IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
AMBRY NICHOLE SCHUESSLER	)	**Supreme Court #SC97376**
130 S. Bemiston Ave., Suite 400	)	
Clayton, MO 63105	)	
	)	
Respondent.		

RESPONDENT'S BRIEF

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INTRODUCTION

On July 23, 2014, Ambry Schuessler (hereinafter, "Schuessler"), a 26 year-old, newly-minted lawyer and first-year prosecutor, was involuntarily made privy to information about a brutal assault on a suspect by Detective Tom Carroll (hereinafter, "Carroll") and a cover-up of his crime by an accomplice in the Office of the Circuit Attorney (hereinafter, "OCA") —a situation that, according to Schuessler's supervisor was not only overwhelming and intense for a 26 year-old lawyer, but for any lawyer (App. Vol. 2, p. A310).

Schuessler was sitting at her desk in the OCA's Misdemeanor Unit, when a colleague (another Assistant Circuit Attorney, Bliss Worrell (hereinafter, "Worrell")), entered Schuessler's office, talking on a cell phone with Carroll, who was describing his assault on a suspect. Schuessler overheard Carroll recounting putting his revolver in the suspect's mouth. Schuessler made a tasteless joke, "I bet that's not the first big black thing he has had in his mouth," (hereinafter, the "Statement").

Within an hour of hearing that Worrell had filed a false charge against the suspect because of Carroll's assault on the suspect, Schuessler, along with a colleague, reported to their supervisor that their friend and colleague, Worrell, had filed false charges against a person for a crime he did not commit. However, when it came to later describing the entirety of the conversation in the room, Schuessler

was embarrassed and humiliated by the tasteless joke she had made. When initially questioned by the FBI, she was not truthful about the source of the Statement, attributing it to Carroll. Twenty-two (22) days later, Schuessler owned her Statement and repeated it in several venues, each time without hesitation, but always with the feeling of embarrassment and humiliation. However, this 22-day lapse in judgment and maturity has given rise to a fraught journey of more than four years during which Schuessler's commendable actions—in blowing the whistle on an assault on a suspect by law enforcement and the most egregious form of prosecutorial misconduct—have been overshadowed by a 15-word tasteless joke and a few lapses in judgment in the days following. Disciplinary proceedings were not commenced until two years after the incident giving rise to it, and the disciplinary proceedings have now lasted another two years and four months.

In the opinion of Philippa Barrett, an OCA supervisor and attendee at Schuessler's IAD interview, the reporting of the cover-up of Carroll's crime by Schuessler triggered the series of events by the OCA and the Police Department's Internal Affairs Division (hereinafter, "IAD") which resulted in the criminal convictions of Carroll and his accomplice. App. Vol. 2, pp. A413-A414.

STATEMENT OF FACTS

On July 23, 2014, Schuessler sat in her office preparing for a jury trial—a trial significant in her career—when Worrell entered uninvited. Worrell exposed Schuessler to her speakerphone conversation with Carroll wherein Carroll admitted to assaulting a suspect and putting a gun in the suspect's mouth, facts Schuessler found overwhelming. App. Vol. 3, pp. A494-A497.

In response to Carroll's admission that he put a gun in the suspect's mouth, Schuessler made a tasteless joke which was meant as nothing more than a joke. App. Vol. 3, p. A497. The joke was a knee-jerk reaction to something "heavy" and it never crossed her mind that it could be construed as a racist or homophobic slur. App. Vol. 3, pp. A464-A465.[1]

The following day, Schuessler learned that Worrell had filed false charges against the suspect, Michael Waller (hereinafter, "Waller"), for a crime he did not commit. App. Vol. 3, p. A498. The knowledge of the filing of the false charges immediately raised concerns of a *Brady* violation and the possibility that the whole

[1] Informant's Statement of Facts reports that immediately after the cellphone conversation between Worrell and Carroll in her office, Schuessler did not "immediately report the police assault to her supervisors." Informant's Brief, p. 14. This was not a component of the Information filed against Schuessler. A "respondent is neither required nor expected to defend against charges not contained in the information." *Matter of Smith*, 749 S.W.2d 408, 414 (Mo. banc 1988). *See also*, 7 Am.Jur.2d Attorneys at Law § 105 (Due process requirements).

office might be at fault for withholding exculpatory information. App. Vol. 3, p. A511.

Within an hour of learning of the filing of the false charge—and after personally verifying that the charges were actually filed—Schuessler reported the filing of the false charges and the assault to her supervisor. App. Vol. 3, pp. A498-A501. During the one-hour period, Schuessler was scared for a number of reasons: telling on friends, telling on an officer, and potentially losing her home as a result of her disclosures. App. Vol. 3, p. A500. When discussing whether to report the filing of the false charges, Schuessler told OCA colleague Katherine Anne Dierdorf (hereinafter, "Dierdorf"), "we could lose our jobs for just knowing about this," to which Dierdorf replied, "we won't lose our jobs, I'm not telling." Dierdorf also asked Schuessler not to report the filing of the false charges. App. Vol. 3, pp. A471, A528.

There is no doubt, and frankly no disagreement, that Schuessler and Ms. Lauren Collins (hereinafter, "Collins") were jointly and severally responsible for unearthing the false charges filed against Waller. App. Vol. 2, pp. A255, A275, A398-A399.

In her interview with IAD, Collins used the term "we" consistently when describing the reactions and actions of herself and Schuessler upon learning of the

filing of the false charges against Waller. App. Vol. 2 p. A255; App. Vol. 5, pp. A1035-A1036.

Collins told IAD during her interview that upon learning of the false charges, she and Schuessler discussed "…who should we talk to, how should we present it to, you know, whoever we decide to talk to." App. Vol. 5, p. A1035. "And we were just like, yeah, we have to say something." App. Vol. 5, p. A1036. Collins testified that it was decided between herself and Schuessler that the filing of the false charges against Waller needed to be reported. App. Vol. 2, p. A254. After taking the time to verify, via the OCA's PKB database notes, that these serious charges were falsely filed, it was decided jointly between Schuessler and Collins that they had to say something. App. Vol. 2, pp. A255, A275, A399. Schuessler and Collins then, together, walked to the office of their supervisor and reported the filing of the false charges against Waller. App. Vol. 2, pp. A255, A275, A399. Collins further testified that Schuessler "did the right thing" when Schuessler decided she needed to be there when the filing of the false charges was reported. To Collins, the issue of who actually spoke when she and Schuessler reported the filing of the false charges really did not matter. App. Vol. 2, pp. A259-A261. The reporting of the false charges was consistent with Schuessler's training. App. Vol. 2, pp. A399-A400.

In the end, Schuessler and Collins acted consistently with Section 1.3 of the OCA Manual: "Integrity requires the courage to insist that what you believe is right and the fortitude to refuse to go along with something you believe is ethically wrong and can distinguish between the need to support an unwelcome decision and the duty to report unethical conduct." App. Vol 5. pp. A940-A941. This was especially true for Schuessler who risked becoming homeless by reporting the false charges filed against Waller. App. Vol. 2, pp. A256, A258-A259. Schuessler was living with Dierdorf and paying Dierdorf rent for the apartment. App. Vol. 3, pp. A669-A670.

Later in the day, Schuessler was interviewed by Beth Orwick (hereinafter, "Orwick") and Ed Postwawko, her supervisor and chief warrant officer. respectively. App. Vol. 3, p. A479. No questions were asked of Schuessler about an assault or use of a gun by Carroll. App. Vol. 3, pp. A504-A505. Yet Schuessler volunteered that Carroll assaulted and kicked the suspect. App. Vol. 3, pp. A479-A480. As to not mentioning the use of a gun in the assault, there was no intent by Schuessler to hide that fact. Schuessler believed that if she could disclose the assault, reveal the filing of the false charges, and save the suspect from going to prison for something that he did not do, she was doing all she needed to do to bring to light the offenses committed by Carroll and Worrell. App. Vol. 3, p. A480.

According to Orwick, one of Schuessler's supervisors, Schuessler was considered nothing more than a fact witness when interviewed by OCA regarding the incident. App. Vol. 2, p. A309.

On the morning of July 25, 2014, Schuessler was interviewed by the police department's IAD, with two members of OCA present. App. Vol. 3, p. A483. The interview lasted merely 21 minutes. App. Vol. 6, pp. A1093-A1114 (under seal). The law enforcement officer conducting the interview expressly asked Schuessler what she knew about the *arrest* of Waller—not about what she knew about the *assault* of Waller or the charges filed against him; Schuessler, to this day, has no firsthand knowledge about the *arrest* of Waller, but she nevertheless volunteered an abundance of detailed and important information about the *assault* and about the charges. App. Vol. 3, p. A507.

After introducing on the record the persons present, the first statement by the IAD interviewer was, "we want to ask you some questions about any knowledge you may have about the **arrest** of Michael Waller in reference to incident report number 14-032969". App. Vol. 6, p. A1093 (under seal) (emphasis supplied). The question immediately following was whether Schuessler knew Waller's name, after which she was asked to tell the interviewers how she knew the name, along with any information she had relevant to "this" investigation. App. Vol. 6, pp. A1093-A1094 (under seal).

Not related to the arrest of Waller, Schuessler volunteered that Carroll "beat the crap out of him." App. Vol. 6, p. A1095 (under seal). No follow-up questions were asked about any details of the assault. App. Vol. 6, pp. A1093-A1114 (under seal). Schuessler did confirm it was Carroll on the phone with Worrell. App. Vol. 6, pp. A1099-A1100 (under seal).

