

**IN THE SUPREME COURT  
STATE OF MISSOURI**

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**IN RE:** )  
 )  
**WARREN STEVEN RIVES,** ) **Supreme Court #SC89188**  
 )  
**Respondent.** )

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**INFORMANT'S BRIEF**

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ALAN D. PRATZEL #29141  
CHIEF DISCIPLINARY COUNSEL

SHARON K. WEEDIN #30526  
STAFF COUNSEL  
3335 American Avenue  
Jefferson City, MO 65109  
(573) 635-7400

ATTORNEYS FOR INFORMANT

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## **STATEMENT OF JURISDICTION**

Jurisdiction over attorney discipline matters is established by Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMo 2000.

## STATEMENT OF FACTS

### Facts Underlying Criminal Charges

In February of 2006, the Missouri Highway Patrol completed an investigation into criminal wrongdoing by Respondent Rives. **App. 6-8.** The investigation focused on Mr. Rives' handling, in his capacity as the City of Lake Ozark Prosecuting Attorney, of traffic charges against an individual named Tracie Geisler. Ms. Geisler had been arrested on July 15, 2005, by an officer of the Lake Ozark Police Department and charged with driving while intoxicated, failure to drive on the right half of the roadway, and an open container violation. **App. 6.**

Ms. Geisler contacted a lawyer named Clarence Hawk for his assistance in resolving the pending charges. Mr. Hawk suggested to Ms. Geisler that she contact the prosecuting attorney, Mr. Rives, directly in an effort to resolve the matter without incurring attorney fees. Mr. Hawk also told Ms. Geisler that he believed Mr. Rives was taking money or sex in exchange for "resolving" traffic tickets. **App. 9-10.** Ms. Geisler suspected that Mr. Hawk sent her to Mr. Rives in an effort to catch Mr. Rives in the act. **App. 10.**

Ms. Geisler made an appointment to meet with Mr. Rives at his private office on a Sunday. No one was present for the meeting besides Ms. Geisler and Mr. Rives. **App. 9.** Ms. Geisler consulted with Mr. Rives about a child visitation matter, then told him about the pending municipal charges. He took the tickets from Ms. Geisler, then, according to Ms. Geisler, told her that "for \$1,500.00 the DWI would go away and I would get one

point on my license.” Mr. Rives directed Ms. Geisler to make the payments to him.  
**App. 9.**

Ms. Geisler thereafter, in August of 2005, mailed two checks to Mr. Rives, one in the amount of \$200.00 and the other for \$100.00. **App. 10.**

On November 22, 2005, the highway patrol interviewed Ms. Geisler. Using money provided by the patrol, Ms. Geisler subsequently paid Mr. Rives an additional \$813.60 in cash and checks. **App. 7.** The highway patrol recorded Ms. Geisler’s final two meetings with Mr. Rives as part of its investigation. **App. 7.**

The total paid by Ms. Geisler to Mr. Rives was \$1,113.50. **App. 7.** Upon making the final payment, Ms. Geisler signed two guilty pleas in Mr. Rives’ office. She observed the money (cash and checks) she had been paying Mr. Rives in a folder at his office.  
**App. 7.**

By way of explaining his dealings with Ms. Geisler, Mr. Rives told the highway patrol investigator that he occasionally gives into a “sob story” and deals directly with someone charged with municipal violations. His secretary would have collected the payments Ms. Geisler made, then he would have paid the money into court and filed her guilty pleas. **App. 12.**

On December 14, 2005, after obtaining the payment that raised the total to \$1,113.50, Mr. Rives endorsed the checks at a bank and purchased a money order in the amount of \$839.00 payable to the City from Ms. Geisler. Mr. Rives filed the money order and guilty plea forms with the court the next day. **App. 7.**

Mr. Rives has no explanation for why \$1,113.50 was collected from Ms. Geisler, but only \$839.00 of that total was paid into court, other than poor bookkeeping or oversight by him or his secretary. **App. 7, 13.** Mr. Rives maintained in his interview with the highway patrol investigator that he would have told Ms. Geisler it would cost \$1,113.50 (not \$1,500.00 as she said) to resolve the municipal charges. **App. 13.**

On October 16, 2007, a special prosecuting attorney filed an information in the Circuit Court of Shelby County charging Respondent with commission of the class A misdemeanor of official misconduct, in violation of § 576.040.1(2). **App. 4-5.** Mr. Rives entered a guilty plea that same day and was sentenced to pay a \$500.00 fine and to pay restitution to the City of Lake Ozark in the amount of \$274.50. According to the judgment, the restitution was paid. **App. 3.**

#### Disciplinary History

Mr. Rives was admitted to the bar in 1991. His disciplinary history consists of two prior admonitions. He received the first in 1998 for violation of Rule 4-8.4(d) (continued to act as prosecutor in a case in which he had a conflict of interest). The other admonition was given in 1997 for violation of Rules 4-1.15 (safekeeping property) and 4-1.16(d) (upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests) in that after a client discharged him, Mr. Rives withheld some deeds from her file, which had been sent to successor counsel, and likewise did not promptly transmit to the former client funds indisputably belonging to her.

