

FILE NO. \_\_\_\_\_

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary  
Action against JESSE GANT, III,  
a Minnesota Attorney,  
Registration No. 214772.  
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**PETITION FOR  
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

At the direction of a Lawyers Professional Responsibility Board Panel, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on January 15, 1991. Respondent currently practices law in Blaine, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

1. Attorney Huyen Le Phan represented Career Systems Development Corporation in defending a lawsuit brought by Maryland Rosenbloom.

2. On February 26, 2007, various motions in the *Rosenbloom v. Career Systems Development Corporation* matter were heard in Ramsey County District Court. In attendance at that hearing were spectators Courtney Yorke and Stanford McClure. Among the issues considered at the hearing was whether the court should order that Mr. Rosenbloom be prohibited from bringing a firearm to his deposition and whether a police officer should be allowed to be present at the deposition.

3. Following the February 26 hearing and before the court issued any order on the motions, Phan submitted to the court an affidavit detailing her version of events that occurred immediately following the hearing. In that affidavit, Phan states that McClure and Yorke had both brought separate lawsuits against Career Systems Development Corporation and that those lawsuits and Rosenbloom's suit were extremely contentious. The affidavit further states that, upon leaving the courthouse on February 26, she saw Messrs. Rosenbloom, McClure and Yorke approximately two hundred feet behind her, looking directly at her, and walking towards her. Her affidavit goes on to state that "Messrs. Rosenbloom, McClure and Yorke's conduct put me in fear of imminent bodily harm, and have caused me emotional distress and anxiety over the last twenty-hours. Mr. McClure testified at his deposition that he fantasizes about killing people who have wronged him, and Mr. Rosenbloom assaulted his daughter's boyfriend with a gun last summer."

4. On April 12, 2007, respondent signed a complaint, naming Stanford McClure as plaintiff, initiating a defamation action against Phan and her law firm. The basis of the alleged defamation was the affidavit filed by Phan in the *Rosenbloom v. Career System Development Corporation* matter.

5. On May 22, 2007, Phan and her law firm moved to dismiss the defamation suit with prejudice pursuant to Rule 12.02, Minn. R. Civ. P.

6. On May 23, 2007, respondent wrote to Paul Peterson, an attorney retained to defend Phan and her firm in the defamation suit, giving notice of his intent to bring a motion for sanctions against Phan, her firm, and Peterson unless they withdrew the motion to dismiss.

7. On May 31, 2007, Peterson wrote to respondent stating, in part:

I have reviewed the case of *Mahoney v. Newgard*, and I believe it clearly establishes the applicability of absolute privilege as a defense in this case.

\* \* \*

I have also enclosed a Notice of Motion under Rule 11 based on your improvident assertion of a lawsuit against Le Phan that is clearly barred by absolute privilege. Please withdraw your Complaint within the next 21 days. We will refrain from filing our motion with the Court until the expiration of that time period.

8. Respondent declined to withdraw the complaint.

9. On August 31, 2007, the Ramsey County District Court issued an order dismissing McClure's defamation claim against Phan with prejudice on the basis that the statements in Phan's affidavit were protected by absolute privilege.

10. On October 30, 2007, the Ramsey County District Court issued an order on a motion for sanctions against respondent brought by Phan. In that order, the court granted Phan's motion for sanctions under Rule 11, Minn. R. Civ. P., and Minn. Stat. § 549.211 and directed that respondent pay \$8,460.00 to the defendants for attorneys fees reasonably incurred in defending the action. In a memorandum attached to its order, the court stated:

Gant's actions were not reasonable under the circumstances for several reasons. First, the defamation claim against Phan was unfounded. Truth is an absolute defense to a defamation claim. *Bol v. Cole*, 561 N.W.2d 143 (Minn. 1997). Establishing a defamation claim requires the plaintiff to prove that a statement was false. *Id.* Here, Phan's statements that she felt intimidated or fearful are emotions, and cannot be proven false. Gant never established that Phan's claim was false and the lawsuit was dismissed on summary judgment.

The second reason is even more damaging to Gant. Gant could not have reasonably thought, or in good faith argued, that existing law supported his client's claims. From the beginning of the case, it was clear that Phan was entitled to absolute privilege for statements relating to the defamation claim. . . .

Third, Gant had knowledge of the absolute privilege doctrine from past litigation. Gant had argued *Cole v. Star Tribune*, 581 N.W.2d 364 (Minn. Ct. App. 1998). Gant argued *Cole* in the face of a claim for absolute privilege. Based on Gant's unfounded arguments against awarding absolute

privilege, the court issued sanctions against him [footnote omitted]. Gant was clearly familiar with absolute privilege.

11. Respondent appealed the district court's order on sanctions.

12. On March 10, 2009, the Court of Appeals affirmed the trial court's award of sanctions. Respondent petitioned the Minnesota Supreme Court for review of the Court of Appeals' decision. On May 19, 2009, the Supreme Court denied that petition.

13. Respondent's conduct in bringing a defamation action against Phan that had no basis in law or fact violated Rules 3.1 and 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

#### DISCIPLINARY HISTORY

In considering the sanction to be imposed, if any, it is appropriate, pursuant to Rule 19(b)(4), RLPR, to consider respondent's prior discipline. Respondent's history of prior discipline, including admonitions, is as follows:

- A. On July 18, 2000, respondent was suspended from the practice of law for pursuing frivolous litigation, violating court rules, failing to pay a court reporter and a court-ordered sanction, and for failing to cooperate with the disciplinary process.
- B. On February 8, 2001, respondent was issued an admonition for practicing law while suspended and attempting to conduct discovery for inappropriate purposes.
- C. On February 9, 2001, respondent was issued an admonition for failing to pay a law-related judgment.
- D. On January 10, 2002, respondent was issued an admonition for practicing law while suspended.
- E. On November 3, 2004, respondent was issued an admonition for failing to refund an unearned advance fee payment.

F. On June 14, 2005, respondent stipulated to the issuance of an admonition for failing to pay a law-related judgment.

WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: August 8, 2009.



MARTIN A. COLE  
DIRECTOR OF THE OFFICE OF LAWYERS  
PROFESSIONAL RESPONSIBILITY  
Attorney No. 148416  
1500 Landmark Towers  
345 St. Peter Street  
St. Paul, MN 55102-1218  
(651) 296-3952

and



PATRICK R. BURNS  
FIRST ASSISTANT DIRECTOR  
Attorney No. 134004