AUSA Hal Goldsmith (hereinafter, "AUSA") testified that in her first interview with the FBI, Schuessler stated that Carroll admitted on the speaker phone call that he used a gun in his interaction with Waller. App. Vol. 1, pp. A167, A174. AUSA further testified that Schuessler told the FBI at the first meeting that there was a beating and "Tom Carroll punched Mr. Waller, hit him with a chair, and put a gun in his mouth." App. Vol. 1, p. A171.

Informant's counsel asked AUSA how he would characterize Schuessler's lies as he had identified them on the investigation, during the time frame in which he was involved. He answered, "… the big lie was that she fabricated evidence that Tom Carroll had made that statement about the gun and the joke. She fabricated that evidence. And so that was a huge and significant harm, if you will, to the investigation." App. Vol. 1, p. A116.

In both the first and second interviews with the FBI, Schuessler informed the FBI that during the speaker phone call, Carroll admitted to using a gun and putting a gun down Waller's throat. App. Vol. 1, p. A174. AUSA felt that Schuessler was

forthcoming in both interviews about Carroll's admission as to the use of a gun and felt that Schuessler's informing the FBI about Carroll's use of the gun was important. App. Vol. 1, p. A174.

As to the sentencing of Carroll, one of the issues relevant to the advisory United States Sentencing Guidelines range was whether Carroll used a gun during the commission of his crime against Waller. App. Vol. 1, p. A175. The telling of a tasteless joke would not enhance Carroll's sentence as there exists no guideline for the telling of a tasteless joke. App. Vol. 1, p. A175. In fact, if there had been no tasteless joke made by anyone regarding Carroll's actions in putting a gun in Waller's mouth, the same sentence would have been imposed. App. Vol. 1, p. A181.

Following the two FBI interviews, AUSA decided to use Schuessler as a witness in the grand jury proceeding against Carroll. App. Vol. 1, p. A190. Schuessler was honest and truthful. App. Vol. 1, p. A190. A grand juror thanked Schuessler for her integrity. App. Vol. 1, p. A191.

AUSA testified that if a lawyer working for him came to him with *Brady* problems and that something must be done about the *Brady* problems, that lawyer would be doing the right thing and would be praised. App. Vol. 1, pp. A186-A187.

United States Attorney Jeff Jensen—who represented Dierdorf in private practice before he became United States Attorney and who testified on Dierdorf's

behalf at the hearing—acknowledged that witnesses frequently make immaterial false statements in FBI interviews and that many little things could be stated that are wrong and immaterial. App. Vol. 4, p. A841. Jensen is the current United States Attorney for the Eastern District of Missouri and a retired FBI special agent. App. Vol. 4, pp. A833-A834, A840. Schuessler did not tell AUSA the truth about the joke in the first interview because, as she testified, "it was a humiliating thing to admit, because I'm embarrassed about it." App. Vol. 2, pp. A516-A517.

Tasteless jokes were not uncommon in the OCA in 2014. R. Vol. 3, pp. 945-947. In fact, supervisors in the OCA were aware that tasteless jokes were made in the office. R. Vol. 3, pp. 945-947. By way of example, seeing pictures of a man's black and blue testicles was part of a common prank played on new assistant circuit attorneys, including Dierdorf, which was carried out with the knowledge of others at the OCA, including supervisors. R. Vol. 3, pp. 945-947. The joke about seeing black and blue testicles was not the first tasteless joke that other assistant circuit attorneys told Dierdorf, and others were recalled as being "very off color." R. Vol. 3, p. 947.

AMBRY SCHUESSLER

Schuessler attended Community R-VI in Laddonia, Missouri. Following high school, she attended Maryville University and graduated in 2010. App. Vol. 2, pp. A444-A445.

Schuessler graduated from St. Louis University Law School in 2013. App. Vol. 2, p. A446.

In September 2013, Schuessler was appointed as an assistant circuit attorney and was assigned to the domestic violence unit shortly thereafter. App. Vol. 2, pp. A448-A450.

After the incident in question, unlike Dierdorf whose employment in the OCA terminated on July 28, 2014[2], Schuessler was allowed to continue her employment at OCA and resigned voluntarily two months after July 2014. App. Vol. 3, p. A523.

As of the date of the hearing before the Disciplinary Hearing Panel, Schuessler had worked for three and one-half years at two family law firms. App. Vol. 3, p. A524. Schuessler has worked at the firm of Coulter Lambson since June 1, 2015. App. Vol. 3, pp. A524-A525.

Schuessler is supervised at the Coulter Lambson firm by the firm's two partners on a day-to-day basis. App. Vol. 3, p. A525.

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[2] After a conference call between Jennifer Joyce, Orwick and Jane Darst where the question was posed, "what do we do with these young prosecutors that we believe have done something unethical," it was determined that Dierdorf could not continue in her employment and was given the option to resign or be terminated. App. Vol. 2, pp. A388-A389.

Since the incidents in question, Schuessler voluntarily received counseling to grapple with the issues she faced during and after the incident. App. Vol. 3, p. A526. Schuessler is sorry for the conduct causing her to be faced with discipline; on reflection, she agrees that she never should have attributed the joke to Carroll and makes no excuses for that conduct. App. Vol. 3, pp. A526-A527.

Joseph Lambson, Esq. (hereinafter "Lambson"), a partner at Coulter Lambson, is Schuessler's direct supervisor on a day-to-day basis. R. Vol. 3, p. 1098. Lambson personally supervises Schuessler on each case that Schuessler handles at the office. R. Vol. 3, p. 1098. Lambson works with Schuessler on big projects, including working on the start of a 501(c)(3) to assist low-income and immigrant communities in the St. Louis area who do not otherwise have access to legal representation. R. Vol. 3, p. 1099.

Lambson testified that Schuessler has an excellent reputation in the legal community for truth and veracity. R. Vol. 3, p. 1100. Lambson has received compliments on Schuessler's work from lawyers and judges in the community. R. Vol. 3, pp. 1101-1102.

As to Schuessler's reputation in the firm where she is employed, Lambson testified that Schuessler's reputation for honesty and integrity is excellent. R. Vol. 3, p. 1102.

In the event an ethical issue arises, Schuessler consults Lambson on how to handle those matters. R. Vol. 3, p. 1103. Lambson was aware of the allegation pending against Schuessler with OCDC and has kept her on as an employee as she is "a hard-working, dedicated, ethical, honest and effective attorney." R. Vol. 3, p. 1104.

COMPLAINTS TO OCDC

Schuessler sent notice of her intent to self-report to OCDC on July 21, 2016 and did self-report on July 29, 2016, two days after the sentencing hearing for Carroll. App. Vol. 5, pp. A922-A928.

The OCA filed a complaint with OCDC on August 16, 2016, in which the OCA stated that, on the advice of AUSA, they did not file a complaint with OCDC earlier to "avoid compromising the ongoing federal criminal investigation and prosecution." App. Vol. 5, pp. A918-A920.

POINTS RELIED ON

I.

Any discipline imposed on Schuessler by the Court should be tempered by the factors that: she was always forthright about use of a gun during the assault of a suspect by Carroll; in only her first interview with federal authorities did she make a false attribution of a Statement, one she had meant as a joke and immediately regretted; both her whistleblower report and cooperation with federal prosecutors in making their case against Carroll served the administration of justice.

A. Schuessler was consistent in her description of Carroll's assault on the suspect, including Carroll's use of a gun during the assault.

B. Schuessler was not representing a client when she reacted with a flippant, bad joke to an overheard account of an assault by Carroll, nor was the Statement subject to regulation.

C. While consistently relating that Carroll employed his gun during the assault of a suspect, Schuessler initially imputed her Statement to Carroll.

D. Ultimately, Schuessler aided the administration of justice, both in the OCA structure with her whistleblower report and through the stages of the federal prosecution of Carroll.

King v. Sorensen, 532 S.W.3d 209 (Mo. Ct. App. 2017)

United States v. Lee, 6 F.3d 1297 (8th Cir. 1993)

See Nat'l Inst. of Family and Life Advocates v. Becerra,

138 Sup. Ct. 2361 (2018)

POINTS RELIED ON

II.

While Informant promotes to the Court a sanction that is a quintessentially harsh punishment rather than that which is necessary to protect the public or the integrity of the legal profession, the great weight of the mitigating factors applicable to Schuessler, and the flexibility afforded the Court in imposing discipline given the fact intensive nature of the situation, support Schuessler continuing as a practicing lawyer.

In re Couples, 979 S.W.2d 932 (Mo. banc 1998)

ABA STANDARDS, STANDARD 9.3

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

See In re Forck, 418 S.W.3d 437 (Mo. banc 2014)

ARGUMENT

I.

> The Supreme Court should discipline Respondent Schuessler because she violated [Missouri Supreme Court Rules].

Any discipline imposed on Schuessler by the Court should be tempered by the factors that: she was always forthright about use of a gun during the assault of a suspect by Carroll; in only her first interview with federal authorities did she make a false attribution of a Statement, one she had meant as a joke and immediately regretted; both her whistleblower report and cooperation with federal prosecutors in making their case against Carroll served the administration of justice.

