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IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
Thomas Eagleton Hollingsworth	)	**Supreme Court #SC100697**
	)	
Respondent.	)	

INFORMANT'S BRIEF

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STATEMENT OF JURISDICTION

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

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STATEMENT OF FACTS

The disciplinary hearing was held on April 12, 2024. Testifying were Jefferson County family attorney, ("NP"); Jefferson County Assistant Public Defender, ("CA"); Jefferson County District Public Defender, ("PA"); and Jefferson County Assistant Prosecutor, Thomas (Tom) Hollingworth ("Respondent"). (Tr. 1-127).[1] Informant's nine exhibits and Respondent's one exhibit were received in evidence. (R. 12-43).[2] Respondent was pro-se.

Respondent was born on July 14, 1971. (Tr. 89). Respondent became licensed as an attorney in Missouri on or about September 17, 2003. Respondent's Missouri Bar number is 54915. Respondent's license is currently in good standing with no disciplinary history. (R. 33, 38). For the past sixteen and one-half years, Respondent has been an Assistant Prosecuting Attorney for Jefferson County. (Tr. 89). He is a former President of the Jefferson County Bar Association. (Tr. 21).

June 9, 2023 Email Incident

On June 9, 2023, Respondent was on "posted duty" on behalf of the State in Division 1 at the Jefferson County Courthouse (Hillsboro). He had cases on the docket. (Tr. 91).

The photographs of Division 1 show a smaller courtroom with two counsel tables. The judge's bench is in the top right corner. In the top left corner is the jury box. To the

[1] Citations to the pages of the Transcript of Disciplinary Hearing are noted as (Tr. #).

[2] Citations to the pages of the Record are noted as (R. #) and for exhibits as (R. #, Ex. #).

left of the jury box is a doorway into the jury room. The jury room contains a long conference room table surrounded by chairs. (See R. 30-32, Ex. 7).

Assistant Public Defender CA testified:

> So during a Division 1 docket the jury room is typically used for attorneys to fill out paperwork, fill out forms for the court. It can be used for negotiations or for conversations between the parties or with probation officers, things like that.
>
> I would say most attorneys will leave their computers in there or bring their computers in there with them to do these things. They may need to look at CaseNet or they may need to look at client files if they're working on a case for instance.

(Tr. 29).

CA added:

> Usually I would only leave the computer unlocked if I was going to be stepping out for a few minutes. More than anything I guess I didn't feel unsafe doing so because clients, the general public weren't allowed back there by the court.

(Tr. 30).

CA further testified that there was trust among lawyers not to look at each other's computer. (Tr. 30):

> Most attorneys that I'm aware of, people in my office, don't feel the need to really be concerned about [locking their

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> computers] because we wouldn't think attorneys would get into other people's computers.

(Tr. 55).

CA recalled Respondent "making comments about me leaving my laptop open, implying or directly saying that someone could mess with it or someone could get into it. I always took them as jokes." (Tr. 30).

Family attorney NP testified that the jury room is generally where counsel in family law cases also meet in Division 1. Attorneys are "[s]itting at the conference table, working on their computers. Even sitting around the perimeter working on laptops." (Tr. 18). NP also testified there is trust among lawyers in the Jefferson County family law practice not to look at each other's computer. (Tr. 18).

Respondent confirmed that "sometimes" attorneys are working on their computers in the jury room during the docket. (Tr. 90).

Prior to June 9, 2023, Respondent had the idea of playing a prank on an unsuspecting lawyer by sending an email from their unattended computer to the elected sheriff of Jefferson County ("the sheriff"):

> The idea of sending such an email to the sheriff from a lawyer's computer had occurred to me months before, the idea of doing it. Now, whether it was going to be from [CA]'s or a public defender's laptop, in fact, I had a couple other targets picked out, but I never did have the opportunity to do it.

(Tr. 90-91).