**POINT RELIED ON**

**THE SUPREME COURT SHOULD PUBLICLY REPRIMAND RESPONDENT PURSUANT TO RULE 5.21 BECAUSE HE PLED GUILTY TO A MISDEMEANOR OF THIS STATE INVOLVING INTERFERENCE WITH THE ADMINISTRATION OF JUSTICE AND INVOLVING MORAL TURPITUDE IN THAT, IN THE COURSE OF HIS DUTIES AS A MUNICIPAL PROSECUTOR, HE RECEIVED A FEE FOR THE PERFORMANCE OF A DUTY IMPOSED BY LAW.**

*In re Lim*, 210 S.W.3d 199 (Mo. banc 2007)

*In re Shunk*, 847 S.W.2d 789 (Mo. banc 1993)

*In re Wiles*, 107 S.W.3d 228 (Mo banc 2003) (per curiam)

Rule 4-8.4(b)

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

## ARGUMENT

**THE SUPREME COURT SHOULD PUBLICLY REPRIMAND RESPONDENT PURSUANT TO RULE 5.21 BECAUSE HE PLED GUILTY TO A MISDEMEANOR OF THIS STATE INVOLVING INTERFERENCE WITH THE ADMINISTRATION OF JUSTICE AND INVOLVING MORAL TURPITUDE IN THAT, IN THE COURSE OF HIS DUTIES AS A MUNICIPAL PROSECUTOR, HE RECEIVED A FEE FOR THE PERFORMANCE OF A DUTY IMPOSED BY LAW.**

The highway patrol's investigation of Mr. Rives was apparently prompted by very serious allegations of sexual impropriety by him in the performance of his duties as a municipal prosecutor. The worst of the allegations were not substantiated by the investigation, even though Mr. Rives initially met alone in his office with Ms. Geisler (providing opportunity), and even though several of Ms. Geisler's subsequent communications with Mr. Rives were secretly recorded. The misconduct revealed by the investigation, bad though it was, was limited to Mr. Rives' inability to account for \$274.50 paid to him by Ms. Geisler, money that was to have been paid to the city. As a consequence of the investigation, Respondent Rives was charged with the class A misdemeanor of "official misconduct" in violation of § 576.040 RSMo. Respondent pled guilty to that misdemeanor on October 16, 2007. A public official is guilty of committing the crime of "official misconduct" if he "receives any fee or reward for ... the performance of a duty imposed by law." A short review of the facts underlying the

guilty plea, facts flushed out in the course of the highway patrol's investigation, may be helpful.

On July 15, 2005, a waitress named Tracie Geisler was arrested in Lake Ozark, Missouri, and charged with driving while intoxicated, failure to drive on the right side of the roadway, and an open container violation. Mr. Rives was, at the time, the municipal prosecutor for the City of Lake Ozark.

Ms. Geisler went to a local attorney named Clarence Hawk for representation on the municipal charges. Mr. Hawk recommended to Ms. Geisler that she approach Mr. Rives on her own hook to try to resolve the case, thereby saving herself an attorney's fee. Mr. Hawk's suggestion was not entirely altruistic – Mr. Hawk and Mr. Rives are apparently longtime adversaries, and it is possible that Mr. Hawk was hoping to substantiate his belief that Mr. Rives was illegally resolving some municipal matters by demanding sexual favors, by sending Ms. Geisler to see him.

Ms. Geisler thereafter met alone with Mr. Rives in his private office on a Sunday. Nothing, however, of a sexual nature is reported to have occurred or been proposed. According to Ms. Geisler, Mr. Rives did tell her that if she paid him \$1,500.00, all but one of the charges would be dismissed, and she would lose only one point off her license. Mr. Rives, it should be noted, recalls the amount differently – he believes he told Ms. Geisler that \$1,113.50, a standard amount in such cases according to him, would do the job.

The facts in this case were developed from a Missouri Highway Patrol investigation prompted, apparently, by Mr. Hawk's allegations of criminal misconduct

against Mr. Rives. The patrol obtained written statements from Ms. Geisler, a highway patrol investigator, and Mr. Rives. The patrol's investigation documents payment to Rives by Geisler of a total of \$1,113.50 through a series of payments, some cash and some Ms. Geisler's personal checks. Rives had collected that much from her by mid-December, 2005. At that point, without explaining why he was backing off the \$1,500.00 figure she says he initially told her was required, Rives had Ms. Geisler sign two guilty pleas. Rives took the personal checks and cash to his bank and endorsed them, then purchased a money order in the amount of \$839.00 payable to the city. The next day the money order was turned in to the city, and the two guilty pleas were entered into the system.