An attorney disciplinary hearing panel's findings of fact, conclusions of law, and recommendations are advisory; thus, the Supreme Court reviews the evidence *de novo* and draws its own conclusions of law based on an independent determination of all issues pertaining to credibility of witnesses and the weight of the evidence. *In re Shelhorse*, 147 S.W.3d 79, 80 (Mo. banc 2004) (*citing In re Snyder*, 35 S.W.3d 380, 382 (Mo. banc 2000)). "Professional misconduct must be proved by a preponderance of the evidence before discipline will be imposed" on an attorney. *In re Krigel*, 480 S.W.3d 294, 299 (Mo. banc 2016) (*citing In re Madison*, 282 S.W.3d 350, 352 (Mo. banc 2009)).

> A. [Schuessler] 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.

Schuessler was consistent in her description of Carroll's assault on the suspect, including Carroll's use of a gun during the assault.

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.

Informant overstates and dramatizes both the extent of Schuessler's misrepresentation and any speculative consequences. Schuessler told a bad joke, a Statement that, once made, caused her embarrassment and shame. It is true that at her first interview with the FBI, attended by AUSA, she misrepresented the source of that Statement. The reality is that Schuessler did lie that **one** time. Informant's claim that the disciplinary rule was further violated by Schuessler's "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" (Informant's Brief, p. 31) is an inaccurate characterization of what happened during a three-week period of time. The worst that could be said of Schuessler's failure to mention her Statement in initial interviews, especially given the open-ended questions she was asked, is that she avoided an aspect of the conversation that took place in her office when Worrell

entered, in effect, broadcasting her cellphone conversation with Carroll to the occupants of the office.

On the very next day following the cellphone conversation to which she was exposed, Schuessler learned that Worrell had filed false charges against Waller. Schuessler became immediately concerned about a *Brady* violation and the possibility that the whole OCA might be at fault for withholding exculpatory information. Within an hour of learning of, and personally verifying that false charges were actually filed, Schuessler and a colleague reported the filing of the false charges *and the assault* to their supervisor. In the interim one hour prior to making the whistleblower report, Schuessler was scared and anxious at the specter of telling on friends, telling on a police officer, and probably losing her home as a result of the disclosures.

When Schuessler was subsequently interviewed by another OCA supervisor and then the chief warrant officer, no questions were directed at Schuessler about an assault or use of a gun by Carroll. Schuessler volunteered that Carroll hit, kicked and used a chair on the suspect. Schuessler's exclusion of the use of a gun in the assault was not an intentional omission to hide the fact. Schuessler believed that disclosure of the assault and the revelation of the filing of the false charges would save the suspect from going to prison for something that he did not do, and

she was doing all that was required to expose the offenses committed by Carroll and Worrell.

On the next morning (July 25, 2014), IAD conducted a 21-minute interview of Schuessler, informing her that the purpose of the interview was Waller's *arrest* (of which Schuessler had no knowledge). *Not* related to Waller's arrest, Schuessler volunteered that Carroll "beat the crap out of him." The IAD interviewers posed no follow-up questions about any details of the assault.

AUSA testified that in her interview with the FBI, Schuessler stated that Carroll admitted on the speakerphone that he used a gun in his interaction with Waller. AUSA further testified that at the first meeting, Schuessler elaborated on Carroll's actions, explaining there was a beating, and Carroll punched Waller, hit him with a chair, and put a **gun** in his mouth. In both her first and second interviews with the FBI, Schuessler informed them that during the speakerphone call, Carroll admitted to the use of a gun and that he put the gun down Waller's throat. Schuessler was always straightforward about Carroll's admission as to the use of a **gun**.

The investigation of Carroll was not prejudiced. As to the "attack" on Schuessler's credibility by Carroll's defense counsel at the sentencing hearing, while the judge expressed his displeasure for Schuessler's misrepresentation, her

testimony was obviously believed as the Court applied the United States Sentencing Guideline enhancement for the use of a gun despite Carroll's denial.

Schuessler owned up to her one lie in the space of 22 days. She had experienced immediate remorse. She not only fully cooperated in making the Government's case against Carroll, but AUSAs chose to showcase Schuessler in front of the grand jury and at the sentencing hearing.

> B. [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 a racist and homophobic slur after hearing Det. Carroll describe assaulting a suspect in custody with his gun.

Schuessler was not representing a client when she reacted with a flippant bad joke to an overheard shocking accounting by Carroll, nor was the Statement subject to regulation.

Schuessler's Statement may evoke a very unsavory visceral response. Regardless, Schuessler's Statement did not violate either Rule 4-8.4(g) or 4-8.4(c), as alleged in Paragraph 41 a. 2. of the Information.

Specifically, the Information charged:

> 41. Based on the above, Respondent is guilty of professional misconduct as a result of violating the following Rules of Professional Conduct:
>
> a. Rule 4-8.4(c), by engaging in conduct involving dishonesty, deceit or misrepresentation, as follows:
>
> 2. Making a racist and homophobic slur in the OCA in response to a report of

> possible illegal police conduct, which itself is a violation of Rule 8.4(g) (Bias or Prejudice in the Judicial System).

This Court reviews the scope of the Missouri Rules of Professional Conduct *de novo* as the rules are interpreted by application of the same principles used for interpreting statutes. *King v. Sorensen*, 532 S.W.3d 209, 215 (Mo. Ct. App. 2017), *transfer denied* (Sept. 26, 2017), *transfer denied* (Nov. 21, 2017). The intent behind the Missouri Supreme Court's rules "is determined by considering the plain and ordinary meaning of the words in the rule." *Id*. (*citing In re Hess*, 406 S.W.3d 37, 43 (Mo. banc 2013)). When a term is not defined in the rule nor has it been judicially interpreted, the Court is bound by the plain and ordinary meaning of the language and no other rule of construction in interpreting the rule is needed. *See In re A.S.O.*, 75 S.W.3d 905, 910 (Mo. Ct. App. 2002); *Jones v. Dir. of Revenue*, 832 S.W.2d 516, 517 (Mo. banc 1992) (interpreting a statute).

Plain language of Rules 4-8.4(c) and 4-8.4(g) determines violation.

The plain language of Rule 4-8.4(g) is clear:

> It is professional misconduct for a lawyer to: …manifest by words or conduct, *in representing a client*, bias or prejudice based upon race, sex, religion, national origin, disability, age, or sexual orientation.

(emphasis supplied). (Rule does not preclude legitimate advocacy).

Comment 4 to the Rule emphasizes that Rule 4-8.4(g) identifies the special importance of a lawyer's word or conduct, in *representing a client*, that manifests

bias or prejudice against others based upon race, sex, religion, national origin, disability, age, or sexual orientation. Comment 4 continues by giving the rationale for the Rule: [t]he manifestation of bias or prejudice by a lawyer, *in representing a client*, fosters discrimination in the provision of services in the state judicial system, creates the substantial likelihood of material prejudice by impairing the integrity and fairness of the judicial system, and undermines public confidence in the fair and impartial administration of justice.

As a matter of fact, Missouri is counted among 16 states that include the qualifier "that discrimination is not allowed *when representing a client*." Lydia E. Lavelle, *Nondiscrimination Rules with Regard to Sexual Orientation: A Survey of the Rules of Professional Conduct in the Fifty States*, 36 Whittier L. Rev. 237, 264-65 (2015) (italics in the original). The article includes Missouri in its listing of States which include the qualifier to the ABA Model Rule. *Id*., n.108. *See, Matter of Smith*, 749 S.W.2d 408, 413 (Mo. banc 1988) (disciplinary rules governing activities between attorney and client did not apply to complaint against attorney arising out of sale of real property, absent proof of professional relationship between vendors and purchaser-attorney). *Cf. In re Hess, supra.* (Rule 4-3.1 applied to lawyer in his capacity as a litigant as well as in his representative capacity).

The Informant tries to make the case that Schuessler was "representing a client," as that is a criterion in the Rule which Informant accuses Schuessler of violating. Tellingly, Informant cites only one case in support of the proposition, and that case is from a different jurisdiction addressing a different statute.

The Colorado Supreme Court held that a 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.") *In re Pautler*, 47 P.3d 1175, 1182 (Colo. banc 2002). Pautler was a district attorney *and* police officer (with badge and authorization to carry a weapon). Pautler responded to an apartment murder scene in his role as a peace officer, and while there, the suspect called the apartment and spoke with other law enforcement officers regarding the details of his crime. The suspect made it clear he would not surrender without legal representation and asked for an attorney who previously represented him, and also requested a public defender (PD). Pautler offered to impersonate a PD in an attempt to induce the suspect to surrender; officers put him on the phone with Pautler who pretended to be a PD. The suspect communicated to Pautler some terms before he would surrender and referred to Pautler as "his lawyer."

The suspect eventually surrendered to law enforcement, but no effort was made to correct Pautler's misrepresentation as being the suspect's PD. It was not uncovered until an actual PD was appointed and the deception came to light.

Pautler was charged with violating Rules 8.4(c) and 4.3 (both of which mirror their Missouri counterparts). Pautler responded that he was acting in his role of peace officer at the time, not district attorney. The Court found "[a]t all times relevant, Pautler represented the People of the State of Colorado."

