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Wednesday, February 15, 2017

Sam S. Phillips
Deputy Chief Disciplinary Counsel
Office of Chief Disciplinary Counsel
3327 American Avenue
Jefferson City, Missouri 65109-1016
Via facsimile only at (573) 635-224

**RE: Complainant: Barbara Figaro
OCDC File # 17-121-XV**

Dear Mr. Phillips:

Please accept this letter in response to the above-referenced complaint. As I understand the complaint, Ms. Figaro principally alleges that I submitted an incorrect statement of property and debt on her behalf, and then failed to take any action to correct the erroneous statement throughout the litigation. She makes other allegations of trial error, but she maintains that the erroneous statement of property and debt is the most damaging, so I will largely confine my response to that allegation.

Ms. Figaro hired me on July 8th, 2015. The petitioner, Mr. Russwurm, had already filed the underlying action for dissolution of marriage in Taney County, Missouri. Because Ms. Figaro had been shut out of the marital residence, we filed a motion for temporary use of the marital residence along with our answer and counterpetition for dissolution of marriage. For the sake of brevity, I am attaching a full copy of the docket sheet for your reference.

On April 27, 2015, all parties appeared in court for a hearing regarding competing motions for temporary use of the residence. Attorney Brandi Smith had a prior engagement in another county, so attorney Rudy Arambulo appeared on her behalf. Mr. Arambulo discussed with me the possibility of coming to an agreement regarding the disposition of the house, but before any agreement could be reached, Mr. Arambulo advised me that Mr. Russwurm wanted to retain possession of the house. Ms. Figaro opposed this, also wanting possession of the house. Consistent with fairly common practice in the area, the trial judge asked the attorneys to discuss the case with him in chambers prior to any hearing. We discussed our respective positions, and the judge told us how he would rule. Therefore, no hearing was held. The Court's docket entry of August 27, 2015, reflects the substance of the discussion. Trial was scheduled for November 3, 2016. * *

The first trial setting was continued to December 18, 2015. On November 9, 2015, I served to attorney Smith the Taney County Form 2, Ms. Figaro's Statement of Marital and Nonmarital Assets and Debts ("First Form 2"), along with the other discovery items mandated by (then) Thirty-Eighth Circuit Rule 68. I agree that the First Form 2 was erroneous. My assistant mistakenly copied the values assigned by Mr. * *

Russwurm on his Form 2, and I failed to see the mistake in my review of the documents prior to their submission to attorney Smith.

I disagree, however, with the assertion that no attempt was made to correct the error, or that the error was hidden from Ms. Figaro, the trial judge, etc. On the morning of December 18th, before going on the record to begin trial, I advised the Court that our values needed to be corrected, and I advised Ms. Figaro of the error. The Court's docket entry of that date reflects as much, as the resulting changes in estimated property values forced a continuance of the trial and the commission of the appraisals. The appraisals were completed over the next few months, with trial rescheduled to March 8th, 2016. On that date, the trial judge was ill, so he rescheduled trial for March 22, 2016. He further ordered the parties to submit an updated Form 2 listing only property in the New Jersey apartment. We did so, showing the correct value of the property in the New Jersey apartment as estimated by Ms. Figaro.

Trial went forward on March 22, 2016. At trial, I did the following to correct the error. First, I ensured that the appraisal of the items in the New Jersey apartment was admitted into evidence, and it was. Second, I introduced into evidence Ms. Figaro's handwritten Form 2, a document that she prepared for my transmission into the formal Form 2. Finally, Ms. Figaro personally testified, as she makes clear in the third full paragraph of page two (2) of her own complaint, that the values contained in her First Form 2 were erroneous, that she disagreed with Mr. Russwurm's estimates concerning several pieces of property, and stated her opinion of the value of those disputed items.