The difference between the total amount collected from Ms. Geisler and what was paid to the city was \$274.50. Mr. Rives had no explanation for what happened to this \$274.50 difference when questioned about it by the highway patrolman. He later attributed the difference to oversight or poor bookkeeping.

So, although the investigation began amidst very serious allegations of criminal wrongdoing, Respondent Rives ultimately pled guilty to the misdemeanor of "official misconduct" in that he apparently retained \$274.50 that was to have been paid to the city. The investigation produced no evidence to support the allegations of sexual impropriety in Mr. Rives' dealings with Ms. Geisler.

"Official misconduct" is a class A misdemeanor. Respondent has pled guilty to a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 4-8.4(b). Supreme Court Rule 5.21 provides an expedited procedure

for imposing discipline against lawyers who have “pleaded guilty or nolo contendere to or been found guilty of” any felony and certain types of misdemeanors, including those “involving interference with the administration of justice.” The disciplinary case against Mr. Rives was filed under Rule 5.21 because the misdemeanor to which Respondent pled guilty falls clearly into a category of misdemeanor to which Rule 5.21 applies, either as interference with the administration of justice or because the conduct involves moral turpitude. Moral turpitude includes acts “contrary to justice, honesty, modesty or good morals.” *In re Shunk*, 847 S.W.2d 789, 791 (Mo. banc 1993). While no cases factually on point with this one were discovered, Respondent’s haphazard collection of payments from Ms. Geisler to resolve her charges, and his subsequent failure to turn all of the money over to the city is, intuitively, contrary to justice and harmful to the administration of justice, conduct within Rule 5.21’s intended reach.

Informant recommended that the Court publicly reprimand Respondent. Needless to say, disciplinary counsel’s recommendations for discipline in any case, including a case filed pursuant to Rule 5.21, are not binding on the Court. The Rule itself does not require that Informant make a sanction recommendation, although Informant usually does for whatever assistance doing so may provide the Court.

Informant recommended public reprimand for reasons drawn from the ABA Standards for Imposing Lawyer Sanctions (1991 ed.). Mr. Rives violated a duty owed to the public – to maintain his personal integrity. See Standard Rule 5.0. As is the case with all sanction analysis, the severity of the sanction increases in proportion to the level of scienter that can be assigned to the lawyer’s misconduct. Here, Respondent pled guilty

to a statute that proscribes an official from “knowingly” receiving more money than was due for the performance of an official duty. See § 576.040.1(2) RSMo. The ABA Standards suggest reprimand in a case where the attorney “knowingly engages” in conduct that reflects adversely on his fitness to practice law. See Standard Rule 5.13. Reprimand is generally appropriate in a case not involving dishonesty, fraud, or deceitful conduct. *In re Lim*, 210 S.W.3d 199, 202 (Mo. banc 2007). Respondent’s two prior admonitions, given in 1997 and 1998, suggest that reprimand would accord with the principle of progressive discipline embraced in the Standards and by the Court. See *In re Wiles*, 107 S.W.3d 228, 229 (Mo banc 2003) (per curiam). In recommending public reprimand, Informant was also cognizant that Respondent could have been charged by the State with a far more serious crime had the State believed the evidence would support such charges.

The foregoing analysis formed the basis for Informant’s recommendation for a public reprimand. Certainly the Court has discretion to impose whatever sanction it believes appropriate to protect the public and maintain the integrity of the profession.

**CONCLUSION**

Respondent pled guilty to a criminal act that reflects adversely on his honesty, trustworthiness, or fitness in violation of Rule 4-8.4(b). Rule 5.21 provides an expedited procedural vehicle for imposition of an appropriate sanction. Informant has recommended a public reprimand.

Respectfully submitted,

ALAN D. PRATZEL      #29141  
Chief Disciplinary Counsel

By: \_\_\_\_\_  
Sharon K. Weedon    #30526  
Staff Counsel  
3335 American Avenue  
Jefferson City, MO 65109  
(573) 635-7400 – Phone  
(573) 635-2240 – Fax  
Sharon.Weedin@courts.mo.gov

ATTORNEYS FOR INFORMANT

**CERTIFICATE OF SERVICE**

I hereby certify that on this 14<sup>th</sup> day of May, 2008, two copies of Informant's Brief and a diskette containing the brief in Microsoft Word format have been sent via First Class mail to:

Timothy R. Cisar  
750 Bagnell Dam Blvd., Suite A  
Lake Ozark, MO 65049

Attorney for Respondent

\_\_\_\_\_  
Sharon K. Weedon

**CERTIFICATION: RULE 84.06(c)**

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 2,545 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and
4. That Norton Anti-Virus software was used to scan the disk for viruses and that it is virus free.

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Sharon K. Weedon

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