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Respondent testified that he picked the sheriff as a "good target" for the email to go to:

> The sheriff being between elected official and also the chief law enforcement officer of the county, was in a position of power and respect. This email was so completely impossible and disrespectful, that it would have been obviously a joke.

(T. 92).

During the docket call in the morning on June 9, 2203, CA left his computer in the jury room unattended "to do a felony plea" in the courtroom. (Tr. 30-31). Respondent noticed CA's absence and chose to conduct his plan:

> Present in the jury room with me were Mr. ["PS"] and Mr. ["TG"], both member of the defense Bar and both relatively young men with good senses of humor. I think part of why I did it was to impress them."

(Tr. 91).

Respondent testified that he "intentionally" accessed CA's computer without permission. (Tr. 93). He sat down in between "[PS] and [TG]" and saw the open email screen. (Tr. 93-94). Respondent stated that knew what he was going to type: "It would be both surprising, shocking and amusing." (Tr. 92). He proceeding to speak aloud to the young attorneys as to what he was doing:

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> Something to the effect of oh my, [CA] left his email open, okay. Open. New email, to [work email address of the sheriff]. Subject line blank. I turned to [PS] and said that will be opened. And then I spoke the words that I placed in that email. And then I remarked that if I do it, I get a whipping. And then I showingly (sic) with trigger finger clicked sent.

(Tr. 94).

The "sent" email at 9:40 a.m., with CA's Missouri State Public Defender Office's signature block, read:

> [First name of the sheriff],
>
> You look sooooo good in Khaki pants and that black shirt.
>
> Warm Regards,
>
> [CA's first and last name]

(R. 15, Ex. 1).

According to Respondent, "the black shirt in question is a black polo shirt that the sheriff had instituted shortly after he became the sheriff as part of their informal uniform. The sheriff's black polo shirt has a badge together with the name [last name of the sheriff] and Sheriff." (Tr. 96).

After sending the email, Respondent felt "[f]ull of Schadenfreude. It's a German word. It means shameful joy." (Tr. 95). Respondent testified that he "got a kick out of it." (Tr. 96). When asked how the two attorneys sitting next to him reacted, Respondent testified:

> Gleefully. More shameful joy. Mr. [PS] said words of praise. I don't remember what they were. Mr. [TG] laughing said do you think I should tell the sheriff. That's when I said yes, right away.
>
> Mr. [TG] and [the sheriff] have a preexisting relationship such that Mr. [TG] was able to just send, I believe, a text message to the sheriff to inform him of what had transpired.

(Tr. 96-7).

Respondent testified he personally did not notify the sheriff or CA as to what he had done. (Tr. 97, 99). "It had cross[ed] [Respondent's] mind that it was simply wrong and inappropriate to send the email prior to sending it." (Tr. 99). But, Respondent testified, he sent it anyway, "because it was funny." (Tr. 99).

Shortly thereafter, family attorney NP walked into the Division 1 courtroom for the docket call and saw Respondent. According to NP:

> [Respondent] followed me into the jury room and was excited to share with me that he had sent an email from one of the public defender's laptops to, the email being directed to [the sheriff], telling [the sheriff] that he looked good in his khaki pants and black shirt.

(Tr. 19).

NP testified:

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> I was shocked. Based on [Respondent's] personality I was not surprised. But I responded to him in a discouraging way, like, [first name of Respondent], you cannot do that, like that is - - that's not okay.

(Tr. 19).

> * * *
>
> [I]t was a prosecutor on a public defender's computer, and there is presumably confidential information if that public defender's cases [are] on that computer.

(Tr. 19).

Shortly thereafter, CA returned to the jury room. Present were NP and another local attorney. (Tr. 31). NP told CA to look at his computer, specifically to check his email. (Tr. 31). She said it "very cryptically, so [CA] was immediately pretty concerned." (Tr. 31). CA testified that he looked in the sent folder and saw there was a message to the sheriff. He opened it and saw the email which was sent from his email address to the sheriff. (Tr. 31). CA described his reaction:

> I think I was mostly in shock. I was of course angry. I think most of all I was a little freaked out because of who this was sent to. Obviously, the elected sheriff of the county where I work and now live in has a lot of power and authority and influence. And I was I think primarily afraid that this was going

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> to come back on me in some way and could cost me my job or something.