The Informant's assertion that *Pautler* supports the proposition that a prosecutor is always representing the "People" was premised on the Colorado Court's interpretation of Rule 4.3 (related to communicating with an unrepresented party). The language "in representing a client," explicit in Missouri Rule 4-8.4(g), is not supported by a Colorado case interpreting a completely different ethical rule. Footnote 10 in the *Pautler* case (*Id*. at p. 1182) indicates that the assertion that "[a]t all times relevant, Pautler represented the People of the State of Colorado" is an interpretation of Colo. Rev. Stat. § 20-1-102(3):

> The district attorney when enforcing support laws pursuant to statute or contract, may use any remedy, either civil or criminal, available under the laws of the state and may appear on behalf of the People of the State of Colorado in any judicial district in the state, when doing so, the district attorney represents the People of the State of Colorado and nothing within this section shall be construed to create an attorney-client relationship between the district attorney and any party, other than the People of the State of Colorado, or witness to the action; except that

> any district attorney who is a contractual agent for a county department of social services shall collect a fee pursuant to section 26-13-106(2), C.R.F.

Colo. Rev. Stat. § 20-1-102(3).

The clear implication is that a district attorney represents the People of Colorado when he is enforcing the laws. Pautler was actively attempting to enforce the law by getting the suspect to surrender. The Court's language that "at all times relevant" would seem to refer to all times when Pautler was attempting to enforce the law. Schuessler was not engaged in any conduct in an attempt to "enforce the law."[3]

Pautler was directly engaging with the suspect, and represented himself not only as an attorney, but the suspect's attorney. Again, Schuessler was not representing a client, nor did she engage with Carroll or his victim. Schuessler did not pose as someone else, nor was she engaging *with* an unrepresented client. The *Pautler* case is inapt.

Likewise, the plain language of Rule 4-8.4(c) is also clear:

> It is professional misconduct for a lawyer to:
>
> (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

[3] The only arguably equivalent Missouri statute is Mo. Rev. Stat. § 56.067, which states that a prosecuting attorney must devote full time to office and shall not engage in other practice of law. However, it does *not* contain language that would imply a prosecutor is at all times "representing the People."

As objectionable as Informant and others might believe Schuessler's Statement to have been, and regardless of the characterization, the crucial point is that the Statement itself did not involve dishonesty, deceit, or misrepresentation.

Consequently, according to the plain language in each of these two Rules, Schuessler's Statement did not contravene either of the cited Rules.

Attorney discipline for allegedly "making a racist and homophobic slur in the OCA" is unconstitutional.

Schuessler's right to free speech is protected by both the First Amendment to the U.S. Constitution and Article I, Section 8 of the Missouri Constitution (A person has a right "to say, write or publish, or otherwise communicate whatever [s]he will on any subject"). Informant has sought to punish Schuessler for exercising her right to say whatever she would on any subject.

"The constitutional guaranties of freedom of speech forbid the states to punish the use of words or language not within narrowly limited classes of speech." *State v. Vaughn*, 366 S.W.3d 513, 518 (Mo. banc 2012) (*citing Hess v. Indiana*, 414 U.S. 105, 107 (1973)) (*Vaughn* offered as examples a speech subject to regulation obscenity, defamation, and fighting words.) *Cf. State v. Wooden*, 388 S.W.3d 522, 526-27 (Mo. banc 2013) (defendant's series of emails to public officials contained "fighting words," a narrowly limited class of speech excepted from broad First Amendment protections).

In the case at bar, a governmental entity seeks to discipline an individual based solely on the content of that individual's speech. The Supreme Court has time and again held that content-based or viewpoint-based regulations are presumptively invalid. *See, e.g., Hill v. Colorado*, 530 U.S. 703, 770 (2000); *U.S. v. Playboy Entm't Grp., Inc.*, 529 U.S. 803, 817 (2000). "Regulations which permit the government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment." *United States v. Lee*, 6 F.3d 1297, 1299 (8th Cir. 1993) (*quoting Regan v. Time, Inc.*, 468 U.S. 641, 648-49 (1984)).

When analyzing content-based restrictions on speech, at a minimum, the proper standard for review is strict scrutiny, thus requiring the governmental entity to prove the restriction furthers a compelling interest and is narrowly tailored to achieve that interest. *See e.g., Reid v. Town of Gilbert, Ariz.*, 135 Sup. Ct. 2218, 2231 (2015) (political signs); *Denver Area Educ. Telecommunications Consortium, Inc. v. FCC*, 518 U.S. 727, 804-05 (1996) (expressing skepticism about the possibility of courts drawing principled distinctions to use in judging governmental restrictions on speech and ideas, a concern heightened by inextricability of indecency from expression); *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 230 (1987) (selective taxation of magazines does not pass "strict scrutiny" test where official scrutiny of the content of publications is based on content of

publication and is thus incompatible with First Amendment). The standard may well be higher under Article I, Section 8 of the Missouri Constitution.

Disciplining an attorney for allegedly making an injudicious bad joke does not survive strict scrutiny, regardless of the content. In deciding *United States v. Lee*, *supra*, the Eighth Circuit introduced its discussion by quoting Justice Scalia's statement from *R.A.V. v. City of St. Paul, Minnesota*, 505 U.S. 377 (1992), "let there be no mistake about our belief that burning a cross in someone's front yard is reprehensible." *United States v. Lee*, 6 F.3d at 1299 (*quoting R.A.V.*, 505 U.S. at 396). Nevertheless, the Eighth Circuit was clear: when a conviction—or discipline—clearly rests on the asserted offensiveness of the words, thus punishing the fact of communication, it is unacceptable. *See also Cohen v. California*, 403 U.S. 15, 18 (1971).

The analytical tools that include a presumption of the invalidity of content-based restrictions on speech and the strict scrutiny test for constitutional purposes, means the issue is not whether Informant's characterization of the Statement by Schuessler is "racist and homophobic." Rather, the test—as it was in *R.A.V.* and *Lee*—is whether a state actor such as Informant seeks to regulate speech based on its content in order to serve a compelling state interest using the least restrictive means available. Disciplining a lawyer for making what is characterized by Informant as a "racist and homophobic slur" does not withstand strict scrutiny.

"The First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *State v. Wooden*, 388 S.W.3d at 525 (internal citation omitted).

Nor is professional speech a separate category of speech exempt from the rule that content-based regulation of speech is subject to strict scrutiny. *See Nat'l Inst. of Family and Life Advocates v. Becerra*, 138 Sup. Ct. 2361, 2371-72 (2018). The Court explained that it had afforded less protection for professional speech in two circumstances, neither of which relied on the fact that professionals were speaking; rather, the Court was more deferential in its review when rules require professionals to "disclose factual, non-controversial information in their 'commercial speech'" and certain professional conduct even though it may incidentally involve speech." *Id*. at 2372. Outside of those two contexts, the Court reflected that its precedents have long-protected the First Amendment rights of professionals. *Id*. at 2374. *See also Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1051-52 (1991) (not appropriate to assess restrictions on attorney's speech under a balancing test except in two limited categories of regulations). These Court-referenced exceptions as to when regulation of speech may be appropriate are clearly inapplicable to Schuessler's Statement.

C. [Schuessler] 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 a gun.

While consistently relating that Carroll's gun was employed during his assault of a suspect, initially, Schuessler imputed to Carroll her Statement.

Schuessler made a tasteless joke while in the company of some of her colleagues. She had no malevolent motivation when she made, what she is the first to admit was, a bad joke. When she thought of the Statement coming to light beyond that small office in the OCA, she experienced immediate embarrassment and humiliation.

As regrettable as Schuessler's imputation of the Statement to Carroll was, the reality is that it had no logical connection with the consequential facts. U.S. Attorney Jeff Jensen testified that witnesses make immaterial false statements in FBI interviews; many little things could be stated that are wrong and they could be immaterial. The government focused on Carroll's use of a gun, about which Schuessler never wavered. AUSA testified that Schuessler had stated during her first interview with the FBI, that Carroll admitted on the speakerphone call that he had used a gun in his confrontation with the suspect. Further, AUSA testified that in the course of that first interview, Schuessler told the FBI that there was a beating and Carroll punched the suspect, hit him with a chair, and put a gun in his mouth. In both the first interview with the FBI and the second interview with the FBI,

Schuessler apprised the FBI that during the speakerphone call, Carroll admitted to the use of a gun and that he had put the gun down Waller's throat. Schuessler was straightforward in both interviews about Carroll's admission as to the use of a gun. Schuessler did not tell the truth about who made the Statement in the first interview because she felt it was a humiliating thing to admit because she was embarrassed about it. Indeed, there was no other reason not to own up to the Statement; she had already incriminated Worrell and Carroll on multiple occasions and in that first interview. She was embarrassed, plain and simple, and that was the only reason she did not admit she was the one who made the tasteless joke.

One issue regarding Carroll's sentencing was whether he had used a gun. Had Carroll accompanied his recount of the beating incident with the same Statement made by Schuessler, his sentence would not have been enhanced as there is no United States Sentencing Guideline for the telling of a crude joke. Had no bad joke been made by anyone in reaction to Carroll's act of putting a gun in the suspect's mouth, the same sentence would have been imposed.

Consequently, while AUSA testified that Schuessler's "big lie was that she fabricated evidence that Tom Carroll had made that statement about the gun and the joke," what actually transpired reflects that it was immaterial in that Carroll's use of a gun was established from the time of Schuessler's first interview with the FBI; once Schuessler stated that Carroll had used a gun in his interaction with

Waller, the gun became part of the case against Carroll. Had Carroll made the Statement that Schuessler did, it would have been superfluous to the case against him.[4] In fact, AUSA was no longer handling the Carroll case at the time of sentencing and the two attorneys who were representing the Government used Schuessler as a witness to support their position.