Moreover, the Court's own docket entry of September 2, 2016, clearly demonstrates that, not only was I allowed to and did attempt to present evidence of the appropriate estimated values, but that the Court considered that evidence in rendering its final decision, stating "Respondent was given the opportunity to amend her Form 2 and the court considered the Respondent's amended values in the subsequent trial. Court did not accept the valuation of the contents of the condo in New Jersey due to the sparseness of the items listed and the court did not feel that a complete disclosure of the household goods was listed."

In conclusion, I do not dispute that the First Form 2 was erroneous and that the error was my responsibility. However, I did not hide the error from Ms. Figaro or the Court, and I did everything I could think of to ensure that the trial judge had substantial evidence from which to assign appropriate values, an area in which trial courts have broad discretion.

Thank you for your time and attention to this matter. Please do not hesitate to contact me if further information is required.

Sincerely,



Daniel D. Brogdon
Mo. Bar. No. 59595

Enclosure

How could my attorney be a part of this and let this happen? According to my attorney's response to the complaint I filed against him (with OCDC) **"Consistent with fairly common practice in the area, the trial judge asked the attorneys to discuss the case with him in chambers prior to any hearing. We discussed our respective positions, and the judge told us how he would rule. Therefore, no hearing was held."**

This request for documents by the judge is where we found out that Dan had submitted the incorrect form 2 and, no there was never an attempt to admit or correct the error. This date is about 6 weeks after the trial.

04/21/2016 **Sound Recording Log Sheet**

/hk

Motion Hearing Held

Case set for evidentiary hearing on June 21, 2016 at 9:00am for a thirty minute hearing. Each party to bring to court a timeline of when the form 2's were filed with opposing party

Property Statement Filed

Form 2 Statement of Property of Petitioner; Electronic Filing Certificate of Service.

Filed By: BRANDI L SMITH;

Certificate of Service

Certificate of Service; Electronic Filing Certificate of Service.

Filed By: BRANDI L SMITH

08/28/2015

Setting- Bench Trial Scheduled**Associated Entries: 10/29/2015 - Hearing/Trial Cancelled****Scheduled For:** 11/03/2015; 9:00 AM ; ERIC DELL EIGHMY; Taney

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

08/26/2015

Income & Expense Stmt Filed

Form 1 Statement of Income and Expense of Petitioner; Electronic Filing Certificate of Service.

Filed By: BRANDI L SMITH

On Behalf Of: JOHN CHARLES RUSSWURM

08/25/2015

Entry of Appearance Filed

Entry of Appearance; Electronic Filing Certificate of Service.

Filed By: DANIEL DEAN BROGDON

08/24/2015

Notice of Hearing Filed

Notice of Hearing.

Filed By: BRANDI L SMITH

On Behalf Of: JOHN CHARLES RUSSWURM

Affidavit Filed

Petitioners Affidavit and Motion for Restraining Order and Order Excluding Respondent from Marital Home Pendente Lite.

Filed By: BRANDI L SMITH

Answer Filed

Answer to Counter-Petition for Dissolution of Marriage.

Filed By: BRANDI L SMITH

Hearing Scheduled**Associated Entries: 08/27/2015 - Hearing Continued/Rescheduled ±****Scheduled For:** 08/27/2015; 11:00 AM ; ERIC DELL EIGHMY; Taney**Hearing Continued/Rescheduled**

All counsel appear. Case set for hearing August 27, 2015 at 11:00am. Judge Eighmy/ac

Hearing Continued From: 08/27/2015; 11:00 AM Motion Hearing**Motion Hearing Scheduled****Associated Entries: 08/24/2015 - Hearing Continued/Rescheduled ±****Scheduled For:** 08/27/2015; 11:00 AM ; ERIC DELL EIGHMY; Taney

08/20/2015

Hearing Continued/Rescheduled

All counsel appear. Case set for hearing August 27, 2015 at 11:00am. Judge Eighmy /lr

Hearing Continued From: 08/20/2015; 9:00 AM Motion Hearing

08/13/2015

Motion Hearing Scheduled