

TABLE OF CONTENTS

COVER PAGE 1

TABLE OF CONTENTS 2

TABLE OF AUTHORITIES..... 4

STATEMENT OF JURISDICTION 6

STATEMENT OF FACTS 7

Background and Disciplinary History 7

Office of Circuit Attorney St. Louis City 8

The Assault and Cover Up 12

Tuesday Night, July 22, 2014..... 13

Wednesday Morning, July 23, 2014..... 13

Wednesday Afternoon, July 23, 2014 14

Thursday Morning, July 24, 2014 15

Thursday Afternoon, July 24, 2014..... 16

Friday Morning, July 25, 2014 17

The Federal Investigation 17

The Information..... 25

The Disciplinary Hearing Panel’s Decision 26

A. Findings of Fact..... 26

B. Conclusions of Law..... 26

C. Recommendation for Sanction..... 27

POINTS RELIED ON

I..... 28
II..... 30

ARGUMENT

I..... 31
Respondent, ACA Schuessler repeatedly lied to and withheld knowledge from criminal law enforcement investigators about Det. Carroll's assault of a detained suspect which prejudiced the prosecution of Det. Carroll..... 32
II..... 37
Ethical Duty Violated 37
Mental State..... 38
Injury and Potential Injury..... 38
Aggravating and Mitigating Factors..... 39
Recommended Discipline 40
CONCLUSION 43
CERTIFICATE OF SERVICE..... 44
CERTIFICATION OF COMPLIANCE: RULE 84.06(C)..... 45

TABLE OF AUTHORITIES

CASES

In re Coleman, 295 S.W.3d 857, 869 (Mo. banc 2009)..... 37, 38, 40

In re Crews, 159 S.W.3d 355, 358 (Mo. banc 2005) ----- 32

In re Donaho, 98 S.W.3d 871 (Mo. banc 2003) 32, 40, 41

In re Ehler, 319 S.W.3d 442, 448 (Mo. banc 2010) 32, 37

In re Frick, 694 S.W.2d 473 (Mo. banc 1985) 41

In re Littleton, 719 S.W.2d 772 (Mo. Banc 1986)..... 40, 41

In re Pautler, 47 P.3d 1175, 1182 (Co. banc 2002)..... 35

In re Ver Dught, 825 S.W.2d 847 (Mo. banc 1992) 41

In re Zink, 278 S.W.3d 166 (Mo. banc 2009)..... 30, 41

OTHER AUTHORITIES

ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS (1991) ----- 37

ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS 5.2 30, 37

ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS 5.22 30, 40

ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS 9.2 39

ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS 9.3 39

ABA STANDARDS DEFINITIONS ----- 38

THE OFFICE OF CIRCUIT ATTORNEY PERSONNEL MANUAL 32

RULES

RULE 4-3.8 (Comment [1])..... 30, 38, 42

RULE 4-8.4----- 37

RULE 4-8.4(c) 28, 29, 31, 34, 35
RULE 4-8.4(d) 29, 32, 35, 38
RULE 4-8.4(g) 28, 29, 31, 34

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

Background and Disciplinary History

Informant charges that Respondent, Assistant St. Louis City Circuit Attorney Ambry Nichole Schuessler, repeatedly misrepresented material facts to state and federal law enforcement investigators about her knowledge of a police detective's assault of a suspect in custody. Informant further charges that Schuessler's misrepresentations, including her false attribution of a racist and homophobic slur to the police detective during the commission of the assault, interfered with the criminal investigation of the detective, jeopardized her credibility when she was cross-examined at the detective's federal sentencing hearing, and undermined the integrity of the criminal justice system.

The Disciplinary Hearing Panel found Schuessler violated Rule 4-8.4(c) by failing to disclose information to her superiors and to the FBI and U.S. Attorney regarding her knowledge of Det. Carroll's [assault] plus her misattribution of her "statement" to Det. Carroll. The panel found Schuessler's "racist and homophobic statement as distasteful but not of itself a violation of Rule 8.4(c) and (g)." It recommended a public reprimand without conditions pursuant to Rule 5.16(d)(1).

The Chief Disciplinary Counsel rejected the panel's recommendation and respectfully requests this Court make complete findings of fact and conclusions of law and impose an indefinite suspension from the practice of law with no eligibility for reinstatement for two (2) years.

Respondent, Ambry Nichole Schuessler became licensed as an attorney in Missouri on September 18, 2013, and her Missouri Bar Number is 66214. (**App. Vol. 5, pg. 883**).

The address designated in Schuessler's most recent registration with the Missouri Bar is 222 S. Meramec Ave., Ste. 300 St. Louis, MO 63105. Schuessler has no prior disciplinary history.

Schuessler attended and graduated from Maryville University in 2010 with degrees in Communications and Psychology. (**App. Vol. 2, pg. 445**).

During law school, Schuessler was a Legal Intern, first in the warrant office, and then in the docket division for the St. Louis County Prosecuting Attorney's Office. (**App. Vol. 2, pg. 446-448**).

Schuessler's first full-time legal job was as an Assistant Circuit Attorney ("ACA") at the St. Louis City Office of Circuit Attorney ("OCA"). (**App. Vol. 2, pg. 449**).

Office of Circuit Attorney St. Louis City

Schuessler took the Prosecutor's Oath, and on September 18, 2013 signed the Acknowledgment and Acceptance of the OCA Personnel Manual (**App. Vol. 5, pg. 931**) indicating that she had read, understood, and accepted and agreed to abide by the following provisions:

Section 1.3 Ethics in Public Service of the OCA Personnel Manual provides that:

"The highest obligation of every individual in our organization is to fulfill the public trust. Each person who undertakes this public trust assumes two paramount obligations:

- to serve the public interest; and
- to perform public service with high personal integrity.

In addition to faithful adherence to these principles, public employees have an additional duty to discern, understand, and meet the needs of their fellow citizens.

