

**IN THE SUPREME COURT OF MISSOURI
EN BANC**

IN RE:)	
)	
EDWARD J. GRIESEDIECK, III,)	Supreme Court #SC92726
MO Bar #33483,)	
)	
Respondent.)	

RESPONDENT'S BRIEF

JENSEN, BARTLETT & SCHELP, LLC

s/Matthew T. Schelp

MATTHEW T. SCHELP, #45724
MATTHEW P. DIEHR, #61999
222 S. CENTRAL AVE., SUITE 110
ST. LOUIS, MO 63105
TELEPHONE: (314) 725-3939
FACSIMILE: (314) 725-5595
E-Mail: MSchelp@jbslawyers.com
E-Mail: MDiehr@jbslawyers.com

ATTORNEYS FOR RESPONDENT

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CASE SUMMARY

On October 31, 2012, the Office of the Chief Disciplinary Counsel (“OCDC”) filed its Informant’s Brief as to Mr. Edward J. Griesedieck, III (“Mr. Griesedieck”) with respect to his misdemeanor violation of Title 18, U.S.C., Section 1033(b)(1) entitled “misappropriation of funds from insurer.” Because Mr. Griesedieck took responsibility for his actions from the outset and pleaded guilty to this offense, the appendix in this matter essentially consists of documents previously filed before this Court, including OCDC’s motion for final order of discipline filed with this Court on July 26, 2012, and Mr. Griesedieck’s response filed on August 27, 2012. Mr. Griesedieck reiterates his request previously made in those filings that this Court impose a discipline consistent with the nature of the misdemeanor offense and in line with his record of service to the Missouri Bar and otherwise exemplary conduct. Mr. Griesedieck separately agreed with the United States Attorney’s Office for the Eastern District of Missouri on April 13, 2012 to abstain from the practice of law until October 13, 2013. He requests this Court to impose discipline of a suspension from the practice of law with leave to apply for reinstatement in six months. Mr. Griesedieck anticipates this suspension would allow him to renew his Missouri bar membership on or about October 13, 2013.

This discipline is appropriate because of the mitigating factors present in this case, including: (1) absence of any prior disciplinary record; (2) lack of selfish motive or gain; (3) timely good faith effort to rectify consequences of misconduct; (4) full cooperation in all proceedings; (5) impeccable character, reputation, and record of service to the Bar; (6) criminal penalties assessed; and (7) ongoing remorse for the transgression.

STATEMENT OF FACTS

A. Procedural History

On or about April 13, 2012, Mr. Griesedieck pleaded guilty in the United States District Court for the Eastern District of Missouri to a one-count misdemeanor violation of Title 18, U.S.C., Section 1033(b)(1). In the matter *In re: Edward J. Griesedieck, III*, SC92505, OCDC moved for an interim suspension of Mr. Griesedieck's law license. Mr. Griesedieck consented to this interim suspension and informed this Court that he had voluntarily agreed to abstain from the practice of law for eighteen months as part of his plea agreement, effective April 13, 2012, with the United States Attorney's Office. This agreement prohibits Mr. Griesedieck from practicing law until October 13, 2013 at the earliest. The United States Attorney's Office for the Eastern District of Missouri specifically agreed that Mr. Griesedieck's eighteen-month abstention from the practice of law was an appropriate penalty for his conduct, and this determination included lengthy consultation with OCDC prior to entering in the plea agreement with Mr. Griesedieck. Because of this plea agreement, Mr. Griesedieck will not be able to practice law again until October 13, 2013 at the earliest, regardless of this Court's decision in this matter.

On July 3, 2012, this Court entered its Order of Interim Suspension in matter SC92505. On July 26, 2012, OCDC filed its Motion for Final Order of Discipline in this matter, *In re: Edward J. Griesedieck, III*, SC92726. OCDC sought a suspension of Mr. Griesedieck's license to practice law without leave to apply for reinstatement for three years. Mr. Griesedieck's responsive filings sought discipline consistent with the nature of the offense and the mitigating factors present, and he respectfully suggested a

suspension of his license with leave to apply for reinstatement in six months. The purpose of the requested six month suspension was to allow Mr. Griesedieck to apply for reinstatement in a timeframe to be licensed at or near the conclusion of the eighteen month abstention outlined in the plea agreement. Mr. Griesedieck reiterates this request in response to OCDC's Informant's Brief.