(Tr. 33).

CA testified that either NP or one of the two attorneys who were witnesses told him that, "[Respondent] had sent the email, or was on my computer." (Tr. 33). CA did not think the email was funny. (Tr. 33). CA described the email message as "flirtatious in nature." (Tr. 33). "Objectively speaking," according to CA, the email was "of a sexual nature." (Tr. 56). CA "felt the need to immediately tell the sheriff that it was not [him] who sent the email. And I was pretty emotional when I sent the [follow-up] email, so it wasn't the most professional email in the world." "I was upset." (Tr. 36). According to CA's testimony, the sheriff replied, "no worries." (Tr. 56).

CA explained that the public defender system uses a program called IBM Notes, where all the clients' case files are kept digitally:

> It's basically a big server that's connected all of [the public defender] offices together. Our email system is also in that same program. So there's a tab with case information, there's a tab for emails, there's a tab for our expert database, a tab for expense reports, things like that.
>
> So essentially all of the work we do that doesn't use the Internet is on this one program. So I would imagine that what was open at that time would have been the database of client information

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so I could look at client cases and things like that, my notes for those cases, and then the email service.

(Tr. 39-40).

At the time of the incident, CA's computer was connected to the Wi-Fi system in the courthouse and logged into the Missouri public defender system through a VPN (Virtual Private Network). (Tr. 39-40).

Events Following Email Incident

CA testified that following the incident he went back to his office. He wanted to speak with his supervisors, District Defender PA and TF. PA was not in. So, CA spoke to TF:

I think I was venting to some of the other attorneys in the office about it and kind of saying like what should I do, this is crazy, like who would do something like this.

(Tr. 34).

CA testified, he "cooled off" over the weekend. (Tr. 34). On Monday, he spoke with District Defender PA. According to CA, PA advised him not to confront Respondent about the incident and not to speak about it with anyone else. CA testified that he let PA handle it. (Tr. 34).

In addition, CA testified that he had not received a verbal apology from Respondent following the incident. (Tr. 34). On cross-examination at the hearing, Respondent asked CA: "Do you now accept my apology?" CA testified: "I do, yes." (Tr. 45).

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Respondent further inquired of CA:

> Q Other than this event, have you ever been the butt of a joke?
>
> A I'm sure I have.
>
> Q It's unpleasant, isn't it?
>
> A Yes.
>
> Q And yet it can be objectively funny to other people?
>
> A Yes.

(Tr. 46).

In the days following the incident, CA testified he attended at least one, if not multiple, office meetings with District Defender PA and other leadership in the Missouri State Public Defender's Office about how to handle possible issues concerning pending cases with Respondent: "The major issue being the possibility of [Respondent] getting into my laptop that [Respondent] had possibly seen confidential client information or correspondence with clients." (Tr. 38).

According to CA, the fact that Respondent had possibly accessed confidential client information created the need for a discussion with each affected client:

> I do not know whether that in fact happened or not. I have no reason to believe specifically that happened, but we sort of had to strategize about what our ethical obligations to our clients were.

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> And I know [PA] had a meeting with [Respondent's] employer, [elected Jefferson County Prosecuting Attorney, TS,] sort of about how this would go. And [PA] sort of put together this motion for disqualification template.
>
> We were instructed to talk with our clients about … if they had a case open with [Respondent] at the time, about whether they were comfortable with him remaining assigned to their case, the pros and cons of taking him off the case or leaving him on. For instance, there was no guarantee that another prosecutor would honor a previous plea offer or agreements on the case. So it may have been in the client's interest to keep [Respondent] on the case.
>
> * * *
>
> If the clients after being advised of the situation decided that they wanted [Respondent] off the case, we were instructed to file this motion. And then we had sort of an understanding with the prosecutor's office that they would then reassign [the] case. And once the reassignment happened in the file, we would then withdraw the motion.