The mission statement of the Circuit Attorney's Office should be the foundation for all action by members of our staff. Sometimes the mission statement is too general to govern the resolution of concrete day-to-day ethical problems. In an attempt to spell out the practical implications of our core values, we have created the principles set forth below. We hope that they will guide your day-to-day work and help you handle the ethical dilemmas you may face:

- Integrity requires the consistent pursuit of the merits of any issue, decision, or action. Your willingness to speak up and to question is as essential to the determination of the merits as the readiness to invite ideas, encourage debate, and accept constructive feedback.
- Integrity requires the courage to insist that what you believe is right and the fortitude to refuse to go along with something that you believe is ethically wrong. You can only evaluate what the right path is after you have listened to the views of others, weighed the relevant

interests and values, and taken the time to understand the facts.

- Hard questions involve tough choices between competing claims. These choices involve loyalty to the organization, respect for authority, recognition of the policy making role of the elected Circuit Attorney, regard for technical and professional expertise and institutional memory, and sensitivity to the requirement of confidentiality. The measure of your success depends on how well and honorably you balance these factors.
- Being a good public servant means knowing how to handle the demands of your work with character and discipline.
- The true public servant:
 - Will not act out of spite, bias, or favoritism;
 - Will not tell their supervisor only what they want to hear;
 - Respects the competence and views of others;
 - Does not succumb to peer or other pressure;
 - Contributes to a climate of mutual trust, respect and friendliness;

- Refuses to let official actions be influenced by personal relationships, including those arising from the past or prospective employment;
- Has the courage of their convictions;
- Is not seduced by flattery;
- Unflinchingly accepts responsibility;
- Does not try to shift blame to others and accepts responsibility for one's own actions and conduct;
- Can distinguish between the need to support an unwelcome decision and the duty to report unethical conduct; and
- Never forgets that they are working for the people ...
all of the people.

Adapted from: Ethical Principles for Public Servants, published by the Council for Excellence in Government – Former Presidents Jimmy Carter and Gerald Ford, Co-Chairmen.”

(App. Vol. 5, pg. 940-941).

Schuessler was assigned to the misdemeanor domestic assault division reporting to ACA Supervisor Pippa Barrett. Schuessler's development as a professional prosecutor was regularly reinforced. All the lawyers in her division were reminded they were public prosecutors who represented the OCA and needed to act and appear professional. **(Vol. 2,**

pg. 454); (Vol. 3, pg. 457). Schuessler attended a formal OCA CLE on “Making Decisions in the Warrant Office.” There, the chief warrant officer taught Schuessler about the prosecutor’s obligations “to charge appropriately and professionally and ethically,” and how to deal with police officers “when you didn’t issue their case.” (**App. Vol. 2, pg. 356**). Also, Schuessler attended a formal OCA CLE on “Prosecutor’s Ethical Obligations under Brady and the Discovery Rules.” (**App. Vol. 2, pg. 354-355**).

At the OCA, Schuessler became good friends with ACAs Bliss Worrell, Katherine Anne Dierdorf, and, Intern Jane Doe.¹ They worked together closely, socialized outside the office, and group texted continually. (**App. Vol. 3, pg. 661-665**).

Schuessler was aware of Worrell’s close, personal relationship with St. Louis City Metropolitan Police Department Detective Thomas Carroll. (**Vol. 2, pg. 452**); (**App. Vol. 5, pg. 902**).

The Assault and Cover Up

Many of the key events of this disciplinary matter took place between Tuesday, July 22, 2014 and Friday, July 25, 2014:

1. Tuesday night: Det. Carroll brutally assaulted a detained suspect.
2. Wednesday morning: Schuessler and ACA Bliss Worrell overheard Det. Carroll admit to the details of the assault, including shoving his gun in the suspect’s mouth. In response, Schuessler made an arguably racist and homophobic slur about the suspect.

¹ Jane Doe is a pseudonym for the Intern.

3. Wednesday afternoon: Worrell falsely charged the suspect to cover up the assault.
4. Thursday morning: Schuessler and ACA Lauren Collins learned from Dierdorf that Worrell had falsely charged the suspect. Collins and Schuessler reported Worrell's misconduct to their supervisor.
5. Thursday afternoon: Schuessler was interviewed by her supervisors and chose to withhold information regarding Det. Carroll's admission and her crude slur.
6. Friday morning: Schuessler was interviewed by Internal Affairs and again chose to withhold information regarding Det. Carroll's admission and her crude slur.

Tuesday Night, July 22, 2014

Dierdorf, Worrell, and Doe attended a St. Louis Cardinals baseball game. During the evening, Worrell learned from Det. Carroll that someone had broken into his daughter's (Meghan) car and stolen her credit card. The police had arrested a suspect for using the credit card at Ballpark Village. Although not at the game, Schuessler learned about the theft and arrest either later that night or early next morning. **(Vol. 3, pg. 457-458).**

Wednesday Morning, July 23, 2014

On the next morning, Wednesday July 23, Schuessler was in her office and began her work day. Worrell came in while talking on her cell phone with Det. Carroll. Worrell put the conversation on speakerphone and let Det. Carroll know that Schuessler was present. Schuessler heard Det. Carroll describe how he assaulted the suspect, whom he

believed stole his daughter's credit card, by punching him, kicking him, hitting him with a chair, and putting a pistol down his mouth. (**App. Vol. 5, pg. 947-949**). In response, Schuessler said: "I bet that's not the first big black thing he has had in his mouth." (**Vol. 3, pg. 463-464**). There was some laughter in the room following her slur. (**App. Vol. 3, pg. 465**).

Schuessler acknowledges that she was referencing a "black penis in a man's mouth." She claims she said it for shock value. "It was a knee jerk reaction to something heavy. It was the kind of humor that I used, actually, a bit at the time. People don't really look at me and see me as somebody who would say that kind of thing, it has some shock value, and that's the kind of humor that I had, so." (**App. Vol. 3, pg. 464**). Schuessler denies her "joke" could be construed as racist or homophobic. (**App. Vol. 3, pg. 464**).

