

**COMPLAINT AGAINST DONALD TRACY
BAR REGISTRATION NUMBER 03128601
FOR VIOLATION OF RULE 3.1 OF THE
ILLINOIS RULES OF PROFESSIONAL CONDUCT OF 2010**

SUMMARY FACTS AND COMPLAINT

1. Donald Tracy is a member of the firm Brown, Hay & Stephens, 205 S 5th St # 700, Springfield, IL 62701. He was the attorney representing the respondent in HUBER v. AMERICAN ACCOUNTING ASSOCIATION, SEVENTH CIRCUIT, FOURTH DISTRICT #2011-MR-000411.
2. In August 2002 an Illinois not-for-profit corporation was formed with the name American Accounting Association (Exhibit A), herein referred to as the 2002 Corporation.
3. Illinois General Not For Profit Corporation Act states

“If the corporation is to have no members, that fact *shall be set forth* in the articles of incorporation or the bylaws.” 805 ILCS 105/107.03(c) (emphasis added)
4. The Articles of Incorporation of the 2002 Corporation did not set forth there were to be no members. (Exhibit A)
5. The Articles of Incorporation of the 2002 Corporation created members with unrestricted voting rights and specifically gave members the right to elect both officers and directors. (Exhibit A)
6. I was a member of the 2002 Corporation for certain years from 2002 to 2011, and from 2011 to the present.
7. Where a corporation has no members or no members entitled to vote on dissolution, the dissolution of a corporation may be authorized by a majority of the directors. 805 ILCS 105/112.05.
8. Where a corporation has members entitled to vote on dissolution, the dissolution of a corporation may be authorized by a vote of members entitled to vote. 805 ILCS 105/112.15
9. In June 2011 those in control of the 2002 Corporation dissolved the corporation with no vote from the members stating the corporation had no members and the dissolution was authorized by a majority of the directors. (Exhibit B)
10. Simultaneously with the dissolution of the 2002 Corporation those in control of the 2002 Corporation reinstated a 1935 Corporation by the same name that had been dissolved by the Illinois Secretary of State in 1996. (Exhibit C)

11. In August 2011 I filed a petition in the Seventh Circuit, Fourth District to vacate the illegal voluntary dissolution of the 2002 Corporation and the reinstatement of the 1935 Corporation, and to judicially dissolve the 2002 Corporation pursuant to Illinois General Not For Profit Corporation Act 805 ILCS 105/112.55(b) which states

“A Circuit Court may dissolve a corporation...In an action by a member entitled to vote...if it is established that the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive or fraudulent.” 805 ILCS 105/112.50(b)(2)

12. Attached as an exhibit to the petition was the Articles of Incorporation of the 2002 Corporation which created members. (Exhibit A)
13. The case was assigned to Judge John Schmidt.
14. Donald Tracy informed himself about the facts of his client’s case and the applicable law.
15. Donald Tracy informed himself that if the corporation is to have no members, that fact shall be set forth in the articles of incorporation or the bylaws.
16. Donald Tracy informed himself that neither the articles of incorporation nor the bylaws set forth the corporation is to have no members and created members with no restrictions on voting.
17. Donald Tracy informed himself that only where a corporation has no members or no members entitled to vote on dissolution, the dissolution of a corporation may be authorized by a majority of the directors.
18. After having informed himself about the facts of his client’s case and the applicable law Donald Tracy knew that 805 ILCS 105/107.03(c) mandated that if the corporation is to have no members, that fact must be set forth in the articles of incorporation or the bylaws.
19. After having informed himself about the facts of his client’s case and the applicable law Donald Tracy knew that the Articles of Incorporation of the 2002 Corporation did not set forth there were no members.
20. After having informed himself about the facts of his client’s case and the applicable law Donald Tracy knew that the Articles of Incorporation of the 2002 Corporation created members with unrestricted voting rights and specifically gave members the right to elect both officers and directors.
21. After having informed himself about the facts of his client’s case and the applicable law Donald Tracy knew that 805 ILCS 105/112.15 states that where a corporation has members entitled to vote on dissolution, the dissolution of a corporation may be authorized by a vote of members entitled to vote.
22. After having informed himself about the facts of his client’s case and the applicable law Donald Tracy knew that only where a not-for-profit corporation has no members or no

members entitled to vote on dissolution, the dissolution of a corporation may be authorized by a majority of the directors. 805 ILCS 105/112.05