(Tr. 38-39; See template documents: Motion for Disqualification; Filing Memorandum Assigning [New] Prosecuting Attorney; Withdrawal of Motion) (R. 24-28, Ex. 6).

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District Defender PA confirmed that nineteen such motions to disqualify Respondent were filed after each client's consultation and authorization. (Tr. 64-67; R. 24-28, Ex. 6). PA approximated that 80 to 100 cases were potentially subject to disqualification. (Tr. 82). Citing *State v. Boyd*, 560 S.W.2d 296, 297 (Mo. App. 1977), the motions explained Respondent's duty as a prosecutor to avoid any "appearance of impropriety." "It is unnecessary for prosecuting attorney to have acquired knowledge which could operate against the defendant, it is enough if he places himself in a position which leaves him open to such charge." *Id*.

PA confirmed that he consulted with Prosecuting Attorney TS before filing the motions. "And that became [the Prosecuting Attorney's Office's] policy, was that when we would file [each] motion, they would simply exchange prosecutors and then we would withdraw the motion." (Tr. 65).

During cross examination of CA, Respondent insinuated that filing such motions was a strategic move on the part of the public defender's office to remove Respondent from cases where Respondent was not the optimal prosecutor to have. (Tr. 48). In response to the insinuation, CA answered:

> No. The entire purpose of having a conversation with the clients about this is whether or not they were comfortable with you remaining on the case due to the possibility that you viewed their information.

> And often clients would not want you off the case because they felt that you made them favorable offers. So I would say it was actually pretty rare in the office to have you taken off the case.

(Tr. 49).

Respondent testified that the disqualifications had "largely occasion[ed] delays" for the resolution of the nineteen cases. (Tr. 123).

As to the content of the email sent by Respondent, District Defender PA testified that it "seemed to be some sort of sexual reference. I mean, commenting on [the sheriff's] appearance in court, or appearance generally certainly seems to be a sexual reference. It was inappropriate." (Tr. 70).

During his testimony, Respondent characterized his email message as "flirtatious, [but] not sexual. It assumes a familiarity that did not exist." (Tr. 95). Respondent said he commented about the sheriff's body in the email, "[b]ecause [he] thought it would be funny." (Tr. 95). According to Respondent, "humor is hard to come by in [the legal] profession, making it "even more valuable." (Tr. 50).

Respondent's Written Reprimand at Work

Respondent testified he did not inform Prosecuting Attorney TS following the incident on Friday. (Tr. 100). On the following Monday, Respondent was called into TS's office. (Tr. 100). Respondent received "what is colloquially called a good ass chewing." He claimed TS "was smiling while she chewed my ass." (Tr. 101).

On June 28, 2023, TS delivered to Respondent a Written Reprimand and Mandatory Performance Improvement Plan (MPIP), finding Respondent violated the County's

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policies regarding good relations among employees and the ethical and responsible use of computer information systems. The Written Reprimand stated:

Disciplinary Reprimand

Thomas Hollingsworth

June 28, 2023

As stated in the Jefferson County Personnel Administration Program:

Section 120.390 Appropriate Conduct

A. … Any action, activity, or behavior whatsoever that tends to destroy good relations between the County and its employees … that affects the safety, security, and well-being of its employees, citizens, or suppliers, that affects the performance of any employee or that is illegal is prohibited by the County.

Section 120.360 Internet Usage Policy.

* * *

2. Unacceptable/Prohibited Use

… Any infractions of [the following] unacceptable or prohibited usage guidelines will not be tolerated and may result in disciplinary action up to, and including, termination of employment.

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> I. Hate mail, harassment, discriminatory remarks, and other antisocial behaviors using the network.
>
> **Infraction(s)**: On June 9, 2023, Mr. Hollingsworth accessed the laptop of Public Defender Charles [CA] while Mr. [CA] was out of the room. Mr. Hollingworth accessed Mr. [CA]'s email and sent a message to the Jefferson County [sheriff] which stated "[First name of the sheriff], you look sooooo good in Kahki (sic) pants and that black shirt." The email was signed with Mr. [CA]'s signature block. The computer that Mr. Hollingsworth access[ed] contained confidential information regarding public defender files.