Schuessler did not immediately report the police assault to her supervisors because "telling on a police officer is a scary thing to do. [She] just wanted to get back to what [she] was doing." (**App. Vol. 5, pg. 951**). She "buried it, ... and tried not to think about it at the time. ... [She] sat on the information." (**App. Vol. 3, pg. 466-467**).

Wednesday Afternoon, July 23, 2014

Unbeknownst to Schuessler at the time, Worrell went into the warrant office to help charge the suspect. Worrell included a false charge of attempted escape, which would – she believed - explain why the suspect was visibly injured. Worrell knew of Det. Carroll's assault, but did not disclose it in the charging documents or to the judge who set bond. That evening, Worrell spoke with Det. Carroll and confirmed that the police story of

attempted escape was fabricated to cover up the assault. Worrell did not inform the supervisors at the OCA. (**App. Vol. 5, pg. 1014-1029**).

Thursday Morning, July 24, 2014

Worrell confided to Dierdorf and Doe the details of the assault and what Worrell had done in the warrant office to cover it up. (**App. Vol. 4, pg. 690-693**).

Dierdorf then went to Schuessler's office, where Schuessler and ACA Lauren Collins were present, to share what Dierdorf had just learned from Worrell. According to Collins, who knew nothing about Det. Carroll's assault or Worrell's charges, Dierdorf announced to the room that Worrell had "messed up." Dierdorf then confided Worrell's details from Det. Carroll about the police assault and explained how Worrell had gone into the warrant office Wednesday afternoon to intercept the warrant application to make sure there were no questions. (**App. Vol. 2, pg. 232-233**). (Schuessler already knew the details of the assault, having heard it from Det. Carroll the day before.) Dierdorf said the false charge was added in to cover up why the suspect was beaten. (**Vol. 3, pg. 469-470**).

In response to Dierdorf's news that Worrell helped falsely charge the suspect, Schuessler's eyes got real big and she said: "We could get in trouble just for knowing." Dierdorf replied: "Well, Bliss would be the one in trouble, but how would they find out, I'm not going to say anything. They won't find out." (**App. Vol. 2, pg. 233-234**); (**Vol. 3, pg. 469-470**); (**Vol. 5, pg. 1034-1035**).

Following the conversation, Schuessler and Collins discussed between themselves what to do with the information about the false charge. They looked up the case on the OCA computer system to confirm that charges had been filed against the suspect. Collins

indicated to Schuessler that Collins was going to tell a supervisor. (**App. Vol. 2, pg. 234-237**). Schuessler initially struggled because she was concerned about her living arrangements with Dierdorf. (**App. Vol. 2, pg. 256**).

Nevertheless, Schuessler accompanied Collins to Barrett's office. Collins told ACA Supervisor Pippa Barrett that trumped up charges may have been filed in the office. (**App. Vol. 2, pg. 237**).

Thursday Afternoon, July 24, 2014

Barrett sent Collins to ACA Chief Warrant Officer Ed Postawko to report the incident (**App. Vol. 2, pg. 238**), and Schuessler went to Division 24 for a docket call. (**App. Vol. 3, pg. 477**).

Schuessler soon encountered Dierdorf in Division 24, and the two sat together. Dierdorf received a call and informed Schuessler that Dierdorf was just summoned to Supervisor Barrett's office. (**App. Vol. 3, pg. 479**).

Dierdorf returned and told Schuessler that Dierdorf's meeting with Barrett was about Worrell and the warrant application. (**App. Vol. 3, pg. 478**). According to Schuessler, Dierdorf said, "I told them I don't know anything. You don't tell them you know anything either." Schuessler felt Dierdorf was instructing Schuessler to lie. (**App. Vol. 3, pg. 479**).

Schuessler was then interviewed by the supervisors. Schuessler spoke generally of hearing something about the assault, but chose not to reveal that she overheard Det. Carroll admit to the assault and having used his gun during the commission. Schuessler said nothing about having made a crude "joke." (**Vol. 3, pg. 480**).

Friday Morning, July 25, 2014

The OCA had already alerted the police department's Internal Affairs about the assault, and two sergeants arrived to conduct interviews. Schuessler was interviewed with OCA supervisors present. (**App. Vol. 3, pg. 483**). Schuessler mentioned the speakerphone conversation. She said she could hear Worrell talking, but falsely said she "couldn't hear [Det. Carroll's] statements." (**App. Sealed Vol. 6, pg. 1102**).

Schuessler did not disclose her knowledge that Det. Carroll used a gun during the assault. (**App. Vol. 5, pg. 927**); (**App. Sealed Vol. 6, pg. 1092-1115**). Again, Schuessler did not reveal the "joke" she made about the use of the gun. (**App. Sealed Vol. 6, pg. 1092-1115**).

The Federal Investigation

Within days of the police assault and false charge, Circuit Attorney Jennifer Joyce referred the investigations to the United States Attorney's Office, Eastern District of Missouri. (**App. Vol. 2, pg. 280**). Assistant United States Attorney Hal Goldsmith led the investigation. Goldsmith had extensive experience investigating and prosecuting criminal civil rights cases, which included hate crimes as well as law enforcement, excessive use of force cases. (**App. Vol. 1, pg. 66**).

On August 13, 2014, Schuessler arrived at the United States Attorney's Office for a previously arranged interview. Present were Goldsmith and two FBI agents. (**App. Vol. 3, pg. 487**).

Schuessler revealed some, but not all, of the details of the speakerphone conversation on Wednesday, July 23. She acknowledged that Det. Carroll said he shoved

his gun in the suspect's mouth. (**App. Vol. 1, pg. 87-88**). But, according to Schuessler, while Det. Carroll was narrating about shoving his gun in the suspect's mouth, Det. Carroll said, "I bet this is not the first big black thing that you've had in your mouth." (**App. Vol. 1, pg. 177**); (**Vol. 3, pg. 487**).

