ethics committee member, but instead were
17 actual co-workers and subordinates of the
18 complaining witness.

19 Part of the problem with the events that
20 happened in both cases was my-- and the-- in
21 the Kansas Court of Appeals, my belief that
22 when I put substantive information in a
23 pleading a judge would evaluate that. I had no
24 idea that there was even a motions attorney and
25 that many of those judges never saw any of that

1 information. But somebody that had an
2 overwhelming priority afield based on
3 compliance with rules was making determinations
4 about that information most of which was
5 irrelevant to him and then making
6 recommendations to Judge Pierron and his panel
7 and I think that ill-served both cases. I
8 think I now know more about that than most
9 people would know or we all do now and I think
10 that I could write pleadings aimed to overcome
11 that and do an appellate court practice now
12 that I understand that's what's happening.

13 So in conclusion I don't think that there
14 is clear and convincing evidence of any ethics
15 rules that the Disciplinary Administrator has
16 charged against me having been violated. In
17 terms of meeting the level of expected
18 competence for somebody with little or no
19 experience like myself on these kinds of
20 complicated cases. So in conclusion I deny
21 that there's been a violation of any ethics
22 rule.

23 CHAIRMAN CRISSELL: Thank you. At
24 this time the Panel is going to spend some
25 time, as I've indicated, discussing whether or

1 not we believe that there may be a violation
2 and then we'll return and discuss that with
3 counsel. If we believe that there has been a
4 violation of one or more rules, we'll take any
5 evidence the parties have concerning
6 aggravation and mitigation.

7 (THEREUPON, a short recess was had).

8 CHAIRMAN GRISELL: Counsel, based
9 upon the evidence that we have heard and the
10 testimony and the exhibits, the Panel has
11 reason to believe that at least one KRPC has
12 been violated. The specific findings of the
13 Panel will be set out in a written finding,
14 which, of course, will be given to counsel and
15 then will be submitted to the Supreme Court.
16 So at this time, based upon the fact that we
17 believe that there has been at least one rule
18 violation, we'll listen to evidence and/or
19 arguments on aggravation and mitigation, which
20 we are required to do and which respondent was
21 given notice of in the original complaint. And
22 I'd ask Mr. Hazlett, if he wishes to, to
23 proceed on those issues.

24 MR. HAZLETT: Yes, I'd like to go
25 through the malices set out in the ABA

1 Standards. The ethical duty violated. I think
2 Mr. Landrith violated his duty to his client,
3 to the public, to the legal system, and to the
4 profession by his conduct. The lawyer's mental
5 state. I would argue that the respondent-- the
6 evidence shows that the respondent acted
7 intentionally and knowingly, especially in
8 placing these matters in pleadings, these
9 allegations against the various individuals.

10 The extent of actual or potential injury
11 caused by the respondent's misconduct. You
12 know, with respect to his clients, we don't
13 really know, I guess, except that I think Mr.
14 Bolden's case obviously was prejudiced by the
15 way the case was handled. Now, Mr. Price's
16 case I'm not willing to concede that Mr. Price
17 ever had any-- any valid case to begin with, so
18 I don't know that you can argue that his case
19 was prejudiced. But I certainly would ask you
20 to look at the injury to Mr. Vincent's clients,
21 that was Mr. Vincent stated the amount of
22 attorney fees that ended up being paid as a
23 result of what occurred here in the matter of
24 Baby C and the obvious emotional difficulty
25 that they would have suffered as a result of

1 all of the time that this remained up in the
2 air.

3 All of the folks, individuals against
4 whom I would argue false allegations were made
5 and the discomfort that they suffered, the
6 system, all of the unnecessary work caused by
7 the respondent to simply follow the rules of
8 procedure. An example is if he goes to the
9 clerk's office and if they tell him they need
10 something that doesn't result in him getting
11 something, that results in him filing a
12 mandamus action. The response to what he
13 encounters is never the right response.

14 Aggravating circumstances talks about
15 absence of a dishonest or selfish motive. I
16 don't think anything here was motivated by a
17 selfish motive, but I do believe that the
18 conduct was dishonest. The only other way you
19 could look at it is the allegation made by the
20 respondent against various individuals was just
21 so reckless as to be almost unbelievable.

22 Pattern of misconduct, multiple offenses,
23 refusal to acknowledge wrongful nature of
24 conduct. To the contrary, he takes the
25 position that everything he did was required by

1 the Rules of Professional Conduct. I would
2 argue a total lack of recognition of what he
3 was doing and the consequences of his actions.