B. The Underlying Offense

In August of 2009, Mr. Griesedieck was contacted by Doug Morgan ("Morgan"), then Chairman of the Board of Directors of Missouri Employer's Mutual ("MEM"). MEM was a client of Mr. Griesedieck and his firm. Morgan, the Chairman of MEM at the time, is since deceased. Morgan informed Mr. Griesedieck that MEM, at the request of Roger Wilson ("Wilson"), its President, wished to make a routine campaign donation to the Missouri Democratic Party but wanted to avoid appearing on the campaign reports as a donor for fear of unending subsequent requests for funds. Mr. Griesedieck spoke with Wilson and was again informed that the sole goal of involving Mr. Griesedieck and his firm was to avoid MEM appearing on the "contributor's list" of donors, as Morgan and Wilson believed MEM would have then been endlessly requested by others for additional donations. There was no other untoward reason for the request. Respondent is not aware of anything improper about MEM making a campaign donation to the Missouri Democratic Party in its own name—nothing about such a donation was in and of itself illegal. Wilson, a former governor of the State of Missouri, subsequently pleaded guilty to the same offense as Mr. Griesedieck.

In order to avoid appearing on the donation list, Morgan and Wilson proposed Mr. Griesedieck's firm, Herzog Crebs, LLP, issue the check to the Missouri Democratic Party. Herzog Crebs would then simply be reimbursed by MEM, and MEM would not show up as a donor. Again, Mr. Griesedieck confirmed with Wilson that this arrangement was what MEM wanted to do. Mr. Griesedieck even memorialized the request in a memorandum he prepared to the Management Committee at Herzog Crebs. There was never any effort to conceal the contribution from Herzog Crebs. A firm check was issued, and the payment was shown on the next month's bill as a cost advanced and later paid by MEM.

As further confirmation that Mr. Griesedieck did not understand the gravity of the situation or its illegality, Mr. Griesedieck did not try to disguise the nature of this transaction. Rather, Herzog Crebs' billing records for MEM reflect that during August of 2009, Mr. Griesedieck billed time detailing the transaction and these narratives were billed to the client alongside the \$5,000.00 "[c]ost advanced per R. Wilson." After having an opportunity to reflect on his actions, Mr. Griesedieck realized the significance of not obtaining approval of MEM's board of directors for the donation—despite this course of action being set in motion by MEM's President and Chairman.

As such, Mr. Griesedieck pleaded guilty to the misdemeanor offense of misappropriation of funds from an insurer in violation of Title 18, U.S.C., Section 1033(b)(1). *See App. 2 - 17.* As OCDC illustrates at great length in its Informant's Brief, this offense contains the element that Mr. Griesedieck acted "willfully." *See App. 3.* Mr. Griesedieck does not dispute this in any respect, but he believes the above factual

recitation is important for this Court to understand the offense itself and properly consider its mitigating factors, including—as OCDC concedes in its Informant’s Brief—an absence of selfish motive. In his guilty plea, Mr. Griesedieck took responsibility for his conduct. *See App. 2 - 17.* At no point has he sought to deflect blame for his regrettable lapse in judgment. *See App. 2 - 17.*

From the outset, Mr. Griesedieck has fully cooperated with the federal government’s investigation, and his actions since the offense are likewise notable. As Mr. Griesedieck’s plea specifically states, he “has clearly demonstrated acceptance of responsibility.” *See App. 2 - 17.* Mr. Griesedieck’s cooperation was so complete that the United States filed a motion with the federal district court seeking a downward departure for substantial assistance to authorities. In addition, Mr. Griesedieck “agree[d] to provide full restitution to all victims of all charges in the indictment.” *See App. 2 - 17.* He agreed to “abstain from the practice of law and from engaging in the law business . . . for the period of eighteen (18) months following his April 13, 2012 guilty plea . . .” *See App. 2 - 17.* After almost thirty (30) years as a lawyer, this is a considerable punishment for the offense. Further, Mr. Griesedieck and Wilson made full restitution to MEM, and Mr. Griesedieck also entered into a consent decree with the Missouri Ethics Commission and paid an associated fine of \$2,000, as well as an additional \$5,000 fine to the United States government. He is also performing community service as part of the plea agreement. More significantly from the professional point of view, he resigned from his position with Herzog Crebs, voluntarily reported his conduct to the Missouri Bar, and consented to this Court’s interim suspension.