According to AUSA Goldsmith, when Schuessler purported to have heard Det. Carroll make a racist slur when putting his gun down the suspect's throat, that was of great significance and a "mortal wound" against Det. Carroll. (**App. Vol. 1, pg. 181**).

At the hearing, Schuessler acknowledged that at her first interview with the federal authorities, she knew she was lying about Det. Carroll making the slur, and further, she understood the ramifications of lying to the FBI. "Lying to the FBI is a very, very serious thing." (**App. Vol. 3, pg. 487-488**).

Goldsmith continued with his investigation, and it became clear to him that Schuessler had been less than candid. (**App. Vol. 1, pg. 99**). Schuessler was called back for a second interview. (**App. Vol. 1, pg. 99**).

In her second [September 4, 2014] interview with Goldsmith and the FBI, after being confronted that she was less than candid at her first interview, Schuessler was then candid concerning the events she experienced between July 23-25. She acknowledged that on Wednesday, she was able to hear Det. Carroll on the speakerphone describe punching the suspect in the face, hitting him in the back with a chair, and sticking a gun in his mouth. Schuessler admitted it was she who then said, "I bet that's not the first big black thing he's had in his mouth." (**App. Vol. 3, pg. 487**). The detective was not the one who made the crude slur.

Schuessler acknowledged to Goldsmith and the FBI that she had minimized her statements in her first interview because of the stress and anxiety the matter had placed on her. She was fearful of losing her job and of losing her living situation with Dierdorf. **(App. Vol. 3, pg. 473).**

According to Goldsmith, Schuessler's failure to give truthful information and full answers to questions by her supervisors, Internal Affairs, and the federal authorities caused actual harm by impeding the criminal investigation into Det. Carroll's misconduct: "We had to keep circling around, if you will, to try to match up the evidence and ultimately determine the truthful facts, if you will." **(App. Vol. 1, pg. 116).** In addition, the falsehoods caused actual harm by jeopardizing the criminal prosecution of Det. Carroll by subjecting Schuessler to a credibility attack when she later was called to testify as a government witness at Det. Carroll's sentencing hearing. **(App. Vol. 1, pg. 107).**

Schuessler was called in front of the grand jury and testified consistent with her second interview with the federal authorities. **(App. Vol. 3, pg. 489).**

Months later, Det. Carroll and Worrell each entered into Guilty Plea Agreements in federal court and were found guilty as follows:

1. Det. Carroll, one count of Deprivation of Rights Under Color of State Law, in violation of 18 U.S.C. § 242, (Case No. 4:16CR00148 HEA) **(App. Vol. 5, pg. 1007-1013),**
and

2. Worrell, one count of Misprision of a Felony, in violation of 18 U.S.C. § 4. (Case No. 4:15CR00486 HEA) (**App. Vol. 5, pg. 1001-1006**).

Although Det. Carroll pled guilty, he denied using a gun during the commission of the assault. That became the subject of his sentencing hearing on July 27, 2016 in front of the Honorable Henry E. Autry. Schuessler was a key government witness. (**App. Vol. 5, pg. 945-1000**)

Schuessler testified that Det. Carroll admitted during the speakerphone conversation to putting a gun down the mouth of the suspect during the assault. She further testified that upon hearing Det. Carroll describe the use of a gun, she made a crude slur. (**App. Vol. 5, pg. 949**).

On cross-examination, Det. Carroll's attorney impeached Schuessler by pointing out the number of times she lied to the investigating authorities:

Q. You lied when you spoke to Beth Orwick [a supervising attorney at the OCA], didn't you?

A. Yes. You are correct.

Q. Okay. And the next time when you spoke to Pippa Barrett, you lied, didn't you?

A. In the IAD conversation?

Q. Yes.

A. Yes. I was not truthful about the speakerphone conversation and leaving out the gun part.

Q. And the first time you talked to the FBI, you lied, didn't you?

A. I did, about attributing the joke to Tom.

Q. You lied, didn't you?

A. I did.

(App. Vol. 5, pg. 964).

Judge Autrey then questioned Schuessler about her lack of judgement as a prosecutor:

THE COURT: And you were a prosecutor in the Office of Circuit Attorney?

THE WITNESS: Yes.

THE COURT: At the time you began your employment as an assistant circuit attorney, did you have a concept of what your duty was as a prosecutor?

THE WITNESS: Yes.

THE COURT: All right. And what did you believe your duty was as a prosecutor?

THE WITNESS: My duty as a prosecutor was to, in essence, uphold justice, which I understand.

THE COURT: And after you were admitted to the practice of law as an attorney, what did you perceive or believe your duty to be as a practicing attorney?

THE WITNESS: The same duty.

THE COURT: Are you still a practicing attorney?

THE WITNESS: I am.

THE COURT: Do you believe that your duty has changed since September 17, 2013 and today, July 27th, 2016?

THE WITNESS: No, Your Honor.

THE COURT: Are there still things that trouble you, Ms. Schuessler, in respect to your duty as a lawyer?

THE WITNESS: No, Your Honor.

THE COURT: But those things troubled you in 2013?

THE WITNESS: In 2013, yes.

THE COURT: And that's because why?

THE WITNESS: I understand that I didn't - -

THE COURT: And that's because why? Why did it trouble you?

THE WITNESS: Why?

THE COURT: As an attorney.

THE WITNESS: As an attorney, why did it trouble me?

THE COURT: Uh-huh.

THE WITNESS: At the time I was - - I was scared of moving forward with this information.

THE COURT: You were scared. Why are you scared?

THE WITNESS: This is a very, very big deal, a big situation.

THE COURT: Well, there's a shocker. You knew that at the time, didn't you?

THE WITNESS: I did.

THE COURT: All right. So as a prosecutor, you were afraid to go forward with information that impacted the criminal

justice system in your role as a prosecutor, the role of the Court, and the role of police officers, correct?

THE WITNESS: Correct.