4 The standards that I think are
5 applicable, it's-- I'm not sure that the
6 conduct fits right into the standards, but I'm
7 going to cite some standards that I think do
8 apply to this. The lack of competence, which
9 is standard 4.5, states that disbarment is
10 generally appropriate when a lawyer's course of
11 conduct demonstrates that the lawyer does not
12 understand the most fundamental legal doctrines
13 or procedures and the lawyer's conduct causes
14 injury or potential injury to a client. Well,
15 that refers to a client again and there we're
16 talking about Mr. Bolden or we're talking about
17 Mr. Price. And I'd like to take Mr. Price out
18 of the equation. Mr. Bolden, I think there is
19 potential injury to Mr. Bolden and maybe to Mr.
20 Price too because Mr. Landrith just didn't tell
21 him from the very beginning that this is a
22 course of action that shouldn't have been
23 pursued. But the commentary below 4.5 states
24 disbarment should be imposed on lawyers who are
25 found to engage in multiple incidents of

1 incompetent behavior. Since disbarment is such
2 a serious request it should rarely be imposed
3 on a lawyer whose course of conduct
4 demonstrates that they cannot or will not
5 master the knowledge and skills necessary for
6 minimally competent practice. And I think that
7 applies here.

8 Two other standards which I believe apply
9 are-- fall under violation of duties owed to
10 the legal system. 6.1, false statements,
11 fraud, and misrepresentation. And, again, I'm
12 not saying this is right on point, but there's
13 some language in this standard which I think is
14 applicable to this situation. It talks about
15 disbarment being appropriate in cases involving
16 conduct that is prejudicial to the
17 administration of justice or that involved
18 dishonesty, fraud, deceit, or misrepresentation
19 to the court. All of the allegations that were
20 placed in these pleadings and that were placed
21 before the court, which I believe have been
22 proved to be false, I think fall under that
23 category and I think exhibit continuing course
24 of conduct prejudicial to the administration of
25 justice. Abuse of legal process, standard

1 6.12-- and the false statement standard was
2 6.1. I'm not sure if I said that. 6.12, abuse
3 of process. I mean, throughout the entire
4 proceedings-- I guess we could call it the
5 abuse of lack of process maybe in the Bolden
6 case, but all of the inconvenience people were
7 subjected to throughout these cases I think and
8 through this proceeding, I mean the way the
9 respondent handled subpoenas in this proceeding
10 to these individuals it was without forwarding
11 costs to the individuals, without serving them
12 properly. Judge Lyle coming up here without
13 being forwarded costs. I think abuse of legal
14 process applies as well.

15 I think all three standards suggest
16 disbarment and I would urge the Panel to make
17 that recommendation to the court.

18 CHAIRMAN GRISELL: So the
19 recommendation of the Disciplinary
20 Administrator is disbarment?

21 MR. HAZLETT: Yes.

22 CHAIRMAN GRISELL: Mr. Landrith.

23 MR. LANDRITH: My mastery of the law
24 that gives me the knowledge that in the Baby C
25 case the recognized rights of parties were Baby

1 C, Baby C's natural father, Baby's C extended
2 natural family. At the time I took
3 representation of David Price, David Price had
4 filed a premature notice of appeal on his own
5 that terminated the adoption and stopped the
6 termination of his parental rights. The only
7 rights that we can consider under the law in
8 that case-- the only rights that are clearly
9 expressed in the law in that case is Baby C's
10 rights. Case law overwhelmingly assigns for
11 Baby C an interest in being with his natural
12 father. His natural father had a preeminent
13 right that was recognized by the requirement
14 that he have appointed counsel both for
15 pretrial and post trial phases.

16 CHAIRMAN GRISELL: Mr. Landrith, this
17 stage of the proceeding is for you to offer
18 evidence or arguments concerning mitigation.
19 And you probably received a copy of the
20 complaint.

21 MR. LANDRITH: Yes, sir.

22 CHAIRMAN GRISELL: And in that
23 complaint it set out the standards that this
24 Panel refers to and the criteria when we're
25 considering mitigation. And so I would ask you

1 to refer to the circumstances as set out in and
2 what's provided in the complaint and what Mr.
3 Hazlett referred to as you go down the list
4 first, tell us if they apply and tell us why
5 they do or don't. If you need a copy, I can
6 provide you one.

7 MR. HAZLETT: I have one right here.

8 CHAIRMAN GRISELL: It's page 12 of
9 the complaint.

10 MR. LANDRITH: I would like to
11 conclude my statements about third parties that
12 were injured by my activities. (Name stricken)
13 and her husband were not recognized by my
14 actions in violation of the code.

15 CHAIRMAN GRISELL: Strike the name of
16 those parties, if you would, please. It's an
17 adoption proceeding and at least from our
18 standpoint we don't wish to offer their names
19 into the record.

20 MR. LANDRITH: Another example used
21 by the Disciplinary Administrator was my
22 inability to obtain subpoenas, that was-- an
23 example I would like to point to. I followed
24 the rule of 216. I first asked the
25 Disciplinary Administrator-- and I brought it

1 up in the pretrial order for this about
2 obtaining those records and then I sought to
3 obtain it from the clerk under the rule.

4 CHAIRMAN GRISELL: Mr. Landrith, it's
5 not part of the complaint and it was argument
6 by Mr. Hazlett. It's not relevant to our
7 determination.

8 MR. LANDRITH: Yes, sir. In terms of
9 aggravating circumstances. I have no evidence
10 except for I do, under G, refuse to acknowledge
11 the wrongful nature of my conduct in that I
12 made a good faith, non-dishonest appraisal of
13 the laws that applied in each and every
14 pleading.