(R. 21, Ex. 3, p. 3).

The six-month Mandatory Performance Improvement Plan (MPIP), signed by Respondent, explained the impact of Respondent's misconduct on the prosecutor's office and required Respondent to comply with a plan of action:

> Not only was there a witness to the act itself, but other individuals overheard Mr. Hollingsworth talking about it in the courtroom.
>
> Because of his actions, the Public Defender's Office has indicated it may file a Motion to Disqualify Mr. Hollingsworth. If granted, these cases will need to be transferred to other

attorneys within the Prosecutor's Office who already have an excessive caseload.

* * *

Plan of Action:

…It is the expectation of Jefferson County that you will refrain from all inappropriate conduct in the future...

You will engage in professional conduct and professional interaction with other employees while in the performance of your job responsibilities. Maintain a professional and positive attitude. Adhere to all workplace policies…

You will write a letter of apology to Mr. [CA] and [the] Sheriff. Said letters will be proofread prior to being sent … (Section 120.600 (F)(l)).

(R. 18-20, Ex. 3, pp. 1-2).

Respondent testified that he "was forbidden by the terms of his [MPIP] from contesting [the] motions to disqualify." (Tr. 115).

The following is Respondent's letter of apology to CA, hand-written on a sheet from Respondent's desk pad containing the seal of the State of Missouri, dated July 13, 2023:

Dear Mr. [CA]:

I apologize for using your email. It was a stupid, juvenile thing to do, ill-befitting a member of the bar.

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I deeply regret any embarassment (sic) it caused you and I hope to, in time, earn back the trust I have lost.

Sincerely,

Tom Hollingsworth

(R. 23, Ex. 5).

CA testified that he received Respondent's written apology just recently. (Tr. 35). According to CA, Prosecuting Attorney TS had intended to get the apology letter to CA right away and took responsibility for the eight-month delay. (Tr. 35).

The following is Respondent's letter of apology to the sheriff, hand-written on a sheet from Respondent's desk pad containing the seal of the State of Missouri, dated July 13, 2023:

Dear Sheriff [last name],

I apologize for sending you that inappropriate email from someone else's email address. It was a juvenile, towel-snapping thing to do and I should have known better.

I regret any embarrassment it caused you.

Sincerely,

Tom Hollingsworth

(R. 22, Ex. 4).

With respect to using the phrase, "towel-snapping," Respondent testified that he "wished to make reference to sort of an inappropriate locker room activity among young men and older men who behave in a juvenile manner." (T. 98). He described towel

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snapping as "taking a slightly damp towel and spin[ning] it up and us[ing] it like a whip. It can be used to inflict pain." (Tr. 98).

Respondent's Additional Testimony

Respondent testified that he did not consider how others in the legal community who became aware of the email might think differently of CA or the Sheriff. (T. 98). However, Respondent did consider how others might think of him:

> Well, I thought that they would think it was inappropriate mischief and be amused by it. And that was in fact most of the feedback that I got.

(Tr. 99).

Respondent added: "I believe humor is important, especially when one is dealing with dreadfully serious matters. It provides a release." (Tr. 116).

Respondent further testified that honesty, trustworthiness, and avoiding the appearance of impropriety are important attributes of a prosecutor. (Tr. 109-11). Respondent admitted that sending the email involved "dishonesty, deceit, and misrepresentation" and created the "appearance of impropriety." (Tr. 110-11).

Respondent confirmed certain language he used in his Response to the OCDC Complaint: "I sent what I thought was a harmless, flirtatious email to an elected official under the name of my friend, [CA], and it was funny." (Tr. 107; R. 16, Ex. 2). Respondent also confirmed certain language he used in his Answer to the Information: "[M]any forms of humorous communication involve deceit or misrepresentation…" (Tr. 109-10; R. 40, Ex. 9).

