

Date: February 14, 2017

RE: Russwurm vs. Figaro    Taney County Missouri    Case #: 15AF-CC00559

From: Barbara Figaro, 1368 Clevenger Cove Road, Hollister, MO 65672  
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To: **Office of the Chief Disciplinary Counsel**  
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**Jefferson City, MO 65109**  
**573-635-7400    573-635-2240 (Fax)**

Complaint against: Brandi Smith, 500 W. Main Street, #201A, Branson, MO 65616

Bar Number    Telephone: 417-544-0315

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On July 1, 2015, I received word my brother was on life support. I was at my home in Hollister, MO. On July 2, 2015, I left my home in MO and drove to Norfolk, Virginia where my brother was in the hospital on life support. On July 3, 2015, Brandi Smith, serving as attorney for my husband, John Russwurm, advised him to lock me out of my home, change the locks to our home and tell me I could not return to my home. He texted this information to me while I was at the hospital. At the time she advised him to do this I was in Virginia with my brother and other family members. My brother was taken off life support on July 4, 2015 and died on July 6, 2015. His funeral was on July 20, 2015 and I returned to my home in Hollister, MO by the end of the month ( July 2015).

On July 7, 2015, Brandi Smith filed a petition for divorce against me, on behalf of my husband, John Russwurm. On the divorce petition she listed my address as 44 Columbus Blvd, Whiting, NJ. This was done to deceive the court.

On July 16, 2015, while I was in Virginia and NJ during my brother's illness and funeral, Brandi Smith had me served with those divorce papers, trying to establish that I did not live in MO and with the sole purpose of deceiving the court. I have not lived in NJ since April 1999 when I purchased my home in MO.

There were times I was out of state visiting family, but she failed to mention many of these trips my husband went with me. Most of our family members live on the east coast and we went 2-3 times a year and spent 3-5 months of the year there. We rarely missed a graduation or special event for my 6 grandchildren. Until he got his girlfriend in 2012. Then he sometimes headed back to MO ahead of me. I did not find out about the girlfriend until August, 2014. And yes, at that time I left my husband for several months. We then got back together in April 2015 and attempted to work things out, but he refused to give up his girlfriend.

**07/16/2015 Summons Personally Served**  
 Document ID - 15-SMCC-741; Served To - FIGARO, BARBARA; Server - ; Served Date - 14-JUL-15; Served Time - 15:43:00; Service Type - Special Process Server; Reason Description - Served  
**Associated Entries: 07/13/2015 - Summons Issued-Circuit**   
 Document ID: 15-SMCC-741, for FIGARO, BARBARA

<b>RUSSWURM , JOHN CHARLES , Petitioner</b>	represented by	<b>ARAMBULO , RUDY A , Attorney for Petitioner</b>	
	200 SUNVIEW ROAD HOLLISTER, MO 65672  <b>Year of Birth:</b> 1952		TRILAKES LAW FIRM, LLC 301 W. PACIFIC ST. SUITE A BRANSON, MO 65616
	<b>FIGARO , BARBARA , Respondent</b>	represented by	<b>MILLER , J MATTHEW , Attorney for Respondent</b>
	44D COLUMBUS BLVD WHITING, NJ 08759  <b>Year of Birth:</b> 1948		BAIRD LIGHTNER MILLSAP HARPOOL 1901 SOUTH VENTURA AVE SUITE C SPRINGFIELD, MO 65804

(End of July 2015) My husband, John Russwurm, under advice of his attorney, Brandi Smith had changed the locks to our home and he locked me out of my house. I had just driven 1250 miles with my dogs to get home after my brother's funeral. When I could not get in the house because he had the locks changed, I texted and emailed him several times asking him to come

home and let me in the house. He did not answer. I called the police. Sgt. Jeff Maneth, from Taney County Sheriff's dept. responded. He then verified that I owned the house and he said my husband could not lock me out of the house. I broke the window in the door to get in.

On August 24, 2015, Brandi filed a false affidavit with the court for a restraining order. All allegations contained in this document were 100% false. On the basis of this document and her having me served while I was out of state for my brother's funeral, I was court ordered not only out of my home, but out of the state by Judge Eighmy. (Copy Enclosed) Every statement she put on that document is a lie (except first 3).

Not only did we live in our home together during dates Brandi Smith specifies from 2012 up until August 2015: we often had grandkids come to visit us in MO., plus visits from other family members, took numerous trips to NJ together, took several trips to WV, took several trips to Arkansas together, for several days each trip so he could fish with guide services. Plus other not so notable normal life things together. I have never threatened my husband. He, on the other hand threatened me with his guns. I have considered 200 Sunview Road, Hollister, MO my home since 1999 when I purchased it. Money to purchase that home in MO came from my home in NJ which I owned for 10 years before I married John; and his name was not on the NJ deed. (Can substantiate and provide timelines for our trips and time together in and out of MO upon request.

