

**IN RE:**

**AMBRY NICHOLE SCHUESSLER**

130 S. Bemiston Ave., Suite 400

Clayton, MO 63105

Missouri Bar No. 66214

Respondent.

**Supreme Court No. SC97376**

## INFORMANT'S REPLY BRIEF

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## **ARGUMENT**

### **I.**

**THE SUPREME COURT SHOULD SUSPEND RESPONDENT SCHUESSLER BECAUSE SHE LIED TO HER CIRCUIT ATTORNEY SUPERVISORS, INTERNAL AFFAIRS, THE U.S. ATTORNEY AND FBI ABOUT HER DIRECT KNOWLEDGE OF AN ILLEGAL POLICE ASSAULT:**

**(A) SCHUESSLER CONTRADICTS HER SWORN TESTIMONY IN FEDERAL COURT DURING WHICH SHE ADMITTED LYING TO BOTH STATE AND FEDERAL INVESTIGATORS;**

**(B) SCHEUSSLER'S CLAIM OF HERO WHISTLEBLOWER STATUS AFTER SHE LIED TO STATE AND FEDERAL INVESTIGATORS DEMONSTRATES THAT SHE HAS NOT TAKEN FULL RESPONSIBILITY FOR HER MISCONDUCT.**

**(C) SCHUESSLER WAS ACTING IN A REPRESENTATIVE CAPACITY WHEN SHE MADE A RACIST AND HOMOPHOBIC SLUR IN THE PRESENCE OF A FELLOW ASSISTANT CIRCUIT ATTORNEY AND POLICE DETECTIVE.**

This Reply Brief is intended to reply only to issues raised by Respondent Schuessler in her brief. The Court is directed to Informant's initial Brief and the Appendix for a more thorough analysis.

**Schuessler Contradicts Her Sworn Testimony In Federal Court During Which She  
She Admitted Lying to Both State and Federal Investigators**

In her brief, Schuessler claims to have made only "one lie:" The lie she told AUSA Goldsmith and the FBI agents that Det. Carroll made a racist and homophobic slur to the victim while shoving his gun down the victim's mouth. (Respondent's Brief, pg. 18).

Schuessler is contradicting her sworn testimony from Det. Carroll's sentencing hearing, during which she admitted lying, not only to the federal investigators, but also to her supervisors and Internal Affairs detectives, about her direct knowledge of the police assault, which included the use of a gun:

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 [Supervisor] Pippa Barrett, you lied, didn't you?

A. In the IAD [Internal Affairs Department] conversation?

Q. Yes.

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

**(App. Vol. 5, pg. 1460).**

Schuessler lied a total of three times: first, to her supervisors, when she concealed the existence of the phone conversation during which Det. Carroll admitted to assaulting a suspect and using his gun; second, to the Internal Affairs sergeants (with her supervisors present), when she admitted to being present for the phone conversation, but falsely claimed she could hear only Worrell's voice; and third, to AUSA Goldsmith and two FBI agents, when she admitted to hearing the full conversation on speakerphone, but falsely attributed the biased slur to Det. Carroll as part of his commission of the assault.

**Schuessler's Claim Of Hero Whistleblower Status After She Lied To State And  
Federal Investigators Demonstrates She Has Not Taken Full Responsibility For Her  
Misconduct**

In her brief, Schuessler wants to be viewed as a hero because she accompanied ACA Collins when Collins reported Worrell's illegal charging actions, thus triggering the initial investigation.

Schuessler's claim sounds a false note considering her failure to take full responsibility for remaining silent and lying about Det. Carroll admissions, including his use of a gun. It was the "use of a gun" which was in dispute at Det. Carroll's sentencing hearing. Schuessler was needed as a prosecution witness. The only other person who heard Det. Carroll's admission was ACA Worrell, who, because of her guilty plea, had a credibility problem. Schuessler's credibility should have been pristine. Instead, by having lied on three occasions regarding the use of a gun, Schuessler's credibility was damaged and then impeached by Det. Carroll's attorney on cross-examination. It is also relevant

that Det. Carroll's attorney thought it tactical to point out that Schuessler asked for immunity before agreeing to testify:

Q: You came here today and you asked for Fifth Amendment protection; is that right?

A: Yes.

(App. Vol. 5, pg. 1485-486).

**Schuessler Was Acting In A Representative Capacity When She Engaged in  
Conversation With Det. Carroll and ACA Worrell**

In her brief, Schuessler contends that because she was not "enforcing the law" at the time of her "joke," she was not representing the People of Missouri and therefore not violating Rule 8.4(g). (Respondent's Brief, pp. 22-27).

Schuessler, as a full-time prosecutor, certainly was enforcing the law. She was engaged in conversation with Det. Carroll and ACA Worrell at her desk, in the circuit attorney's office, during normal working hours, discussing a crime committed in her jurisdiction. Comment 4(c) to Rule 8.4(g) reminds lawyers that the rule is inclusive of conduct that creates an "intimidating, hostile or offensive environment" at work. This scenario is easily contrasted with a crude joke made outside the office and after hours, especially if the crude joke is wholly unrelated to a lawyer's daily professional tasks, and no colleagues are present.

Assuming the Court holds that Rule 8.4(g) applies to lawyers only when they are working on a case in the judicial system, Schuessler, at the time she made the slur, was in fact representing a client: "I was preparing for trial." (App. Vol. 5, pg. 1495).

Schuessler's separate argument that Rule 8.4(g) is unconstitutional is wrong. In *In re Westfall*, 808 S.W.2d 829 (Mo. banc 1991), the Court held that regulating lawyer speech directed at the conduct of a judge (Rule 4-8.2) survived first amendment scrutiny in light of the compelling state interests served. Those same compelling state interests of protecting the public and the administration of justice permit the Court to regulate Respondent's speech under Rule 8.4(g).

### **CONCLUSION**

A clear preponderance of the evidence demonstrates that Schuessler violated Rules 8.4(c) and 8.4(d) by failing to disclose information and lying about her knowledge of an illegal police assault, particularly Det. Carroll's admission of using a gun. Schuessler also violated Rule 8.4(g) for demonstrating bias or prejudice at the circuit attorney's office. Schuessler's most serious violation was the prejudice she caused to the administration of justice by damaging her credibility as a prosecution witness at Det. Carroll's sentencing hearing and by calling into question the integrity of the criminal justice system.

In order to protect the public and the integrity of the profession, Informant respectfully requests that the Court reject the DHP recommendation and enter an order indefinitely suspending Schuessler 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 31<sup>st</sup> day of December, 2018, the Informant's Reply Brief was sent through the Missouri Supreme Court e-filing system to Respondent's counsels:

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Marc A. Lapp

**CERTIFICATION: RULE 84.06(c)**

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

1. Includes the information required by Rule 55.03;
2. Reply Brief served upon Respondent's Counsel by Missouri Supreme Court e-filing system;
3. Complies with the limitations contained in Rule 84.06(b);
4. Contains 1,365 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and



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Marc A. Lapp