POINT RELIED ON

The Supreme Court should decline to impose the discipline sought by the Office of Chief Disciplinary Counsel, and it should instead consider mitigating factors in assessing a less harsh discipline. The unique mitigating factors in this case support Mr. Griesedieck's suggested sanction of suspension from the practice of law with leave to apply for reinstatement to the Missouri Bar in six months.

In re Zink, 278 S.W.3d 166 (Mo. banc 2009)

In re Belz, 258 S.W.3d 38 (Mo. banc 2008)

In re Crews, 159 S.W.3d 355 (Mo. banc 2005)

In re Connaghan, 613 S.W.2d 626 (Mo. banc 1981)

ARGUMENT

The Supreme Court should decline to impose the discipline sought by the Office of Chief Disciplinary Counsel, and it should instead consider mitigating factors in assessing a less harsh discipline. The unique mitigating factors in this case support Mr. Griesedieck's suggested sanction of suspension from the practice of law with leave to apply for reinstatement to the Missouri Bar in six months.

“This Court has the inherent authority to regulate the practice of law.” *In re Zink*, 278 S.W.3d 166, 169 (Mo. banc 2009). “The fundamental purpose of attorney discipline is to protect the public and maintain the integrity of the legal profession.” *Id.* “It is proper to consider mitigating factors, including the attorney's previous record, when determining the appropriate discipline.” *In re Crews*, 159 S.W.3d 355, 360 (Mo. 2005). This Court has acknowledged that even in cases involving misappropriation of funds, it is necessary to take into account mitigating factors. *In re Belz*, 258 S.W.3d 38, 46 (Mo. 2008).

A. In Fashioning its Sanction, This Court Should Take Into Account Mr. Griesedieck's Lack of Prior Disciplinary Record, Absence of Selfish Motive, Evidence of Good Character and Reputation, Parallel Federal Penalty, and Effort to Make Restitution.

There are at least seven mitigating factors evident in this matter that the Court should consider in assessing discipline to Mr. Griesedieck: (1) lack of prior disciplinary record; (2) an impeccable character and reputation; (3) lack of selfish motive; (4) effort to make restitution; (5) full and free disclosure of conduct and cooperative attitude toward

proceedings; (6) parallel criminal penalties in the United States District Court; (7) remorse for the transgression. *See* ABA Standard for Imposing Lawyer Sanctions 9.3—Mitigation. Mr. Griesedieck respectfully suggests that a suspension from the practice of law with leave to apply for reinstatement in six months is sufficient discipline.

i. Lack of Prior Disciplinary Record and Impeccable Reputation

Mr. Griesedieck has been a member of the Missouri Bar for twenty eight years without any previous discipline. He has been a member of the Illinois Bar for a similar length of time with no disciplinary actions against him. He has been a trusted partner and member of the Management Committee at Herzog Crebs, LLP. For the last twenty six years, Mr. Griesedieck hosted the popular “Ask the Lawyer” program on KMOX radio, where Mr. Griesedieck addressed citizens’ sometimes simple legal questions, but also discussed important policy issues. Prior to hosting this show, Mr. Griesedieck headed the similar off-air program sponsored by the St. Louis County Bar Association, again addressing citizens’ legal concerns for no fee. This was Mr. Griesedieck’s extraordinary value to the profession—he used his time as a member of the Missouri Bar to serve Missouri citizens’ needs.

Mr. Griesedieck has been married to his wife, Ann, for twenty five years, and he is the dedicated father of three children. His family has been and remains his first priority. Despite the time commitments involved in raising his family and pursuing his successful legal career, Mr. Griesedieck has always been generous of his time to the endeavors he supports. Mr. Griesedieck has served as a board member for Catholic Charities / Cardinal Ritter Senior Services from 2009 to the present, for the March of Dimes from

2006 to 2009, for the White House Jesuit Retreat House from 1987 to 1993, and for St. Vincent's Home for Children from 1988 to 1992. He is an active parishioner at Our Lady of the Pillar Parish in St. Louis County. He coaches basketball, soccer, and baseball.

