No. 123622

IN THE SUPREME COURT OF ILLINOI S

ABRAHAM LINCOLN REYNOLDS, III,
2006 DECLARATION OF LIVING TRUST;
ROZLYN TAYLOR, Individually and as
Trustee; and MARVIN GRAY,

(Marvin Gray)
Petitioner,

v.

GERALD S. McCARTHY,

Respondent.

On review of the opinion of the Appellate Court of Illinois
First Judicial District, No. 1-16-2478

There on appeal from the Cook County Circuit Court,
No. 14 CH 09651
The Honorable Kathleen M. Pantle, Judge Presiding

REPLY BRIEF

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ORAL ARGUMENT REQUESTED

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INTRODUCTION

"*Even when laws have been written down, they ought not always to remain unaltered.*"
Aristotle (384 BC – 322 BC)

The instant Petition For Leave To Appeal (PLA) herein, seeks to correct an anomaly in jurisprudence of the State of Illinois which ostensibly precludes any and all attorneys' incurred by a *pro se* lawyer. This circumstance seemingly arose due to the facts that while cases have appeared before this and lower courts involving *pro se* lawyers prosecuting matters for which they subsequently claim *pro se* attorneys' fees (and the supposedly inherent abuses that such matters might cause), no cases are found where such lawyers are take time from their law practices to respond to frivolous pleadings filed in

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contravention of Supreme Court Rule 137 (which pleadings, incidentally, may have, themselves, been filed by a *pro se* lawyer). The object of this PLA is to correct that anomaly. and as the respondent provides herein a vacuum of actual authority to defeat that correction, this petitioner is consequently without authority to counter that vacuum.

ARGUMENT

1. The petitioner-appellant is pointedly aware that Supreme Court Rule 315(h) provides that if an appellee files a brief, the appellant may file a brief and that Supreme Court Rule 341 provides that the reply brief should be confined to the arguments propounded in the brief of the appellee (and need only contain Argument). However, although the nature, contents and tenor of the Brief Of Respondent-Appellee, Gerald S. McCarthy To Petition (Brief… herein) provide no real countervailing authority against the issue presented in the PLA, some brief responsive commentary is plainly called for, in the interest of expediency and the judicious use of the time of this court.

2. Without repeating all that has been previously filed and entered, the instant PLA filed by the petitioner argued that the appellate court's decision denying a grant of *pro se* attorney's fees to the petitioner on the basis of the *Hamer* case and its progeny was error in that those cases only concerned *pro se* attorneys who had instigated litigation and did not concern *pro se* attorney's who responded to frivolous litigation, as in the case at bar.

A. There was no question raised by the petitioner as to the propriety of the remainder of the decision of the appellate court which affirmed the trial court's findings including, mainly, that the respondent filed frivolous pleadings in the trial court in contravention of Supreme Court Rule 137.

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B. The respondent did not file a his own petition for leave to appeal as to any part of the appellate court's decision and did not file an initial response to the petitioner's PLA.

C. It was therefore expected that the respondent's Brief…, when ultimately filed, would be confined to interposing argument and authority in favor of the proposition that the appellate court was correct in denying *pro se* attorneys' fees to the petitioner on the basis of authority that shows that *pro se* attorneys' who respond to frivolous litigation are also precluded from an award of attorneys' fees.

3. A review of the respondent's Brief… reveals arguments that apparently seek to cause this Supreme Court to reverse the decision of the appellate court in various ways and manners without ever actually appealing or seeking to appeal that appellate court decision.

A. The petitioner initially notes that Supreme Court Rule 315(h) provides, in part, that:

(1) If the brief of the appellee contains arguments in support of cross-relief, the appellant's arguments in opposition shall be included in the reply brief, and

(2) If the brief of the appellee contains argument in support of cross-relief, the cover of the brief shall be captioned: "Brief of Appellee. Cross-Relief Requested".

(3) Yet, the Brief… contains no such caption or designation although the body of the appellee's brief seems to undeniably argue for such cross-relief.

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B. The respondent also fails to invoke any other authority, reason or rationale to indicate that this Supreme Court has before it for review the whole of the findings of the trial court and the appellate court in contravention of the Supreme Court Rules that pertain to appeals.