THE COURT: You are no longer a prosecutor anymore, correct?

THE WITNESS: Correct.

THE COURT: It's a good thing. You may step down.

(App. Vol. 5, pg. 995-999).

What weight Judge Autrey gave to Schuessler's testimony about Det. Carroll's use of a gun is unknown.

On July 27, 2016, Det. Carroll was sentenced to 52 months in prison. **(App. Vol. 5, pg. 1001-1006).**

On July 28, 2016, Worrell was sentenced to 18 months probation. **(App. Vol. 5, pg. 1007-1013).**

On August 10, 2016, having been advised of Worrell's conviction, the Supreme Court of Missouri disbarred Worrell (SC95871).

Chief Felony ACA Beth Orwick, who had participated in the OCA interview of Schuessler on Thursday, July 24, testified at the disciplinary hearing that she was "surprised" to learn of Schuessler's possible involvement with knowledge of others' wrongdoing: "I had originally thought [Schuessler] was more of a whistleblower and

witness. And then it was very fluid, but it seemed like there was some evidence that [Schuessler] was perhaps more involved, and that was surprising to me.” (**App. Vol. 2, pg. 285**).

Schuessler is now working as an attorney for a law firm in Clayton, Missouri. (**App. Vol. 3, pg. 524-525**).

Testimony is in the record by Schuessler’s then employer/supervisor supporting her generally good character.

Schuessler has expressed remorse for her actions (**App. Vol. 3, pg. 492**) and received counseling on her own accord to help her grapple with the issues. (**App. Vol. 3, pg. 526**).

The Information

Informant filed the Information on May 30, 2017. (**App. Vol. 5, pg. 875-901**).

Informant charged that Schuessler violated Mo. S. Ct. Rule 4-8.4(c), by lying (including misrepresentation, deception, and concealment of illegal and improper activities) and by failing to disclose relevant and important information to her supervisors, the Internal Affairs sergeants, and the federal authorities regarding her knowledge of Det. Carroll’s illegal assault.

Informant charged that Schuessler violated Mo. S. Ct. Rule 4-8.4(g), by manifesting by words, in representing a client, bias or prejudice based upon race and sexual orientation when she made the slur after hearing Det. Carroll describe orally assaulting a suspect with his gun.

Informant charged that Schuessler violated Mo. S. Ct. Rule 4-8.4(c), by falsely attributing a racist and homophobic slur to Det. Carroll while assaulting the suspect with his gun.

Informant charged that Dierdorf violated Mo. S. Ct. Rule 4-8.4(d), by engaging in conduct which was prejudicial to the administration of justice.

At the hearing, Schuessler argued the inapplicability of S. Ct. Rule 4-8.4(g), insisting that Schuessler was not “representing a client” at the time of her “joke.” (**App. Vol. 4, pg. 867-868**).

The Disciplinary Hearing Panel’s Decision

The disciplinary hearing was held over three days: January 30-31 and February 9, 2018. On July 5, 2018, the Disciplinary Hearing Panel (“DHP”) filed its Decision. (**App. Vol. 5, pg. 1057-1060**).

A. Findings of Fact

The panel made chronological findings of fact consistent with the above recitations. (**Vol., 5, pg. 1057-1060**). Regarding the crude slur Schuessler made in response to Det. Carroll’s admission on July 23, the panel described it as a “tasteless statement.” (**Vol. 5, pg. 1057-1060**).

B. Conclusions of Law

The panel concluded:

“Respondent is guilty of professional misconduct as a result of violating Rule 4-8.4(c) by initially failing to disclose to her superiors in the prosecutor’s office and to the FBI and the U.S.

Attorney in the first interview regarding her full knowledge of Detective Carroll's involvement plus her attribution of the statement to Detective Carroll.

As to the three charges in the information all arose as a result of the same incident, the charges are considered as one charge.

A racist and homophobic slur is taken as distasteful but not of itself a violation of Rule 4-8.4(c) and (g). Regarding the violation of the charge of engaging in conduct prejudicial to the Administration of Justice in violation of Rule 4-8.4(d) the Panel finds that Schuessler reported the misconduct and was in fact a whistle blower on Worrell and Carol's (sic) misconduct and therefore is not guilty of professional misconduct under Rule 4-8.4(d).

C. Recommendation for Sanction

The panel recommended a reprimand without conditions pursuant to Rule 5.16(d)(1). The panel further found that the statement made by Schuessler did not materially affect the outcome of the prosecution as both Worrell and Carroll have been sentenced in Federal Court proceedings. As mitigating factors, the panel cited Dierdorf's lack of disciplinary history and her remorsefulness. **(Vol. 5, pg. 1057-1060).**

POINTS RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT SCHUESSLER BECAUSE SHE:

(A) VIOLATED MO. S. CT. RULE 4-8.4(C), BY LYING AND FAILING TO DISCLOSE RELEVANT AND IMPORTANT INFORMATION TO THE SUPERVISORS, THE INTERNAL AFFAIRS SERGEANTS, AND THE FEDERAL AUTHORITIES REGARDING HER KNOWLEDGE OF DET. CARROLL'S ASSAULT AGAINST A SUSPECT IN CUSTODY;

(B) VIOLATED MO. S. CT. RULE 4-8.4(G), BY MANIFESTING BY WORDS, IN REPRESENTING A CLIENT, BIAS OR PREJUDICE BASED UPON RACE AND SEXUAL ORIENTATION WHEN SHE MADE A RACIST AND HOMOPHOBIC SLUR AFTER HEARING DET. CARROLL DESCRIBE ASSAULTING A SUSPECT IN CUSTODY WITH HIS GUN;

(C) VIOLATED MO. S. CT. RULE 4-8.4(C), BY FALSELY ATTRIBUTING A RACIST AND HOMOPHOBIC SLUR TO DET. CARROLL WHILE HE

**ASSAULTED A SUSPECT IN CUSTODY WITH HIS
GUN; AND
(D) VIOLATED MO S. CT. RULE 4-8.4(D), BY
ENGAGING IN THE ABOVE CONDUCT, WHICH WAS
PREJUDICIAL TO THE ADMINISTRATION OF
JUSTICE.**

Mo. Sup. Ct. Rule 4-8.4(c)

Mo. Sup. Ct. Rule 4-8.4(d)

Mo. Sup. Ct. Rule 4-8.4(g)

POINTS RELIED ON

II.