Mr. Griesedieck's lack of any prior disciplinary record underscores his excellent reputation in the St. Louis legal community, and these factors militate in favor of a lighter disciplinary assessment than OCDC's requested discipline.

ii. Absence of Selfish Motive and Restitution

As indicated, Mr. Griesedieck agreed to make a campaign contribution to the Missouri Democratic Party on behalf of MEM and at the behest of its Chairman and President, Morgan and Wilson. Morgan had informed Mr. Griesedieck that MEM wished to make a campaign donation to the Missouri Democratic Party but wanted to avoid appearing on the campaign reports as a donor for fear of unending subsequent requests for funds. Morgan proposed the process to achieve MEM's goal, and Mr. Griesedieck confirmed this with Wilson, the President of MEM. Mr. Griesedieck confirmed this arrangement was acceptable internally to his law firm, Herzog Crebs, and he billed his time spent on the project to MEM along with the "cost advanced" of \$5,000.00. Mr. Griesedieck pleaded guilty to the offense of misappropriation of funds from an insurer. Through his guilty plea, Mr. Griesedieck took responsibility for this offense, and while absolutely admitting that his actions were willful, they were not selfish and did not result—nor were they intended to result—in any personal financial benefit. Though he had no personal financial gain, Mr. Griesedieck has absolutely made the required restitution to MEM, entered into a consent decree with the Missouri Ethics Commission

and paid an associated fine of \$2,000, performed community service, and paid an additional \$5,000 fine to the United States government.

This Court has consistently considered absence of a selfish financial motive as a mitigating factor in assessing discipline, as well as efforts to make restitution. Here, Mr. Griesedieck's actions were regrettable but not motivated by greed, and he has taken responsibility for them from the outset. He has made all restitution asked of him, and he has paid all associated fines.

iii. Cooperation with Proceedings, Parallel Penalties, and Remorse

Mr. Griesedieck has complied with the federal government's investigation from the outset, and he was sentenced to probation as a result of his plea of guilty to the misdemeanor offense of misappropriation of funds from an insurer in violation of 18 U.S.C. §1033(b)(1). He has been fined and penalized by the federal judicial system as a result of this, and he willingly volunteered his law license prior to this Court's order that he do so. He has experienced the shame associated with this offense, and he continues to feel remorse for his actions. His family has lost its primary source of income for the past twenty five years. The Court should consider all of these circumstances as mitigating factors in its assessment of discipline for Mr. Griesedieck.

B. Missouri Law Reveals a Six Month Suspension With Leave to Apply for Reinstatement Is a More Appropriate Discipline for Mr. Griesedieck in Light of the Significant Mitigating Factors.

This case is about an otherwise exemplary individual who had a regrettable lapse in judgment. OCDC's recommended discipline of indefinite suspension of Mr. Griesedieck's law license with no leave to apply for reinstatement for three years is not commensurate with his actions, the circumstances surrounding these actions, or his subsequent conduct.

In its brief, OCDC's effort to again compare Mr. Griesedieck's conduct to that of John D. Connaghan is without merit. In *Connaghan*, attorney Connaghan "collected a fee of \$20,000 . . . to secure favorable treatment of [] legislation." *In re Connaghan*, 613 S.W.2d 626, 627 (Mo. banc 1981). The Court determined such clear bribery amounted to a crime of moral turpitude. *Id.* at 630-31. Without in any respect denying his conduct was willful as outlined in his guilty plea agreement, Mr. Griesedieck's sole goal in facilitating the misappropriation of his client's funds was to spare his client from appearing on a mailing list for other fundraising events—there was not a more devious purpose. Further, the relevant funds were transferred with this innocuous purpose at the request of his client's President and Chairman.

The campaign donation had no bearing on pending legislation as in *Connaghan*, and to Respondent's knowledge it was not in and of itself illegal. As the Court has indicated, it is incumbent the Court take into account the factual setting of the misappropriation of funds in addition to the mitigating factors. *Belz*, 258 S.W.3d at 46

(“This case is very different from those cited by the OCDC in which the attorney simply stole funds, tried to hide it, and failed to make restitution until compelled to do so”).

The other cases cited by OCDC similarly are not compelling for the argument Mr. Griesedieck’s conduct merits a three-year suspension from the practice of law. Failure to pay income tax—as cited by OCDC in both *Duncan* and *Kazanas*—has been deemed by this Court to be a crime of moral turpitude, motivated by greed. *In re Duncan*, 844 S.W.2d 443, 444 (Mo. banc 1992); *In re Kazanas*, 96 S.W.3d 803, 808 (Mo. banc 2003). By contrast, as OCDC has conceded, Mr. Griesedieck had no selfish motive for direct financial gain, something this Court should properly consider as a mitigating factor in assessing discipline. Moreover, the facts of Mr. Griesedieck’s offense simply bear no likeness to either *Kazanas* or *Duncan*. For instance, attorney Kazanas’ crime was actually a felony because his tax evasion was part of a broader scheme to defraud his own law firm in response to perceived slights from his superiors. *Kazanas*, 96 S.W.3d at 805.