4. However, at Paragraph I. of his Argument on page 11 of the respondent's Brief…, he asserts that, *"…neither the court in Hamer, nor any court since, has found a reason to award fees based on whether an attorney litigation instigated the litigation or defended themselves in an action.*" But the respondent does not invoke or assert any cases where the court denied *pro se* attorneys' fees to an attorney who defended himself against frivolous pleadings, as an example. The respondent does mention *Kehoe v. Saltarelli*, 337 Ill. App. 3d 669, 678, 786 N.E.2d 605 (1st Dist. 2003) and *In re Marriage of Pitulla*, 202 Ill. App. 3d 103, 117, 559 N.E.2d 819 (1st Dist. 1990). The petitioner discussed those cases in his PLA, pointing out that, in both causes, the claimant attorney instigated the subject litigation:

A. In *Kehoe v. Saltarelli*, **the plaintiff filed suit, *pro se*, against the defendants** for legal malpractice and attorneys' fees. The trial court dismissed the complaint and the plaintiff appealed. The appellate court affirmed the dismissal and held that a *pro se* attorney cannot be awarded attorneys' fees, citing *Hamer* and *Kay v. Ehrler*.

B. *In re Marriage of Pitulla*, a domestic relations matter containing a myriad of issues in a combined appeal, involved **an attorney who filed a petition for sanctions against his former client for filing a frivolous pleading** and the trial court granted the petition and awarded the attorney a sanction in the amount of $100.00. The appellate court, after determining that the award was improper and mentioned and

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acknowledged, in passing, the *Hamer* holding. In that matter, the court also asserted that the trial court was deficient in consideration of the fee petition.

C. **But** what must be pointed out is the respondent's apparent knowing, conscious and affirmative attempt to mislead this court when he contends in his Brief…:

(1) Re *Kehoe*, at the end of the first paragraph on page 11, that: "*Equally, Gray's position that a person defending themselves in an action is entitled to an award for attorney fees is not supported by Illinois case law. See Kehoe v. Saltarelli, 337 Ill. App. 3d 669, 678, 786 N.E.2d 605 (1st Dist. 2003) (**Attorney defending himself in a Motion to Dismiss**)*" (emphasis added) when a casual review of the case facts would have revealed, in the third paragraph of the Background of the case the following statement: "*Plaintiff filed a one-count complaint against defendants for attorney malpractice which was dismissed on September 21, 2000. Plaintiff filed his second amended complaint (revised) (hereafter complaint) on July 17, 2001, alleging four counts as follows: legal malpractice/breach of fiduciary duty; tortious interference; participation in Wildman's breach of fiduciary duty; and attorney fees for breach of contract."* The case was lost by the *pro se* attorney plaintiff because of a lack of contractual relationship between the attorney and the defendant law firm which declined to represent him;

(2) Re *Pitulla*, the respondent characterizes the case as "***Attorney defending himself against a Rule to Show Cause***" when the gravamen of that very complicated case, as set forth in the PLA, actually involved, as the facts set forth at paragraph nine of the Opinion: *"(Attorney) Rinella filed a section 2 – 611 petition seeking sanctions and attorney fees for having to respond to petitioner's petition for rule to show cause."* As maintained in the PLA, the appellate court negatively ruled on the basis of the technical deficiencies of the petition for fees **while noting that *Department of Conservation v.***

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***Lawless,* 100 Ill. App. 3d 74 (1981) <u>DOES provide for an award of *pro se* attorney's fees even for attorneys instigating litigation (contrary to *Hamer*</u>).**

(3) These attempts to induce error are contumacious.

5. Otherwise, the respondent attacks the ruling of the trial court and the appellate court without addressing the essence of the instant <u>PLA</u>: **Whether a *pro se* attorney responding to and defending against frivolous *pro se* pleadings can be awarded the attorneys' fees that he incurred when he takes time from the business of his law office to conduct that response and defense**. Particularly, in the absence of authority, the respondent does not even propound or hazard a lay-person's logical or rational reason that such a defending attorney should be denied the fees claimed where the *Hamer* line of cases do not factually apply. Apparently, the respondent, like the trial court, could not find authority on the issue of *pro se* attorneys' fees where the claiming attorney was responding to frivolous pleadings. Neither could the petitioner.

6. It appears that this Supreme Court of the State of Illinois has not confronted a fact situation of the compensability of *pro se* attorneys' fees incurred in response to frivolous pleadings and this absence is the *raison d'etre* of the instant <u>PLA</u>.