23. Although Donald Tracy knew that the Articles of Incorporation of the 2002 Corporation did not set forth there were to be no members, in January 2013 Donald Tracy misrepresented the facts to the court and moved to dismiss the second amended petition under Illinois Code of Civil Procedure Section 2-619(a) stating, “Petitioner lacks standing to sue the 2002 Corporation because he was never a member of the 2002 Corporation. The 2002 Corporation never had any members.” (Docket Entry 01/09/2013, page 5)
24. Although Donald Tracy knew that 805 ILCS 105/112.15 requires that where a not-for-profit corporation has members entitled to vote on a dissolution, the dissolution may only be authorized by a vote of members entitled to vote, and knew that the members did not vote on the dissolution of the corporation, in January 2013 Donald Tracy misrepresented the facts to the court and moved to dismiss the second amended petition under Illinois Code of Civil Procedure Section 2-619(a) stating that the 2002 Corporation had been dissolved and therefore the court had “no jurisdiction over the 2002 Corporation because it had been dissolved.” (Docket Entry 01/09/2013, page 4)
25. Without opinion and contrary to the clear facts and the unambiguous mandate of the law, on March 6, 2013 Judge Schmidt granted Donald Tracy’s motion to dismiss based on his misrepresenting that there were never any members of the 2002 Corporation and the corporation had been dissolved. (If no reason is given by a trial court for dismissing an action, it must be assumed that the dismissal is for the reasons argued by the movant. Zielinski v. Miller, 277 Ill. App. 3d 735, 660 N.E.2d 1289 (1995))
26. An appeal was filed but dismissed for lack of jurisdiction due to late filing the notice of appeal.
27. Subsequent to Judge Schmidt’s dismissing the petition contrary to the clear facts and the unambiguous mandate of the law I discovered that Donald Tracy, and members of his law firm Brown, Hay, & Stephens, LLP, had paid thousands of dollars in political campaign contributions to Judge Schmidt.
28. The mandate of the law is clear and unambiguous. “If the corporation is to have no members, that fact shall be set forth in the articles of incorporation or the bylaws.” 805 ILCS 105/107.03(c)
29. The mandate of the law is clear and unambiguous. Only where a not-for-profit corporation has no members entitled to vote on a dissolution, “the dissolution of a corporation may be authorized by a majority of the directors.” 805 ILCS 105/112.05
30. The facts are clear and unambiguous. The Articles of Incorporation of the 2002 Corporation not only did not set forth there would be no members as mandated by 805 ILCS 105/107.03(c), the Articles of Incorporation of the 2002 Corporation actually created members with no restriction on voting rights. (Exhibit A)

31. Donald Tracy did not argue for an extension, modification or reversal of the existing law that mandates that “If the corporation is to have no members, that fact shall be set forth in the articles of incorporation or the bylaws.”
32. In stating that the 2002 Corporation never had any members Donald Tracy knowingly and intentionally misrepresented the facts to the court.
33. There was no basis in law or fact in arguing that the 2002 Corporation never had any members.
34. By knowingly and intentionally misrepresenting to the court that the 2002 Corporation never had any members Donald Tracy violated rule 3.3 of the Illinois Rules of Professional Conduct of 2010 which states

CANDOR TOWARD THE 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;

or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer’s client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

35. By knowingly and intentionally misrepresenting to the court that the 2002 Corporation had been dissolved Donald Tracy violated rule 3.1 of the Illinois Rules of Professional Conduct of 2010 which states

MERITORIOUS CLAIMS AND CONTENTIONS

A lawyer shall not...assert or controvert an issue [in a proceeding], unless there is a basis in law and fact for doing so that is not frivolous, which includes a good-faith argument for an extension, modification or reversal of existing law.

36. Donald Tracy’s making claims which had no basis in law or fact and which he knew were contrary to the facts and the clear and unambiguous mandate of the law and which were not a good-faith argument for an extension, modification or reversal of the clear and unambiguous mandate of the existing law to a judge to whom he and his law firm had paid thousands of dollars in political campaign contributions, resulted in the dismissal of the petition against both the clear facts and the unambiguous mandate of the law.
37. There is a visible connection between Judge Schmidt’s having receiving thousands of dollars in political payments and the illegal dismissal of the petition.

38. Donald Tracy's misrepresentation of the facts and law is publicly known and has been published on various Internet sources, including several law review articles.
39. The integrity of the Illinois bar has been severely damaged. It is the responsibility of the Illinois Attorney Registration & Disciplinary Commission to restore the integrity of the Illinois bar by taking appropriate public disciplinary action against Donald Tracy.
40. While there is a visible connection between Judge Schmidt's having received thousands of dollars in political campaign payments from Donald Tracy and his law firm and the illegal dismissal of the petition by Judge Schmidt, it is unknown whether there was overt collusion between Donald Tracy and his misrepresentation of the facts and Judge Schmidt, or whether there was merely tacit agreement.