FOR THE REASON THAT RESPONDENT SCHUESSLER WAS A SWORN PROSECUTOR WHO INTENTIONALLY VIOLATED HER OATH AND CAUSED HARM TO THE INVESTIGATION AND PROSECUTION OF DET. CARROLL, TO THE CRIMINAL JUSTICE SYSTEM, TO THE PUBLIC, AND TO THE LEGAL PROFESSION, THIS COURT SHOULD ENTER AN ORDER OF SUSPENSION FROM THE PRACTICE OF LAW WITH NO LEAVE TO REAPPLY FOR REINSTATEMENT FOR TWO (2) YEARS.

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

Mo. Sup. Ct. Rule 4-3.8, Comment [1]

ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS 5.2

ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS 5.22

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT SCHUESSLER BECAUSE SHE:

(A) VIOLATED MO. S. CT. RULE 4-8.4(C), BY LYING AND FAILING TO DISCLOSE RELEVANT AND IMPORTANT INFORMATION TO THE SUPERVISORS, THE INTERNAL AFFAIRS SERGEANTS, AND THE FEDERAL AUTHORITIES REGARDING HER KNOWLEDGE OF DET. CARROLL'S ASSAULT AGAINST A SUSPECT IN CUSTODY;

(B) VIOLATED MO. S. CT. RULE 4-8.4(g), BY MANIFESTING BY WORDS, IN REPRESENTING A CLIENT, BIAS OR PREJUDICE BASED UPON RACE AND SEXUAL ORIENTATION WHEN SHE MADE A RACIST AND HOMOPHOBIC SLUR AFTER HEARING DET. CARROLL DESCRIBE ASSAULTING A SUSPECT IN CUSTODY WITH HIS GUN;

(C) VIOLATED MO. S. CT. RULE 4-8.4(C), BY FALSELY ATTRIBUTING A RACIST AND HOMOPHOBIC SLUR TO DET. CARROLL WHILE HE

ASSAULTED A SUSPECT IN CUSTODY WITH HIS GUN; AND

(D) VIOLATED MO S. CT. RULE 4-8.4(D), BY ENGAGING IN THE ABOVE CONDUCT, WHICH WAS PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE.

It is well-settled that Disciplinary Hearing Panel's recommendations are advisory in nature. *In re Donaho*, 98 S.W.3d 871 (Mo. banc 2003). In a disciplinary proceeding, this Court reviews the evidence *de novo*, independently determining all issues pertaining to credibility of witnesses and the weight of the evidence, and draws its own conclusions of law. *In re Crews*, 159 S.W.3d 355, 358 (Mo. banc 2005). "Professional misconduct must be proven by a preponderance of the evidence before discipline will be imposed." *In re Ehler*, 319 S.W.3d 442, 448 (Mo. banc 2010).

Respondent, ACA Schuessler repeatedly lied to and withheld knowledge from criminal law enforcement investigators about Det. Carroll's assault of a detained suspect which prejudiced the prosecution of Det. Carroll.

Schuessler is a licensed Missouri lawyer, and therefore deemed fit to practice law by this Court. She swore the Oath of Admission on September 18, 2013. Schuessler accepted the job of Assistant St. Louis City Circuit Attorney, swore the Prosecutor's Oath, and signed the Acknowledgment and Acceptance of the OCA Personnel Manual, indicating that she had read, understood, and accepted and agreed to abide by the provisions in it.

According to Section 1.3 Ethics in Public Service of the OCA Personnel Manual, Schuessler was aware of her “highest obligation to fulfill the public trust, to perform public service with high personal integrity. Schuessler was regularly taught professionalism by the circuit attorney’s office in all aspects of her job.

On Wednesday morning, July 23, Schuessler, with her baggage of too close relationships with others in the circuit attorney’s office and police department, was at her desk when she and Worrell overheard Det. Carroll on speakerphone admit that he physically assaulted a detained suspect who was caught with his daughter’s stolen credit card. Det. Carroll said that as part of the beating, he shoved a gun down the suspect’s mouth. Schuessler responded to hearing Det. Carroll’s admission by making a racist and homophobic slur about the suspect. She did nothing with the information that Det. Carroll had admitted to committing a crime in her jurisdiction.

When the situation escalated with news of a cover up of the assault by Worrell, Schuessler, albeit reluctantly, went with ACA Collins to report Worrell.

When she was interviewed by the OCA, however, Schuessler chose not to reveal overhearing Det. Carroll’s admissions. When interviewed by Internal Affairs, Schuessler did reveal overhearing Worrell on speakerphone, but chose to deny overhearing Det. Carroll. When interviewed by the U.S. Attorney and FBI, Schuessler revealed overhearing Det. Carroll admit to assaulting a suspect and shoving his gun in the suspect’s mouth, but then falsely embellished by claiming that Det. Carroll admitted to making a racist and homophobic slur about the suspect during the assault.

Only after being confronted by the U.S. Attorney and FBI during a second interview did Schuessler finally tell the full truth and admit it was she who made the “joke” at the time she overheard Det. Carroll. At her disciplinary hearing, Schuessler acknowledged that at the time of the first interview with the federal authorities, she knew she was lying about Det. Carroll making the slur, and further, she understood the ramifications of lying to the FBI. “Lying to the FBI is a very, very serious thing.” (**App. Vol. 3, pg. 487-488**).