7. The various other attacks and arguments presented in the respondent's <u>Brief…</u> represent ad hominem positions properly presentable to the trial and Appellant Court, and do not incapsulate the issue under Supreme Court review, i.e., the *Hamer* public policy reasons against the claimed award; the claimed award invites abuse and misappropriation; firm attorneys represent their own and the firm's interests; a corporation represented by in-house counsel; in-house paralegal services; the policing of *pro se* attorney billing; Gray's billing shows examples of "potential abuse"; whether the doctrine

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of *res judicata* applied to the case at bar; the history of the previous case before Judge Garcia and the instant case before Judge Pantle; whether Supreme Court Rule 137 was previously violated by the respondent; and the multitude of errors "committed" by the appellate court. The only two salient historical facts that the petitioner will reference is that (1) the entirety of the instant cause of action was wholly prompted by the *pro se* respondent who continued and persisted in his meritless allegations until he could go no further and that (2) the petitioner attempted to squelch and foreclose them at the first of his every opportunity. The respondent's frenzied dedication to previously propound specious positions and pleadings before the trial and appellate courts below is only exceeded by his current devotion and commitment to avoid the statutory consequences of those malefactions.

8. The petitioner has argued that the appropriate review herein is *de novo* but such a review has not been invoked by the respondent for any reason including to cause this Supreme Court to extend that review back to the minutia addressed by the trial court and the considerations of the appellate court, to the exclusion of the issues raised in the instant PLA; nor has the respondent invoked Supreme Court Rule 318. The respondent has simply presented a position, without precedent, that any and all that has ever been done in the instant cause by the lower courts is before this Supreme Court for reversal, with no authority to support and no attention to the actual issue at hand.

9. Similarly, the respondent tenders no argument of a legal or authoritative nature that would properly defeat the petitioner's argument and prayer for appellate attorney's fees.

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10. Finally, and with all due respect to the respondent and in an apparent point of fact, on review of the whole of the respondent's Brief…, the unmistakable conclusion that cannot be denied is that the respondent is only dissembling, commonly known as giving a false or misleading appearance or to conceal the truth or real nature. The respondent is seemingly very aware that there is little if any authority or basis for his position herein and he raises a flurry of judicial "dust" composed of untoward notions that have been fully addressed by the trial and appellate courts for the purpose of causing such dust to blind and cloud the view of this Supreme Court in order that it may lose focus on the issue that is the supposed basis for its allowance of the petitioner's PLA.

CONCLUSION

WHEREFORE, the Petitioner, MARVIN GRAY, again respectfully prays that this Supreme Court do that which the appellate court felt that it could not do, to repair this modest but tellingly complete tear in the fabric of the jurisprudence of the State of Illinois that is created by the automatic and mechanical "policy" application of the *Hamer* "rule" to such cases that involve absolutely converse facts to those contained in that case and its "progeny", to correct the consequential judicial anomaly and, therefore, that:

A. This court reverse the decision of the appellate court, affirm the decision of the trial court and enter and reinstate the sanctions initially prayed for in the amount of $12,966.25 granted by the trial court; and

B. This court impose, pursuant to Supreme Court Rule 375, a further sanction, in the form of an award of damages for the reasonable costs of defending against the instant frivolous appellate court appeal, attorneys' fees, against the Respondent, as have been necessarily and further incurred by the Petitioner.

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"The law must be stable, but it must not stand still."

Roscoe Pound (1870 – 1964)

Respectfully submitted,

Marvin W. Gray

November 26, 2018
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NOTICE OF FILING, CERTIFICATE OF COMPLIANCE, CERTIFICATE OF SERVICE AND VERIFICATION

TO: Tanya D. Woods, Esq.
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PLEASE TAKE NOTICE that I caused to be electronically filed with the Clerk of the Supreme Court of the State of Illinois, on this 26th day of November, 2018, the attached Reply Brief.

CERTIFICATE OF COMPLIANCE

I certify that this Reply Brief conforms to the requirements of Rules 341(a) and (b) and that the length of the Reply Brief is 9 pages.

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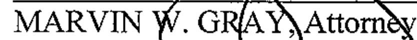
CERTIFICATE OF SERVICE

I certify that on November 26, 2018, I served this Reply Brief on Tanya D. Woods, Counsel for the Respondent-Appellee of 9841 South Vanderpoel Avenue, Chicago, IL 60643 by emailing a copy thereof to her email address of tdwoods.lawoffice@gmail.com.

MARVIN W. GRAY, Attorney

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), the undersigned certifies that the statements set forth herein are true and correct.



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