15 In mitigation I have no prior
16 disciplinary record. Absence of dishonest or
17 selfish motive. The first case was a pro bono
18 case, the second case is a contingency fee
19 case. Personal or emotional problems if such
20 misfortunes have contributed to a violation of
21 Model Rules of Professional Conduct. The
22 extent of adversity I described in my pleadings
23 was the conduct of the other party against
24 myself, my client, and my witnesses. I have
25 none that would fall in the category of this

1 rule. Timely good faith effort to make
2 restitution or rectify consequences of
3 misconduct. I'm not aware of any demands of
4 restitution or sums of money or-- in fact, the
5 testimony of Ms. Price that there was an award
6 of sanctions in that case that included
7 monetary sanctions is incorrect in my belief.

8 The present-- E, present or past attitude
9 of the attorney as shown by his or her
10 cooperation in the hearing and his or her full
11 and free acknowledgment of the transgressions.
12 I very quickly responded to both complaints. I
13 provided all the information asked of me.
14 Sometimes duplicative. I was open and honest
15 in all phases of the investigation. I think
16 that other than the few objections I raised,
17 maybe two or three, before this panel I've not
18 objected to or failed to provide any
19 information or objected to anybody else
20 providing any information in the entirety of
21 these proceedings.

22 G, previous good character and reputation
23 in the community, including any letters from
24 clients, friends, and lawyers in support of the
25 character and general reputation of the

1 attorney. I have only the testimony of my two
2 clients. I did not offer any others. H, I
3 have no physical disability. I, mental
4 disability or chemical dependency, including
5 alcoholism or drug abusive, none of both. J,
6 delay in disciplinary proceedings. I have not
7 sought to delay or obstruct these proceedings.
8 K. imposition of other penalties or sanctions.
9 Again, I know of no penalties or sanctions
10 arising in cases or these two cases. M.
11 Remoteness of prior offenses would be
12 inapplicable. I have no prior offenses. And
13 any statement by the complainant expressing
14 satisfaction with restitution and requesting no
15 discipline, I know of no such statement by
16 either complainant. I think the complainant is
17 essentially the state. Factors which are not
18 considered--

19 CHAIRMAN GRISELL: Those matters
20 which we don't consider as aggravating or
21 mitigation.

22 MR. LANDRITH: So I conclude my
23 testimony on aggravating or mitigating
24 circumstances.

25 CHAIRMAN GRISELL: Were the panel to

1 find that there was a violation of one or more
2 rules we then have an obligation, as I
3 understand it, to recommend a discipline to the
4 Supreme Court within the scope of what's set
5 out in the rules or something that we believe
6 is reasonable. Do you have any recommendation,
7 were we to find a violation, as to the
8 appropriate discipline to be imposed?

9 MR. LANDRITH: I raised my concerns
10 and I still think they're very relevant, you
11 are finding fault with the content of my
12 speech, it's speech about what I perceived and
13 had voluminous evidence was a violation of the
14 statute, some of which were actually criminal.
15 My fear is that some of our forms of discipline
16 may, in fact, be further restraints against
17 those kinds of speeches. I guess I don't have
18 any thoughts further. I'm considering things
19 like supervised probation and things like that,
20 so I guess I have no further comments or
21 suggestions in particular.

22 MS. HARRIS: Okay. Just so that you
23 know, the Panel, in order to consider
24 supervised probation, has to have-- a
25 supervised probation plan would have had to

1 have been forwarded to us before the start of
2 this hearing pursuant to the rules. And unless
3 I'm mistaken there has been no probationary
4 plan forwarded to us prior to the start of this
5 hearing, unless I didn't get a copy of it.

6 MR. LANDRITH: I understood that and
7 it was included in each and every
8 correspondence from the Office of the
9 Disciplinary Administrator. I chose not to
10 forward a supervised probation plan because the
11 likely outcome of this proceeding was
12 disbarment. And, second, a supervised
13 probation would create difficulties both for
14 myself and my expression of speech and I think
15 would cause problems for whoever I sought to be
16 a supervised probation person. Not because I
17 would challenge limits, but because of-- I
18 think that there's a lot of representational
19 damage from association. I've seen endless
20 part of that, so I don't think that's a
21 solution.

22 CHAIRMAN GRISELL: Okay. Thank you.
23 If counsel has nothing further at this point,
24 the Panel will close the hearing. As I've
25 indicated, the Panel will deliberate on this

1 matter and its findings will be issued in a
2 written finding and submitted to counsel and
3 then counsel will proceed as set out in the
4 Supreme Court Rules. Thank you.
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

I, Jana L. Willard, a Certified
Shorthand Reporter in and for the State of
Kansas, duly commissioned as such by the
Supreme Court of the State of Kansas, do hereby
certify that I was present at and reported in
shorthand the foregoing proceedings had at the
aforementioned time and place; further that the
foregoing 134 pages is a true and correct
transcript of my notes requested transcribed.

IN WITNESS WHEREOF, I have hereunto
affixed my Official Seal this _____ day of
_____, 2005.

Jana L. Willard
CERTIFIED SHORTHAND REPORTER