Similarly, OCDC’s statement that “[l]ong term suspensions are frequently ordered by the Court, even in misdemeanor cases, where an element of the underlying crime is knowing, willful, or intentional violation of criminal law” is suspect. *In re Kaiser*, SC86308—cited by OCDC as comparable to Mr. Griesedieck’s offense—reveals that Mr. Kaiser previously had been suspended by this Court from the practice of law for the period of one year, whereas Mr. Griesedieck had an unblemished twenty eight year career as a member of the Missouri Bar prior to this lapse in judgment. Details of *In re Braun*, SC87230 do not appear to be available at this time, but a review of the initial federal

charges against Mr. Braun appear to have been securities fraud in excess of \$80,000,000, and so Mr. Griesedieck's offense is distinguishable on volume alone.

Mr. Griesedieck's conduct merits less harsh discipline than other offenses this Court has reviewed, such as repeat drunken driving, possession of cocaine, and false statements to the tribunal accompanying veiled threats to judges—all of which were met with suspensions with leave to apply for reinstatement in six months. *In re Stewart*, 342 S.W.3d 307, 310 (Mo. 2011), *In re Shunk*, 847 S.W.2d 789, 791-92 (Mo. 1993), *In re Madison*, 282 S.W.3d 350, 360 (Mo. 2009). Mr. Griesedieck's long record of good-standing with this Court and remorse for his transgression indicate a suspension from the practice of law with leave to apply for reinstatement in six months is the appropriate discipline for his conduct, especially in conjunction with the penalties enforced by the United States Attorney, including Mr. Griesedieck's abstention from the practice of law for a minimum of eighteen months.

Because OCDC's recommended discipline of indefinite suspension of Mr. Griesedieck's law license with no leave to apply for reinstatement for three years is not commensurate with his offense and fails to consider his subsequent conduct, Mr. Griesedieck respectfully requests this Court decline to impose the discipline sought by the OCDC. Rather, he instead suggests that a six month suspension from the practice of law is instead sufficient punishment for his regrettable lapse in judgment.

REQUEST FOR ORAL ARGUMENT

Oral argument is appropriate for this case and Mr. Griesedieck respectfully requests that this Court allow fifteen minutes of argument for each party.

CONCLUSION

Mr. Griesedieck's offense stands alone against a backdrop of service, dedication, and integrity. He requests this Court take into account his significant contributions to the Missouri Bar and to the citizens of Missouri, his otherwise unblemished record with this Court, his professionalism in accepting responsibility for his conduct, the absence of a selfish motive for his transgression, and the other aforementioned mitigating factors. Mr. Griesedieck respectfully suggests to the Court that a suspension from the practice of law with leave to apply for reinstatement in six months is a sufficient discipline against him in this matter.

WHEREFORE, Edward J. Griesedieck, III, by and through his attorney Matthew T. Schelp, respectfully requests this Court decline to impose the discipline sought by the Office of Chief Disciplinary Counsel instead issue discipline in the form of a suspension from the practice of law with leave to apply for reinstatement in six months.

Respectfully submitted,

JENSEN, BARTLETT & SCHELP, LLC

By: s/Matthew T. Schelp
 MATTHEW T. SCHELP, #45724
 MATTHEW P. DIEHR, #61999
 222 South Central Avenue, Suite 110
 St. Louis, MO 63105
 Telephone: (314) 725-3939
 Facsimile: (314) 725-5595
 E-Mail: MSchelp@jbslawyers.com
 E-Mail: MDiehr@jbslawyers.com

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2012, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing upon:

Sharon K. Weedin
Chief Disciplinary Counsel
3335 American Avenue
Jefferson City, MO 65109

s/ Matthew T. Schelp
MATTHEW T. SCHELP, #45724
Attorney for Respondent

CERTIFICATION: RULE 84.06(c)

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

1. Include the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 3,964 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and
4. That Trend Micro Anti-Virus software was used to scan the disk for viruses and that it is virus free.

s/ Matthew T. Schelp
MATTHEW T. SCHELP, #45724
Attorney for Respondent