**08/27/2015 Hearing Continued/Rescheduled**

All parties appear with counsel. Husband is to remain in the marital home located in Taney county. Wife is to remain in the home in New Jersey. Parties are to maintain these homes during the pendency of this case. This case is set for November 3, 2015 at 9:00am for trial. Parties are to meet 30 days before trial and make sure there is an agreement as to when property was purchased and the source of funds used for the purchase. If there is not agreement then the parties are required to obtain documents to support their positions as to the source of funds. This court is not going to hear just oral testimony on what was sold and purchased and where the money came from. The parties are required to submit a consolidated Form 9 by October 28, 2015. Judge Eighmy

**Hearing Continued From: 08/27/2015; 11:00 AM Hearing**

On October 19, 2015, Brandi Smith, attorney for my husband, submitted his Form 2, to my attorney, Dan Brogand. Somehow, Dan Brogand took figures, values, items, and distribution of items from my husband's form 2, and put that information on my form 2, and submitted it back to Brandi Smith.

In as much as major items such as real estate, boat slip values, and some items listed had the same values; I believe Brandi Smith had to know the form she received was in error and incorrect. If my husband and/or she reviewed these documents at all they had to know they were submitted in error. If we agreed on all those values we would not have had to go to court.

She then fraudulently prepared the form 9 with our combined numbers. I believe she knew the figures and items she was using, were false. On the day of trial, December 18, 2015, she withdrew as my husband's attorney. Rudy Arambulo became attorney for my husband. Rudy Arambulo then handed my attorney Dan Brogand a copy of this Form 9, in the court hallway, 10 minutes before we went into court for trial. This was the first time I saw that document. Rudy Arambulo then proceeded to submit that fraudulent document to court. I testified in court at that time and numerous other times that the figures in this document were not my figures. Some items listed did not exist, and distribution of many items was incorrect.

I believe there was collusion between Brandi Smith and Rudy Arambulo in the preparation and submission of fraudulent documents to the court to benefit my husband, deceive the court and encourage the court to give my husband an extremely high, unequal and unfair settlement. (Separate complaints submitted against Dan Brogand and Rudy Arambulo).

Brandi Smith took it upon herself to contact my attorney Dan Brogand, and told him numerous lies. She told him I had a boyfriend, I hung out in bars, I refused to pay for my share of household bills, my husband had to pay all my expenses and bills and that I often left the house and my husband did not know where I was. She told him I had packed my personal possessions and was preparing to move out of my home in MO. I know this because these are the questions my attorney asked me when I went to his office. All of these allegations are false and it was improper and probably illegal for her to try and taint my attorney against me, especially when all of the above allegations were lies.

Numerous times during the hearings and trial, Brandi Smith approached the Judge when we were off the record and had private side bar conversations with Judge Eighmy. Brandi Smith was in court for hearings and trial, even after she withdrew as attorney for my husband.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

### **Rules of Professional Conduct: Rule 3.3--Candor to Tribunal**

(a) A lawyer shall not knowingly:

(1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer, unless correction would require disclosure of information that is prohibited by Rule 1.6;

(2) Counsel or assist a client to engage in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good-faith effort to determine the validity, scope, meaning, or application of the law;

(3) Fail to disclose to the tribunal legal authority in the controlling jurisdiction not disclosed by opposing counsel and known to the lawyer to be dispositive of a question at issue and directly adverse to the position of the client; or

(4) Offer evidence that the lawyer knows to be false, except as provided in paragraph (b). A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(d) A lawyer who receives information clearly establishing that a fraud has been perpetrated upon the tribunal shall promptly take reasonable remedial measures, including disclosure to the tribunal to the extent disclosure is permitted by Rule 1.6(d).

### **Representations by a Lawyer**

[2] An assertion purported to be made by the lawyer, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There may be circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. If the lawyer comes to know that a statement of material fact or law that the lawyer previously made to the tribunal is false, the lawyer has a duty to correct the statement, unless correction would require a disclosure of information that is prohibited by Rule 1.6. This provision in paragraph (a)(1) differs from ABA Model Rule 3.3(a)(1), which requires a lawyer to disclose information otherwise protected by Rule 1.6 if necessary to correct the lawyer's false statement. If Rule 1.6 permits a lawyer to disclose a client confidence or secret, D.C. Rule 3.3(a)(1) requires the lawyer to disclose that information to the extent reasonably necessary to correct a false statement of material fact or law. Nothing in D.C. Rule 3.3(a)(1) limits any disclosure duty under Rule 4.1(b) when substantive law requires a lawyer to disclose client information to avoid being deemed to have assisted the client's crime or fraud. The obligation prescribed in Rule 1.2(e) not to counsel a client to commit or assist the client in committing a fraud applies in litigation but is subject to Rule 3.3(b) and (d). Regarding compliance with Rule 1.2(e), see the Comment to that Rule. *See also* Rule 8.4.

### **Misleading Legal Argument**

[3] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in subparagraph (a)(3), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party and that is dispositive of a question at issue. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

### **Offering Evidence**

[4] When evidence that a lawyer knows to be false is provided by a person who is not the client, the lawyer must refuse to offer it regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this rule if the lawyer offers the evidence for the purpose of establishing its falsity.

