

FILE NO. A09-1998
STATE OF MINNESOTA
IN SUPREME COURT

In Re Petition for Disciplinary Action
against JESSE GANT III,
a Minnesota Attorney,
Registration No. 214772.

FINDINGS OF FACT,
CONCLUSION OF LAW
AND RECOMMENDATIONS

The above-captioned matter came on for hearing on April 7, 2010, before the undersigned referee appointed by the Minnesota Supreme Court in the Minnesota Judicial Center, St. Paul, Minnesota. Patrick R. Burns, First Assistant Director, appeared for the Office of Lawyers Professional Responsibility (hereinafter the Director). Respondent Jesse Gant III appeared *pro se*.

At the hearing the parties read into the record an agreement on a stipulated disposition in this matter. A transcript of that agreement is attached to and made a part of these Findings of Fact, Conclusion of Law and Recommendations.

Respondent agreed to withdraw his answer to the Director's petition for disciplinary action and admit the allegations in that petition. The parties and this referee recommend to the Court that the appropriate disposition is a public reprimand, subject to conditions set forth below.

Based upon the agreement of the parties, Respondent's withdrawal of his answer to the petition for disciplinary action, and Respondent's admission to the allegations in that petition, the undersigned now, by clear and convincing evidence, makes the following:

FINDINGS OF FACT

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

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

4. 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."

5. 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.

6. 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.

7. 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.

8. 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.

9. Respondent declined to withdraw the complaint.

10. 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.

11. 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.

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

13. 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.

CONCLUSION OF LAW

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.

DISCIPLINARY HISTORY

Respondent's disciplinary history 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.

RECOMMENDATIONS

1. That Respondent Jesse Gant III, be publicly reprimanded.

2. That the public reprimand be conditioned upon Respondent paying the sanctions and costs assessed against him by the district court and Court of Appeals in the matter of *Stanford McClure v. H. Le Phan, et al.* on the following schedule:

Respondent shall pay \$1,000 against the amounts owed on or before July 1, 2010, and thereafter shall pay \$1,000 per month until the full amount owed is paid.

3. That, should Respondent not make the payments as outlined above, the Supreme Court, upon request of the Director and after giving Respondent the opportunity to respond, may suspend Respondent's license to practice law for an appropriate period of time.

4. That Respondent pay to the Director's Office \$900 in costs in compliance with Rule 24, Rules on Lawyers Professional Responsibility.

Dated: May 4, 2010.

By Warren E. Litynski
WARREN E. LITYNSKI
REFEREE