The bottom line is that Schuessler interfered with the investigation of Det. Carroll. But, that was just the start of the prejudice Schuessler caused. As it turned out, Schuessler was needed as a prosecution witness against Det. Carroll at his sentencing hearing on the specific issue of whether Det. Carroll used his gun during the commission of the assault; a point adamantly denied by Det. Carroll. On cross-examination, Det. Carroll’s attorney attacked Schuessler’s credibility by impeaching her with her previous lies.

To what extent Schuessler’s misconduct had on the sentencing of Det. Carroll is unknown. But for a sworn prosecutor to jeopardize the appropriate prosecution of Det. Carroll at all is simply unconscionable.

The preponderance of the evidence establishes that Schuessler violated Mo. S. Ct. Rule 4-8.4(c), by lying and failing to disclose relevant and important information to her supervisors, the Internal Affairs sergeants, and the federal authorities regarding her knowledge of Det. Carroll’s assault of a detained suspect.

The preponderance of the evidence establishes that Schuessler violated Mo. S. Ct. Rule 4-8.4(g) by manifesting by words, in representing a client, bias or prejudice based upon race and sexual orientation. Schuessler admits that in response to overhearing Det.

Carroll admit to shoving his gun in the suspect's mouth, she said: "I bet that's not the first big black thing he's had in his mouth." Schuessler admits that her crude slur was in reference to a "black man's penis," and therefore, by definition, is racist and homophobic. If that is the lens through which Schuessler views a report of illegal police conduct in her jurisdiction, how can the OCA and the public trust Schuessler to properly investigate and prosecute crime? Schuessler, however, denies that she was "representing a client" while sitting at her work desk exercising her "free speech," and is therefore not in violation of the Rule.

What Schuessler ignores is that, as a prosecutor during public business, she always represents "the People of Missouri." See *In re Pautler*, 47 P.3d 1175, 1182 (Co. banc 2002) (Colorado Supreme Court held that circuit attorney "represented the People of the State of Colorado" when he was talking to an unrepresented suspect prior to his arrest, in violation of Colo. RPC 4.3 ("In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested.")).

The preponderance of the evidence establishes that Schuessler violated Mo. S. Ct. Rule 4-8.4(c), by falsely attributing a racist and homophobic slur to Det. Carroll during his assault of the suspect with his gun. Her false attribution elevated Det. Carroll's motive to one of discrimination or bias in the commission of a crime. Fortunately for Det. Carroll, Schuessler later corrected the record.

The preponderance of the evidence establishes that Schuessler violated Mo. S. Ct. Rule 4-8.4(d), by engaging in the above conduct, which was prejudicial to the administration of justice. Her lies, including her false attribution, interfered with the

criminal investigation, jeopardized her credibility when she was cross examined at Det. Carroll's federal sentencing hearing, and undermined the integrity of the criminal justice system.

As aptly stated by Chief Felony ACA Beth Orwick, who had participated in the OCA interview of Schuessler on Thursday, July 24: "I had originally thought [Schuessler] was more of a whistleblower and witness. And then it was very fluid, but it seemed like there was some evidence that [Schuessler] was perhaps more involved."

ARGUMENT

II.

FOR THE REASON THAT RESPONDENT SCHUESSLER WAS A SWORN PROSECUTOR WHO INTENTIONALLY VIOLATED HER OATH AND CAUSED HARM TO THE INVESTIGATION AND PROSECUTION OF DET. CARROLL, TO THE CRIMINAL JUSTICE SYSTEM, TO THE PUBLIC, AND TO THE LEGAL PROFESSION, THIS COURT SHOULD ENTER AN ORDER OF SUSPENSION FROM THE PRACTICE OF LAW WITH NO LEAVE TO REAPPLY FOR REINSTATEMENT FOR TWO (2) YEARS.

The purpose of attorney disciplinary proceedings is “to protect the public and maintain the integrity of the legal profession.” *In re Ehler*, 319 S.W.3d 442, 451 (Mo. banc 2010). In imposing discipline, the Court considers the ethical duty violated, the lawyer’s mental state, the extent of actual or potential injury caused by the attorney’s misconduct, and any aggravating or mitigation factors. The Court relies on the ABA Standards for Imposing Lawyer Sanctions (1991) when imposing sanctions to achieve the goals of attorney discipline. *In re Coleman*, 295 S.W.3d 857, 869 (Mo. banc 2009).

Ethical Duty Violated

Schuessler’s ethical violations, which arose out of her job as an assistant circuit attorney, involved a “Failure to Maintain the Public Trust.” ABA STANDARD 5.2. “The duties owed to the public are protected in part by Rule 4-8.4, attorney misconduct. This rule helps guarantee that the public can trust lawyers to protect their interest and property.”

Id. at 869. As a “minister of justice,” Schuessler’s integrity is her currency. *See* Mo. S. Ct. Rule 4-3.8 (Comment [1]).

The most serious ethical violation by Schuessler was the prejudice she caused to the administration of justice by repeatedly lying about Det. Carroll’s misconduct. Mo. S. Ct. Rule 4-8.4(d).

Mental State

Intent is the “conscious objective or purpose to accomplish a particular result.” ABA STANDARDS DEFINITIONS. She acknowledged that at the time of the first interview with the federal authorities, she knew she was lying about Det. Carroll making the slur, and further, she understood the ramifications of lying to the FBI: “Lying to the FBI is a very, very serious thing.”

Injury and Potential Injury

When discussing injury, the Court looks at actual as well as potential injury to the legal system and profession. The injury resulting from professional misconduct need not be actually realized. *In re Coleman*, 295 S.W.3d 857, 870 (Mo. banc 2009).

As Goldsmith testified, Schuessler’s failure to give truthful information and complete answers to questions by her supervisors, Internal Affairs, and the federal authorities impeded the criminal investigation of Det. Carroll’s assault. Her repeated lying actually jeopardized the proper sentencing of Det. Carroll, who contended he did not use a gun during the assault. Det. Carroll’s attorney attacked Schuessler’s credibility at the sentencing hearing because she had repeatedly lied to investigators regarding her knowledge of Det. Carroll’s admissions.