> D. [Schuessler] violated Mo. S. Ct. Rule 4-8.4(d), by engaging in the above conduct, which was prejudicial to the administration of justice.

Ultimately, Schuessler aided the administration of justice, both in the OCA structure with her whistleblower report and through the stages of the federal prosecution of Carroll.

By Informant's editorialization of the facts, it seeks to persuade this Court that Schuessler's conduct was prejudicial to the administration of justice. However, a sample of Missouri cases, including *In re Coleman*[5] cited by Informant, display elements that were not part of Schuessler's circumstances, even as rendered by Informant. Schuessler, within a matter of days, corrected her untruth and any arguable evasion during the preliminary course of the investigation, well before it could impact a party's rights or judicial proceedings,

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[4] Informant argues that Schuessler's "false attribution elevated Detective Carroll's motive to one of discrimination or bias in the commission of a crime." (Informant's Brief, p. 35). The record does not reference or support any such potentiality.

[5] *In re Coleman*, 295 S.W.3d 857 (Mo. banc 2009), *as modified on denial of reh'g* (Nov. 17, 2009).

nor was an individual client involved. The case examples that follow did not involve conduct that occurred in the course of a like investigatory process; rather, the misconduct occurred in connection with an adjudicatory or other rights-determinative process.

In re Eisenstein, 485 S.W.3d 759 (Mo. banc 2016). Respondent's email to opposing counsel implied that she would suffer professional retribution if she further discussed the issue of his improper review of a document to be used as an aid to opposing counsel at trial. "Threatening opposing counsel during the course of litigation or to avoid an ethics complaint constitutes conduct prejudicial to the administration of justice." *Id*. at 763.

In re Coleman, *supra*. This case, too, involved an attorney's representation of a client in litigation, accepting a settlement when client had declined the offer, trying to get client to sign the settlement document by threatening client that if she did not sign that he would withdraw from all three of her cases or move the court to enforce settlement. There followed a considerable number of transactions with the court as the attorney filed a motion to enforce that was denied, then a motion to withdraw. The attorney failed to respond to client's inquiries as to how she should proceed as to an objection to withdraw, whether he intended to assert a lien in her case, the status of her other cases, etc. The attorney did not reply. The court

placed the case on the trial docket twice. Client was unable to obtain new counsel and ultimately, her case was dismissed.

Explaining why the attorney's conduct was prejudicial to the administration of justice, the Court stated, "[R]espondent wasted judicial resources when he filed a motion and attempted to enforce a prohibited agreement purporting to give him the sole right to settle [client's] case. His conduct also negatively impacted the judicial process because his failure to give [client] information at the termination of his representation hindered her ability to obtain new counsel that was necessary to adjudicate her claims in the pending cases." *Id*. at 868.

In re Madison, 282 S.W.3d 350 (Mo. banc 2009). "[Respondent's] conduct and statements [made in a number of public documents] were prejudicial to the administration of justice, disrupted the tribunal, and impugned the integrity and qualifications of two judges in reckless disregard of the truth of his claims." *Id*. at 360. The Court noted these statements were "intended to disrupt the legal process, … and "caused one judge to recuse herself unnecessarily from a case and put her in fear for her safety." *Id*. at 359. *See also In re Hess*, *supra*. (conduct found prejudicial to administration of justice where Respondent "knowingly and deliberately participated in bringing frivolous litigation ["designed to harass, intimidate and burden"]. [Respondent's] former clients were emotionally and financially harmed by his conduct" (*id*. at 46)).

Knowingly counseling a witness to lie on the stand or filing with a court documents that attorney knows contain false information has also been viewed by the Court as prejudicial to the administration of justice. *See, e.g.*, *In re Krigel*, 480 S.W.3d 294 (Mo. banc 2016); *In re Oberhellmann*, 873 S.W.2d 851 (Mo. banc 1994); *In re Storment*, 873 S.W.2d 227 (Mo. banc 1994).

In re Tessler, 783 S.W.2d 906 (Mo. banc 1990). Respondent repeatedly failed to cooperate with the bar committee in its investigation of the complaints from clients. The Court stated, "we are particularly persuaded not by the isolated instances of neglect, but by the pattern of respondent's failure to cooperate with the work of the investigating committee. Therefore, we find by a preponderance of the evidence that respondent has engaged in conduct that is prejudicial to the administration of justice…" *Id*. at 910.

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.

While Informant promotes to the Court a sanction that is a quintessentially harsh punishment rather than that which is necessary to protect the public or the integrity of the legal profession, the great weight of the mitigating factors applicable to Schuessler, and the flexibility afforded the Court in imposing discipline given the fact intensive nature of the situation, support Schuessler continuing as a practicing lawyer.

The purpose of the attorney disciplinary process is not to punish the offender, but to protect the public. *See, generally*, 7 Am.Jur.2d Attorneys at Law, § 30, Protection of the public and maintenance of the integrity of the legal profession has been referenced often in Missouri case law, e.*g.*, *In re Snyder*, 35 S.W.3d 380, 384 (Mo. banc 2000); *In re Waldron*, 790 S.W.2d 456, 457 (Mo. banc 1990). Correspondingly, the Court has been quick to add, "[i]t is proper to consider mitigating factors, including the attorney's previous record, when determining the appropriate discipline." *In re Snyder*, 35 S.W.3d at 384.

Ethical duty violated

Informant tries to persuade the Court that as an assistant circuit attorney[6], Schuessler exhibited a "Failure to Maintain the Public Trust."

Schuessler did not "repeatedly" lie. The dictionary definition of "repeatedly" is an adverb meaning "over and over again; constantly." "repeatedly." *Merriam-Webster Online Dictionary*, https://www. merriam-webster.com (last visited Dec. 16, 2018). Schuessler made one misrepresentation, which she corrected in a matter of days. Schuessler has not shown herself in any way to be anything except a lawyer who would protect the public's interest and property. Nor was any misconduct of a nature that would—or did—prejudice the administration of justice.

Mental state

Schuessler told "the big lie" (as testified to by AUSA) when she—only in her first interview with the FBI (with AUSA present) —attributed her Statement to Carroll. (App. Vol. 1, p. A116). The result that Schuessler wanted to achieve was

[6] Informant makes reference to Schuessler as a "minister of justice"; the phrase is one from the commentary to Rule 4-3.8 (Special Responsibilities of a Prosecutor). The meaning ascribed to the tag is to emphasize that a prosecutor is not simply an advocate. A prosecutor is obliged to make sure the defendant is accorded due process and that guilt is decided on the basis of sufficient evidence. *See* Sup.Ct.R. 4-3.8, cmt. 1.

the avoidance of revealing the Statement about which she was embarrassed and humiliated. Nevertheless, she owned up to her misrepresentation in short order.

Injury and potential injury

Informant makes a meal of the *potential* injury that might have developed from Schuessler's lack of candor when she was initially questioned. "Potential injury" is defined as the harm that "is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct." ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS, DEFINITIONS ("ABA STANDARDS"). Despite Informant's reference to AUSA's testimony and its description of the potential injury as "colossal" (Informant's Brief at p. 39), none of Informant's speculative "horribles of horribles" occurred. Again, reverting to the dictionary in which the definition of "colossal" is "huge, massive, enormous," Informant engages in hyperbole. "colossal." *Merriam-Webster Online Dictionary*, https://www.merriam-webster.com (last visited Dec. 19, 2018). Schuessler's one-time lie, as regrettable as it was, did not "pour scorn on the criminal justice system" (Informant's Brief, p. 39).[7] Evidently, Judge Autrey did find Schuessler credible;

[7] Interestingly enough, while AUSA allegedly worried about possible attacks on Schuessler's credibility, he called her before a grand jury to testify against Carroll, and other federal prosecutors made the decision to add her to a list of witnesses testifying at the Carroll's sentencing hearing about his use of a gun during the assault of a suspect.

moreover, she was not the only witness for the prosecution at the sentencing hearing. And, Schuessler had already *not* been a prosecutor for almost two years by the time she testified at that hearing.

Aggravating and mitigating factors

Informant acknowledges the relevance of aggravating and mitigating factors in the imposition of attorney discipline. Informant then takes the position that, essentially, what it views as aggravating factors should outweigh other considerations in favor of an inordinately long suspension. Informant overstates, by implication (i.e., "multiple instances"), the number of instances in which Schuessler lied and mischaracterizes her motivation as "selfish and cowardly." Informant's Brief at p. 39. Admittedly, Schuessler was not entirely forthcoming about all of the details of the group setting when Carroll was on Worrell's cell phone. Nevertheless, Schuessler's motives were not selfish. Instead, Schuessler went on to act on her overriding motivation which was to report wrongdoing by one of her colleagues in the OCA; consequently, Schuessler and another colleague quickly reported to a supervisor. In addition, when questioned, Schuessler never wavered from the position that Carroll had used a gun. Blowing the whistle on a law enforcement officer and a fellow prosecutor, and doing so knowing it could cost Schuessler her housing, was far from selfish; it was selfless and tangibly led to

the dismissal of false charges against an innocent man and federal criminal convictions of the officer and the prosecutor.

Schuessler should not be assigned aggravating factors in determining the appropriate disciplinary sanction. *See In re Couples*, 979 S.W.2d 932, 937 (Mo. banc 1998) (addressing various aggravating elements used by the Court).