[5] When false evidence is offered by the client, however, a conflict may arise between the

lawyer's duty to keep the client's revelations confidential and the duty of candor to the court. Upon ascertaining that material evidence is false, the lawyer should seek to persuade the client that the evidence should not be offered or, if it has been offered, that its false character should immediately be disclosed. Regardless of the client's wishes, however, a lawyer may not offer evidence of a client if the evidence is known by the lawyer to be false, except to the extent permitted by paragraph (b) where the client is a defendant in a criminal case. The lawyer is obligated not only to refuse to offer false evidence under subparagraph (a)(4) but also to take reasonable remedial measures under paragraph (d) if the false evidence has been offered.

[6] The prohibition against offering false evidence applies only if the lawyer knows that the evidence is false. **A lawyer's knowledge that evidence is false can be inferred from the circumstances.** *See* Rule 1.0(f). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

[7] Although paragraph (a)(4) prohibits a lawyer from offering evidence only if the lawyer knows it to be false, it also permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate

### **Remedial Measures**

[8] Paragraph (d) provides that if a lawyer learns that a fraud has been perpetrated on the tribunal, the lawyer must take reasonable remedial measures. If the lawyer's client is implicated in the fraud, the lawyer should ordinarily first call upon the client to rectify the fraud. If the client is unwilling to do so, the lawyer should consider other remedial measures. The lawyer may not, however, disclose information otherwise protected by Rule 1.6, unless the client has used the lawyer's services to further a crime or fraud and disclosure is permitted by Rule 1.6(d). In other cases, the lawyer may learn of the client's intention to present false evidence before the client has had a chance to do so. In this situation, paragraphs (a)(4) and (b) forbid the lawyer to present the false evidence, except in rare instances where the witness is the accused in a criminal case, the lawyer is unsuccessful in dissuading the client from going forward, and the lawyer is unable to withdraw without causing serious harm to the client. In addition, Rule 1.6(c) may permit disclosure of client confidences and secrets when the lawyer learns of a prospective fraud on the tribunal involving, for example, bribery or intimidation of witnesses. The terms "criminal case" and "criminal defendant" as used in Rule 3.3 and its Comment include juvenile delinquency proceedings and the person who is the subject of such proceedings.

### **Refusing to Offer Proof of a Non-client Known to Be False**

[11] Generally speaking, a lawyer may not offer testimony or other proof, through a non-client, that the lawyer knows to be false. Furthermore, a lawyer may not offer evidence of a client if the evidence is known by the lawyer to be false, except to the extent permitted by paragraph (b) where the client is a defendant in a criminal case.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging, or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in Rule 4-3.3(a) and (b) continue to the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by Rule 4-1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

### **Rule 3.4 Fairness to Opposing Party and Counsel**

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused; or

### **Rule 4.1 Truthfulness in Statements to Others**

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 4-1.6.

## **RULE 4-3.5: IMPARTIALITY AND DECORUM OF THE TRIBUNAL**

A lawyer shall not:

(a) **seek to influence a judge**, juror, prospective juror, or other official by means prohibited by law;

(b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;

(d) engage **in conduct intended to disrupt a tribunal**.

## **Rule 4.4 Respect for Rights of Third Persons**

(b) A lawyer who receives a document relating to the representation of the lawyer's client and **knows or reasonably should know** that the document was inadvertently sent shall promptly notify the sender.

### **RULE 4-8.3: REPORTING PROFESSIONAL MISCONDUCT**

(a) A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

### **RULE 4-8.4: MISCONDUCT**

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

On the original form 2 that Brandi Smith filed with my attorney, items she listed that were to go to my husband were extremely undervalued, items listed to go to me were extremely over-valued and there were numerous items that did not exist. They lied regarding a deferred comp plan. They lied about a leased apartment I used when visiting my family, stating it was real estate, but could not produce a deed because one did not exist. She lied on numerous items claiming they were non-marital, when in fact they were marital. They lied about his gun collection, getting less than half of them appraised.

She knew Dan Brogand had submitted incorrect figures to her and when it became apparent to her he was not going to come forward with that information or attempt to correct the error, she took full advantage of it and continued to deceive the court.



In August 2015 my husband and I had a dispute over his guns being kept all over the house. He threatened me and said it would be cheaper than a divorce. He must have discussed it with Brandi because she advised him to remove his guns. When I asked him where the guns were he said his lawyer told him to remove them from the house.

In closing, I believe Brandi Smith knowingly prepared and submitted false documents to the court and then to Rudy Arambulo and then Rudy Arambulo submitted the false documents to the court--both did this in order to deceive the court and adversely affect my divorce settlement with my husband.

Documents available upon request to support this complaint

Related to complaints filed against attorneys: Dan Brogand and Rudy Arambulo

Respectfully Submitted,

\_\_\_\_\_

Date \_\_\_\_\_

Barbara Figaro