The potential injury was colossal. If Judge Autrey determined that Schuessler was not a credible witness, Det. Carroll's length of sentencing could be less than otherwise appropriate for the crime he committed. That would be a breach of justice for the People.

As an Assistant Circuit Attorney, Schuessler had the power to directly affect the fair administration of justice. Her lying poured scorn on the criminal justice system, particularly on the reputation of the OCA. To let her misconduct go improperly addressed would raise legitimate questions from the public as to the integrity of the criminal justice system and the legal profession. The Det. Carroll/Worrell incidents happened within a month of the highly charged and publicized events in Ferguson, Missouri. Issues of alleged police and prosecutor misconduct echo and foment in the public sphere to this very day.

Aggravating and Mitigating Factors

The relevant aggravating factors which may justify an increase in the degree of discipline to be imposed include: multiple offenses, dishonest or selfish motive, and the vulnerability of the victim. ABA STANDARD 9.2.

The relevant mitigating factors which may justify a reduction in the degree of discipline imposed include: absence of a prior disciplinary record, full and free disclosure to the disciplinary board and cooperative attitude toward the proceedings, and good reputation. ABA STANDARD 9.3. To her credit, Schuessler has sought counseling. And unlike the others, Schuessler withstood a humiliating cross examination during Det. Carroll's sentencing hearing followed by a public shaming from the judge.

In toto, however, the aggravating factors outweigh the mitigating factors. Schuessler's multiple instances of lying were selfish and cowardly. What makes

Schuessler's case particularly galling is that she took the prosecutor's oath at the OCA to put the public interest above all else and act with integrity.

Recommended Discipline

The Court relies on the ABA Standards when imposing sanctions to achieve the goals of attorney discipline. The goals of attorney discipline are to protect the public, ensure the administration of justice, and maintain the integrity of the profession. *In re Coleman*, 295 S.W.3d 869 (Mo. banc 2009).

“Misconduct involving subterfuge, failing to keep promises, and untrustworthiness undermine public confidence in not only the individual but in the bar. Therefore, in order to protect the public, and maintain the integrity of the profession, a substantial penalty must be imposed.” *In re Donaho*, 98 S.W.3d 871, 874 (Mo. banc. 2003).

Respondent has demonstrated questionable moral judgment, which raises serious doubts about her fitness to practice law. *Id.* at 874.

According to Standard 5.22 of the ABA Standards of Professional Discipline, a suspension is generally appropriate when a lawyer in an official or governmental position knowingly fails to follow proper procedures or rules, and causes injury or potential injury to a party or the integrity of the legal profession.

Ultimately, suspension serves the dual purposes of discipline: it protects the public, and maintains the integrity of the profession by deterring other members of the bar from engaging in similar conduct. Suspension also recognizes that while the focus of discipline is to achieve the purposes previously described, those purposes are inevitably achieved through punishment. *In re Littleton*, 719 S.W.2d at 777-78.

Missouri has a number of cases involving discipline for a breach of the public trust. (*In re Frick*, 694 S.W.2d 473 (Mo. banc 1985)) (lawyer disbarred for misconduct which damaged the image of the legal profession and showed his willingness to break the law); (*In re Littleton*, 719 S.W.2d 772 (Mo. Banc 1986)) (suspension for multiple acts of misconduct, including misrepresentation); (*In re Ver Dught*, 825 S.W.2d 847 (Mo. banc 1992)) (suspension for misrepresenting facts before an administrative law judge); (*In re Donaho*, 98 S.W.3d 871 (Mo. banc 2003)) (suspension for multiple acts of misconduct, including intentional deception); (*In re Zink*, 278 S.W.3d 166 (Mo. banc 2009)) (suspension for intentionally lying to federal agents and the United States Attorney's office in the course of an investigation.)

Of those cases, *Zink* is the most factually similar to Schuessler's. Both *Zink* and Schuessler lied to law enforcement investigators about misconduct in the criminal justice system. Both cases involved charged suspects and thus directly affected the fair administration of justice. Only after being confronted by contrary evidence did both admit they had been lying. In *Zink*, the Court imposed a six-month suspension.

Although an actual suspension is appropriate for Schuessler, the length should be for longer than six months. Unlike *Zink*, Schuessler did not sit out the practice of law for six months prior to her disciplinary hearing as part of a "diversion agreement" with the U.S. Attorney's office--a factor that the Court cited as mitigating. ***Id.* at 169.** And, unlike *Zink*, who was an associate attorney at a law firm, Schuessler was an assistant circuit attorney. As a "minister of justice," Schuessler carried a special obligation to see that procedural

justice was done and that guilt was decided upon the basis of sufficient evidence. *See* Mo. Sup. Ct. Rule 4-3.8 [Comment 1].

Considering Schuessler's intentional and multiple episodes of lying to criminal investigators about her knowledge of Det. Carroll's illegal assault of a detained suspect, in addition to her misconduct regarding her racist and homophobic slur, Informant respectfully requests Schuessler be suspended indefinitely; she should not be eligible for reinstatement for two (2) years.

CONCLUSION

A clear preponderance of the evidence demonstrates that Schuessler violated Rules 4-8.4(c), 4-8.4(g), and 4-8.4(d) by intentionally lying about her knowledge of an illegal police assault. Schuessler’s most serious violation was the prejudice she caused to the administration of justice.

In order to protect the public and the integrity of the profession, Informant respectfully requests that this Court enter an order indefinitely suspending Respondent from the practice of law with no leave to apply for reinstatement until after two (2) years.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of November 2018, a true and correct copy of the foregoing was served via the Missouri Supreme Court e-filing system on Respondent's counsel:

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CERTIFICATION OF COMPLIANCE: 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. Was served on Respondent's Counsel via the Missouri electronic filing system pursuant to Rule 103.08;
3. Complies with the limitations contained in Rule 84.06(b); and
4. Contains 7,911 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



Marc A. Lapp