- Schuessler had no prior disciplinary offenses;
- Schuessler's motives were not dishonest or selfish in that they were not for personal enrichment, nor was there a client involved with whom or on whose behalf, she was dishonest;
- There was no pattern of misconduct; rather, one incident about which she was not forthcoming, covered a period of approximately 22 days;
- There were not multiple offenses as the one closed conversation among colleagues gave rise to all of Informant's charges;
- Not only has Schuessler not refused to acknowledge the wrongful nature of her conduct, she self-reported it to the OCDC, and had previously admitted it to all involved;
- Schuessler, rather than having substantial experience in the practice of law, was in her very first year of practice;
- Schuessler did not display indifference in repairing her prevarication; and

- Schuessler fully cooperated with federal authorities in "making their case" against Carroll.

The mitigating factors affecting Schuessler's circumstances should be given significant weight.

"Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed." ABA STANDARDS, STANDARD 9.3 (TEXT).

> 9.32 Factors which may be considered in mitigation. Mitigating factors include:
>
> (a) absence of a prior disciplinary record;
>
> (b) absence of a dishonest or selfish motive;
>
> (c) personal or emotional problems;
>
> (d) timely good faith effort to make restitution or to rectify consequences of misconduct;
>
> (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
>
> (f) inexperience in the practice of law;
>
> (g) character or reputation;
>
> [((h) and (i) address, respectively, "physical disability" and "mental disability or chemical dependency including alcoholism or drug abuse")];
>
> (j) delay in disciplinary proceedings;
>
> (k) imposition of other penalties or sanctions;
>
> (l) remorse;
>
> (m) remoteness of prior offenses.

(ABA STANDARDS 9.32(J)) as approved, February 1986 and as amended, February 1992. *See also,* 7A C.J.S. ATTORNEY & CLIENT § 156.

Schuessler's circumstances provide a textbook case for the wisdom of providing for mitigating factors rather than looking formulaically at the possible consequences of lawyer misconduct listed in the Standards (presumably the tack taken by Informant).

(a) Certainly, Schuessler had no prior disciplinary record;

(b) Schuessler did not have a dishonest or selfish motive in not being immediately forthcoming and initially telling a lie in her first interview with the FBI; rather, she reacted to her overwhelming feelings of embarrassment and humiliation;

(c) Actually, Schuessler overcame the personal problems that she knew her role as a whistleblower would produce, *e.g.*, losing her place to live;

(d) Within a matter of days, Schuessler rectified the consequences of her misconduct by owning up to the Statement she had made and rendering assistance to the government at critical stages of its prosecution;

(e) Schuessler self-reported to the OCDC in an absolutely candid disclosure and she went on to cooperate at every stage of its proceedings;

(f) Referring to Schuessler's *inexperience* in the practice of law is an exercise in understatement; she had less than one year of experience as a lawyer when she was thrust into the maelstrom of circumstances surrounding Carroll's wrongdoing aided by one of her own colleagues;

(g) Schuessler's character and reputation were unsullied before this incident and her subsequent practice of law has garnered respect and praise from those with whom, and in front of whom, she has been practicing law for some years;

(j) See below;

(k) While there has not been the imposition of "other penalties or sanctions" from the disciplinary process tool chest, Schuessler has been publicly shamed in a federal court and in the public eye; the stay put on the disciplinary process by the U.S. Attorney's Office has caused a proverbial shadow over Schuessler's career for now almost five years;

(l) Schuessler has felt and displayed sincere remorse;

(m) See below.

(j) and (m) Delay/Remoteness of prior offenses

Delay in disciplinary proceedings is recognized as a mitigating factor. *See In re Belz*, 258 S.W.3d 38, 46 n.5 (Mo. banc 2008). *Cf. Matter of Dorsey*, 731 S.W.2d 252, 254 (Mo. banc 1987) (J. Blackmar concurring, showing reluctance to concur in 90 day suspension "because of the long delays in the processing" of the case; concurrence because Respondent was not without fault in regard to delays); (J. Welliver, dissenting, remarking that at the time of the acts complained of, Respondent was not qualified to practice law and should have been disbarred. He submitted, however, "[d]ue to the passage of time, over four years, since the misconduct occurred, a strong case can be made for a public reprimand, particularly, as here, where there have been no further charges of misconduct during the intervening time. Suspension for ninety days can only be punishment...Because of the long delays resulting from our far too cumbersome disciplinary procedures, I would, in this instance, utilize the public reprimand because I believe it will better serve the interests of the public." *Id*. at 255).

Other jurisdictions have similarly taken heed of delay as a mitigating circumstance. *See, e.g., In re Vogel*, 482 S.W.3d 520, 539 (Tenn. 2016) (declining to find delay as mitigating factor after two years had elapsed, but citing cases recognizing delay after 4, 5, and 6-9 years); *In re Payne*, 707 F.3d 195, 217 (2d

Cir. 2013) (Committee recognized that passage of time can be a mitigating factor, and Respondent's defaults and other misconduct reviewed by the Committee were relatively dated); *In re Conduct of Lawrence*, 98 P.3d 366, 379-80 (Or. banc 2004) (considering delay as a mitigating circumstance where trial panel's disciplinary decision was issued more than five years after the misconduct occurred and accused's disciplinary record since events that led to proceeding, was apparently unblemished); *In re Peasley*, 90 P.3d 764, 777-78 (Ariz. banc 2004) (although all of the delay was not State Bar's fault, the delay had a negative impact on Respondent and was mitigating factor after five total years had elapsed); *Grievance Adm'r v. Lopatin*, 612 N.W.2d 120, 132 (Mich. 2000) (ABA Standards adopted on interim basis (Standard 9.32(i) became 9.32(j)); remoteness of incident(s) warranted mitigating delay factor); *People v. Dalton*, 840 P.2d 351, 353 (Colo. banc 1992) (because disciplinary proceedings had been delayed, Court concluded public censure was appropriate disciplinary sanction).

The delay in the Schuessler case is antithetical to the purposes of attorney discipline. "The purpose of the attorney discipline is to **protect the public** and maintain the integrity of the legal profession." *In re Adams*, 737 S.W.2d 714, 717 (Mo. banc 1987) (emphasis supplied). The U.S. Attorney's Office put a delay on precipitating any kind of disciplinary process to suit the Office's perceived evidentiary needs in a prosecution. Control of all timing by the U.S. Attorney

based on the rationale of using Schuessler as a witness has been a shadow over her career for now almost five years."[8]

Arguably, a disservice was perpetrated on the public if Schuessler's conduct was so detrimental that the public needed protection from her practice of law. (Obviously, that did not seem to be anyone's actual thought as Schuessler continued to work at the OCA after all the facts came to light and AUSA called her to testify in front of the grand jury soon after Schuessler had rectified her lie (where, following her testimony, she was complimented by a grand juror on her integrity)). Schuessler's situation is one in which sufficiently compelling mitigating circumstances clearly predominate over the harsh sanction Informant requests.

Recommended Discipline

The goals of attorney discipline have already been achieved.

Informant requests Schuessler's indefinite suspension without eligibility for reinstatement for two (2) years. Schuessler's misconduct may not be easily categorized.

> [T]he standards are not designed to propose a specific sanction for each of the myriad of fact patterns in cases of lawyer misconduct. Rather, the standards provide a

[8] Schuessler has been closely monitored by her supervising partner in the family law practice that she entered several years ago, all the while questioning in the back of her mind the implications for her career given the U.S. Attorney Office's focus on using her publicly in its case against Carroll.

> theoretical framework to guide the courts in imposing sanctions. The ultimate sanction imposed will depend on the presence of any aggravating or mitigating factors in that particular situation. The standards thus are not analogous to criminal determinate sentences, but are guidelines which give courts the flexibility to select the appropriate sanction in each particular case of lawyer misconduct.

ABA STANDARDS, *Theoretical Framework*; *see also* DEFINITIONS 1.3 (Purpose of These Standards).

Neither case precedent nor the philosophical underpinnings of the standards for Imposing Lawyer Sanctions support Informant's requested sanction.

Informant questions Schuessler's moral "fitness to practice law" given her "questionable judgment." (Informant's Brief, p. 40). Yet, the case law suggests that Schuessler has not engaged in the kind of conduct at which the Court despairs at a lawyer's "moral judgment."

In the *In re Donaho* case, the Court used and cited language about "moral judgment," "moral fortitude," and "requisite moral character" of an attorney. Thus, "questionable moral judgment" was used in reference to Donaho's intentional deception, especially concerning because it occurred before a disciplinary committee. ("This Court regards dishonesty before a disciplinary committee to be especially egregious" and "leniency might be appropriate were it not for the remaining charges, all of which involve intentional deception of the very committee charged with ensuring that those licensed to serve as members of

the bar act with the moral fortitude benefitting the profession." *In re Donaho*, 98 S.W.3d 871, 874 (Mo. banc 2003)).

This special concern expressed by the Court when a lawyer's moral judgment caused them to deceive their own profession's regulatory body, dates at least to *In re Staab*, 719 S.W.2d 780 (Mo. banc 1986). "This Court joins a growing majority of states who explicitly entertain as attorney misconduct the failure to cooperate with disciplinary authorities…[T]his Court should expect no less [than prompt cooperation] of members of this self-regulating profession if the Court is to maintain the public's confidence and the profession's integrity." *Id*. at 783-84 (finding public reprimand appropriate where Respondent was repeatedly uncooperative with the disciplinary committee, and neglected two cases, while deceiving the client in each). *See also In re Forge*, 747 S.W.2d 141 (Mo. banc 1988) ("We believe that absent respondent's attempts to mislead the Committee, a less severe sanction would be sufficient. However, respondent chose to trifle with the Committee by embarking upon a consciously chosen course of prevarication and attempted obfuscation…We expect members of the bar to cooperate promptly and candidly with bar committees. Those who knowingly seek to mislead those committees, and in so doing interfere with their work, do so at their peril." *Id*. at 145-46)); *In re Stricker*, 808 S.W.2d 356 (Mo. banc 1991) ("[R]espondent failed to cooperate with the bar committee relative to the [client] complaint. In the

proceeding before the Master, respondent denied having received notice of a hearing in the [client] matter and denied that he failed to appear in court, claiming that there was a plea agreement reached. He testified under oath to matters directly contradicted by exhibits in the case and other credible evidence. Respondent has not explained the discrepancies…nor has he accepted responsibility for his actions." *Id*. at 361)).

In other disciplinary cases, the word "moral" is used in connection with intentionally deceptive conduct where the attorney lied or defrauded clients, a court, or the disciplinary committee.

The circumstances of Schuessler's case provide quite a contrast. Rather than a bar complaint, Schuessler's first relevant activity was acting as a whistleblower. Schuessler corrected her misstatements *before* the investigation was at a stage where any defendant's substantive rights were affected, and further assisted the prosecution by testifying against the wrongdoers, consistent with the correction. Schuessler's misstatement was not made to an attorney-regulating body or to a court to avoid discipline—no complaint had been filed against her at the time. And, Schuessler was candid and truthful with the disciplinary committee.

Informant attempts to use "Failure to Maintain the Public Trust" (ABA STANDARDS, STANDARD 5.22) to bolster its effort to have Schuessler suspended from practice. We have been unable to discover any Missouri cases in which

STANDARD 5.22 has been utilized. However, a brief survey of other jurisdictions indicates that in the cases in which "a lawyer in an official or governmental position knowingly fails to follow proper procedures or rules..," there is an actual exploitation of the office that the lawyer holds or multiple, repeated failures to follow a rule after being reminded, and an actual impact on a party stemming from the failure to follow rules or on the integrity of the legal process.

In one case, Respondent was a part-time county attorney and had a part-time private practice in Kansas. *In re Holste*, 358 P.3d 850 (Kan. 2015), *reinstatement granted sub nom*. *Matter of Holste*, 382 P.3d 850 (Kan. 2016). He filed a breach of contract claim on behalf of a client and obtained a default judgment on behalf of his client. When the adverse party filed a second motion to set aside, Respondent emailed the opposition, saying that if they kept pushing the default judgment issue, he would dismiss the case and file two felony theft charges instead.

In re Graves, 802 So.2d 530 (La. 2001) involved Respondent who was an assistant district attorney, responsible for filing a Sentence Review Memorandum in all capital cases within thirty days from the time the defense's brief was filed. Respondent missed the deadline on a case and the court sent a demand for the Sentence Review Memorandum. Respondent requested additional time, and an additional sixty days was given. No Sentence Review Memorandum was ever filed, yet Respondent told the court, at oral arguments (after inquiry) that he had a

copy of the Memorandum and would get it taken care of with the clerk's office after arguments. Still, no Memorandum was filed. When asked to show cause why he was not in contempt, Respondent said he had received no notice that the Memorandum was required. "Respondent failed to comply with [court orders] in connection with the filing of the Sentence Review Memorandum. His conduct delayed resolution of the underlying criminal proceeding, causing injury to the integrity of the legal process. Respondent's actions reveal a disturbing disregard for his professional obligations and a lack of respect for the authority of this court which is inappropriate for any member of the bar, especially an assistant district attorney." *Id*. at 532. The Court, after considering mitigating factors, imposed a deferred nine-month suspension subject to a two-year period of probation. *See also In re Disciplinary Action Against Serstock*, 432 N.W.2d 179 (Minn. banc 1988), *reinstatement granted*, 512 N.W.2d 862 (Minn. 1994) (Respondent was a prosecutor who had accepted money from several individuals and was dismissing their parking tickets. He also negotiated DWI citations with an attorney to whom he owed money. The Court stated, "[r]espondent's misconduct as a deputy city attorney harmed no one person individually. The harm in this case was to the public and the legal system as a whole." *Id*. at 185).

Schuessler did not exploit her office, but took pains to call attention to OCA rules violations by a colleague. Schuessler was not repeatedly reminded about a

rule after initially breaking it; rather, she corrected her one-time misrepresentation within a relatively short period. Schuessler had been consistent from her first account about Carroll's use of a gun. The immaterial fact of whether he accompanied that act with a slur could have minimal effect on any party – or even the legal process – over the course of 22 days.

In an attempt to convince this Court that Schuessler violated the "public trust," Informant cites a list of cases that are not only factually distinguishable, but are far removed from Schuessler's conduct which arose from a one-time, off-hand tasteless joke about which she was initially not forthcoming (but within a matter of days she acknowledged); and, Schuessler acted as a conscientious whistleblower from the outset.

In the first situation, a lawyer was disbarred for violating a rule that no longer appears in the Missouri Rules[9], but was based on behavior characterized as

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[9] **DR 1-102 Misconduct.**

(A) A lawyer shall not:
- (1) Violate a Disciplinary Rule.
- (2) Circumvent a Disciplinary Rule through actions of another.
- (3) ***Engage in illegal conduct involving moral turpitude.
- (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
- (5) Engage in conduct that is prejudicial to the administration of justice.
- (6) Engage in any other conduct that adversely reflects on his fitness to practice law.

Respondent was charged, *inter alia*, in violation of DR1-102(A)(3) which encompasses illegal conduct involving moral turpitude.

misconduct that damaged the image of the legal profession and showed willingness to break the law. *In re Frick*, 694 S.W.2d 473 (Mo. banc 1985). While *representing a client* in a dissolution proceeding, Respondent began an affair with that client. The relationship intensified once the divorce was final and Respondent separated from his wife. The relationship eventually deteriorated. Respondent wrote "hateful and vile" letters, and later, threatening letters, to and about the client. He sent these letters to the client, placed them on her windshield, and sent them to third parties including family members of the client.

The Chairman of the Missouri Bar Administration, following the client's report of Respondent's behavior, warned Respondent against contacting or writing the client. Respondent, however, went on to vandalize the client's car multiple times, as well as her home and, he continued sending "anonymous" threats. He spray-painted client's name on a college wall and when approached by security, Respondent fired shots at the officers in an attempt to flee.

The Special Master had noted that Respondent's was not a minor violation of the law, but rather a serious, gross violation related to malicious acts directed toward a client, thus resulting in the public's lessened confidence in the legal profession; Respondent was ultimately disbarred.

Any analogy is illusionary. Respondent's conduct was directed at *his client*; Schuessler made a comment about an individual that was never her client.

Respondent's actions were violent and illegal, rising to the level of crimes of "moral turpitude." There is a stark difference between violence and illegality and a bad joke made among one's colleagues in a closed setting. Respondent's acts spanned the course of a year with numerous acts of misconduct. Schuessler's conduct revolved around one incident about which she told an [immaterial] untruth and she corrected it in a matter of days.

In a case in which the Court believed a suspension with leave to apply for reinstatement at the end of six months, was another instance in which the Court focused on "illegal conduct involving moral turpitude" proscribed by D.R.1-102(A)(3). *In re Littleton*, 719 S.W.2d 772 (Mo. banc 1986). Exploiting the tradition of the legal profession, Respondent sought to turn his professional relationship with his *client* into a personal one when he was hired by and obtained over $1,000.00 from a client's friend and family for specific use as bond money. When Respondent went to visit the client in jail, he made sexual advances toward the client. Upon obtaining the client's release for only $50.00, Respondent gave his client a ride home and again made sexual advances in the car, *e.g.*, touching her breast. Despite multiple requests, Respondent refused to return the money in excess of what was needed for bail, and falsely represented it was for his legal fees. Respondent was charged with failing to carry out his contract of employment for professional services in a prompt manner; for failing to return the money when it

was not needed for bail purposes; and for making sexual advances toward the client and allegedly sexually assaulting her following her release from jail. The Court found that Respondent engaged in "conduct involving dishonesty, fraud, deceit, or misrepresentation" by misrepresenting the purpose for which he accepted the "bond money" as he later claimed the money as a fee for legal services.

Respondent's conduct was directed at *his client*, whereas Schuessler had no contact with the victim in this case, nor were any of the actors her client. In stark contrast, she was a fact witness. Respondent's conduct involved improper handling of a client's money and sexual misconduct, not a part of the case at bar in any way. Again, any analogy is illusory.

A lawyer was charged with violation of Rule 4-303(a)(1), (2), (4) (candor toward the tribunal); and Rule 4-8.4(c), (d) (misconduct). *In re Ver Dught*, 825 S.W.2d 847 (Mo. banc 1992). Respondent represented his *client* in an appeal following the denial of Supplemental Security and Disabled Widows' Income benefits. Client had remarried, but Respondent advised her not to mention her new last name if it did not come up; if asked directly, she must respond truthfully. While under oath at an administrative hearing, client gave her prior last name—not her new married one—and Respondent did not correct her. Respondent also stated that client had only two husbands when he knew she was currently married to her third husband. After discovery of the misrepresentation, Respondent was federally

charged with suborning perjury and making a material misrepresentation of matters within the jurisdiction of the Department of Health and Human Services; he was found not guilty.

Respondent was then charged with the disciplinary rule violations. The Court noted that Respondent's participation was not passive; rather, he designed portions of client's testimony to mislead the administrative law judge (ALJ) and Respondent himself referred to client by her former surname and stated she had been married only twice.

Again, the circumstances bear no resemblance to those which bring us here. Respondent was dishonest and misleading while questioning *his client* under oath in a judicial tribunal, whereas Schuessler, while under oath, was completely honest. When Schuessler quickly acted as a whistleblower to report a fraudulent activity in the OCA, and in the questioning following in quick sequence, she attempted to recite the facts she thought material to the subject of the investigation. She did not choreograph a false narrative. Again, Respondent's actions were directly related to his representation of *his client*, whereas Schuessler initially kept to herself her own off-hand Statement, a tasteless joke that really embarrassed her.

A case that involved multiple acts of misconduct describes a scale of behaviors with which the Schuessler circumstances are simply not comparable, much less equivalent. *In re Donaho, supra*. *Client* hired and paid Respondent to

file a motion to amend child visitation. Respondent drafted the motion, client signed the document, but Respondent failed to file the completed motion. Six months passed in which Respondent moved offices and changed phone numbers, failing to inform client of same. After repeatedly ignoring client's attempts to contact him or receive a refund, Respondent finally responded to client's friend's letter requesting a refund, stating he would refund the money if client signed a release terminating representation and discharging Respondent from any potential liability. Client signed the release, but was not refunded the money.

Client filed a complaint with OCDC, to which Respondent responded. The OCDC encouraged Respondent that if paid by a certain date, full restitution would be viewed favorably. Respondent faxed the OCDC copies of money orders for full restitution, payable to client, with a handwritten note that the money orders were sent via certified mail. In light of the payment, the Committee voted to issue an admonition and close the file.

Respondent never mailed the money orders and instead cashed them in for his own use. Upon learning of this, the OCDC charged Respondent with various rule violations. The Disciplinary Hearing Panel recommended suspension. The Court reflected that procrastination in Respondent's representation and failure to refund the advanced fee *might* warrant leniency if it were not for the remaining charges.

The remaining charges involved intentional deception of the very Committee charged with insuring that members of the bar act with moral fortitude. "Misconduct involving subterfuge, failing to keep promises, and untrustworthiness undermine public confidence in not only the individual but in the bar." *Id*. at 874 (internal citation omitted). The Court stated that it regarded dishonesty before a Disciplinary Committee to be especially egregious. *Id*. at 874. Respondent demonstrated a continued inability to admit he had been dishonest.

Respondent intentionally deceived the OCDC while it was investigating *his* misconduct. On the other hand, Schuessler was completely honest in a court of law and in self-reporting the facts to the OCDC. Respondent's dishonesty was for selfish personal gain, whereas Schuessler's delay in complete candor, was out of fear and humiliation rather than a deceitful scheme to benefit herself. Respondent's actions were conscious, purposeful, and thought out over a period of time, while Schuessler's actions were more reactionary in the moment. Schuessler then admitted her wrongdoing and lack of candor, showed that she understood right from wrong, and demonstrated in the months and years following that she understands the profound duty imposed by her profession.

Informant emphasizes *In re Zink*, presumably because lying to federal authorities was an element of that case. 278 S.W.3d 166 (Mo. banc 2009). *Client* hired Zink to represent her on three felony counts of forgery. Zink communicated

to the prosecutor that his client was related to a professional football player. The prosecutor said he would reconsider his recommendation of a six-year imprisonment if Zink could produce an autographed baseball. Zink was recorded by the FBI telling his client that he could get the felonies "taken care of" if she produced the autographed baseball. *Id*. at 167. The client assembled signed memorabilia that she gave to Zink, who then told the prosecutor he had it. The prosecutor was shocked and told Zink that he did not want it. During an interview with the FBI, Zink made false and misleading statements that obtaining the baseball was only a joke—and made similar misleading statements in a later interview with the U.S. Attorney's Office. Only after Zink was confronted with the taped conversation in which he said he could get the felonies "taken care of," did he admit to the FBI and U.S. Attorney's Office that he had made false and misleading statements during prior interviews. To avoid legal prosecution, Zink entered into a diversion agreement with the U.S. Attorney's Office for a voluntary abstention from practicing law for one year, with any violation of the diversion agreement terms subjecting Zink to prosecution.

Zink was charged and found to be in violation of Rule 4-8.4(a) by violating Rule 4-1.4 in that he failed to tell *his client* of the limitations on his conduct when he knew she expected assistance not permitted by the Rules of Professional Conduct; making untruthful statements of *material* fact during his interviews with

the FBI and U.S. Attorney's Office; and by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation when he made these untruthful statements of material fact; and when he told his client he could obtain a reduction on her felony charges in exchange for the sports memorabilia. The Court noted that Zink's punishment should be harsher than that of the prosecutor (who received a public reprimand) because Zink intentionally lied to federal agents and the U.S. Attorney's Office in the course of their investigation. Zink's license to practice law was indefinitely suspended with leave to reapply in six months.

Zink's conduct involved direct conduct with *his client*, not so, Schuessler's. Zink's six-month suspension was not based solely on his dishonesty with the FBI and U.S. Attorney's Office, but rather, his underlying misconduct—prior to the interviews—was a significant part of the reasoning for the sanction. In contrast, Schuessler's interview with federal authorities was not spawned by her own prior misconduct, but rather the misconduct of someone else. Before any admission that he lied, Zink was confronted with evidence of his own recorded words that could not be controverted. Schuessler—very soon after any misrepresentation—divulged all of the facts, due to her own conscience, albeit not in her initial interview.

Informant tries to rationalize a longer suspension than Zink because Zink engaged in a voluntary abstention from practice for one year. However, the Court was purposeful in noting that the diversion agreement was an independent

agreement between Zink and the U.S. Attorney's Office, and Zink received the benefit of his bargain for that agreement in that he was not criminally prosecuted. The diversion agreement did not seek to address the ethical implications of Zink's conduct and the Court would not give him credit for "time served" for an abstention that was not ordered by the Court. Again, Zink involves an attorney's relationship with *his client* and the misconduct that was part of it in addition to his deceit. Moreover, Zink's underlying acts had criminal implications. The fact that Schuessler had responsibilities as a "minister of justice," related more to Waller, a suspect being wrongly charged; she, in effect, came to his aid with her whistleblower report.

The foundational reasons for the lawyer disciplinary process have been satisfied in that the public does not require protection from Schuessler's practicing law. Schuessler's long ago correction of her misrepresentation; full cooperation and assistance to the U.S. Attorney's office in bringing and making its case against Carroll; and her candor with the OCDC and the ensuing process all demonstrate that the integrity of the legal profession is not at risk.

Coupled with the weight of the mitigating factors and the flexibility afforded the Court in imposing discipline, no more than a reprimand is called for. *See In re Forck*, 418 S.W.3d 437, 444 (Mo. banc 2014) ("This Court adheres to a practice of applying progressive discipline when imposing sanctions on attorneys who commit

misconduct"). Schuessler had no disciplinary record nor has she been other than ethical and well-respected in the four-plus years since the incident that sparked the current disciplinary process. Schuessler's was an isolated instance of misconduct; while it "should not be trivialized, it is apparent from the record that the harm to the [system] was minimal." *See In re Kopf*, 767 S.W.2d 20, 23 (Mo. banc 1989). "The basic issues in a disciplinary proceeding against a lawyer are whether discipline should be imposed and, if so, the type of discipline appropriate under the circumstances. Each attorney discipline case must be decided on its own merits and every offending attorney must receive the disposition most appropriate in the circumstances." 7 Am.Jur.2d Attorneys-at-Law, § 101 (Nature of attorney disciplinary proceedings).

For four and one-half years, Schuessler has endured chaos, despair and fear for her future. Counseling was needed and received well before any complaints were filed with OCDC. In short, Schuessler has been punished and punished severely. The stigma of the July 2014 events and their aftermath will never dissipate. Yet, through it all, Schuessler has managed to blossom into a well-respected member of the Family Law Bar. Any discipline imposed by this Court should be no more severe than the reprimand recommended by the Disciplinary Hearing Panel.

CONCLUSION

Informant's charges of Schuessler's professional misconduct have not been proved by a clear preponderance of evidence. Moreover, Schuessler's whistleblower report of a colleague's misconduct and her cooperation with federal prosecutors in making the government's case against an errant police officer aided the administration of justice.

As the goals of attorney discipline have been fulfilled, any discipline imposed by the Court should not exceed the Reprimand recommended by the Disciplinary Hearing Panel.

CERTIFICATE OF COMPLIANCE

I hereby certify that the attached brief complies with Rules 55.03, 84.06(b), 84.06(c), and 103.08, and contains 15,417 words, excluding the cover, this certification and the signature block, and the certificate of service, as counted by Microsoft Word.

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CERTIFICATE OF SERVICE

I hereby certify that the electronic copy of this Brief was scanned for viruses and found to be virus free; and that notice of the filing of this Respondent's Brief, along with a copy of this Respondent's Brief was sent through the Missouri eFiling System on this 19th day of December, 2018, to:

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