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Respondent's History and Character

Each of the witnesses, including Respondent, testified to Respondent's history and character of inappropriate jokes and comments containing sexual innuendo made during working hours.

Attorney NP, a family law attorney at a local law firm and the current President of the Jefferson County Bar Association, has known Respondent since 2010. (Tr. 14). NP is also the prosecutor for the city of Crystal City in Jefferson County. (Tr. 13-4). NP described Respondent as "a bit mischievous," and that, "it would be generally accepted that some of his behavior is inappropriate." (Tr. 15). As an example, NP recalled appearing at a docket in what was Division 2 at the time [Jefferson County Courthouse in Hillsboro], and [Respondent] came next to me and said he was finished for the day, it was pretty early in the morning on this docket, and that he would be going home for an "afternoon delight."[3] She interpreted, "[t]hat he would be going home to have intercourse with his wife." (Tr. 15). NP was bothered by the comment and reported the incident to a supervising lawyer at her law firm. (Tr. 24).

Assistant Public Defender CA, a 2019 law school graduate, testified that he had "observed [Respondent] say things that [CA] would consider to be inappropriate in a

[3] "Afternoon Delight" is a song recorded by Starland Vocal Band. *The Billboard Book of Number 1 Hits* (5th ed.), p. 438. ISBN 0-8230-7677-6.

The song is filled with double entendres referring to midday sexual encounters. https://americansongwriter.com/the-rather-randy-meaning-behind-afternoon-delight-by-starland-vocal-band/#:~:text=The%20song%20is%20filled%20with,fun%20and%20hinted%20at%20sex.

professional setting or in a courtroom setting." (Tr. 26, 28). CA added: "I know that I've personally seen him make flirtatious comments towards female attorneys. I can't remember the specific wording of them. Again, I don't think they were sincere, but they were probably inappropriate I would say." (Tr. 28).

Ten-year District Public Defender PA testified: "At various times, I've had attorneys complain about jokes that [Respondent] made or things that [Respondent] has said to them that they thought crossed the line or were unprofessional." (T. 59). Within the past two weeks, separate from the incident that is the subject matter of the instant Information, a female attorney reported to PA that Respondent had made a "crude, sexual comment, some sort of oral sex joke." PA reported this separate incident to the public defender's human resources office. (Tr. 58-59, 78-79).

Respondent confirmed that he had said something to that female attorney, but "was not aware that [what he said] was considered inappropriate." (Tr. 112-13). Respondent admitted, however, that in the past he has "made sexual jokes, sexually (sic) innuendo type jokes to members of the Bar." (Tr. 103). He described himself as a "mischief maker." (Tr. 100).

Closing Arguments

Respondent argued in closing that he "may have been allowed access to the [jury] room because I was a lawyer and a prosecutor, but that was incidental. I was not acting as a prosecutor when I sent that. I was acting as a juvenile and as a fool, a court fool." (Tr. 116). Respondent denied any intent to sexually harass or interfere with the administration

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of justice. (Tr. 116). Respondent admitted to violating Rule 4-8.4(c), but denied violating 4-8.4(d), 4-8.4(g), and 4-4.4(a). (Tr. 108-09; R. 38-41, Ex. 9).

Informant argued for a suspension. Respondent argued for an admonition. (Tr. 119-26). The proceedings were concluded. (Tr. 125).

DISCIPLINARY HEARING DECISION

Initially, the DHP issued an admonition, finding only a violation of Rule 4-8.4(c). (R. 47-48). Informant rejected the admonition. (R. 49).

On June 10, 2024, the DHP issued a majority decision recommending a reprimand. (R. 51-68). After reciting its findings of fact from the evidence presented, the panel made findings as to each of the charged rules.

Rule 4-8.4(c): The panel found: "The Respondent is guilty of professional misconduct as a result of violating Rule 4-8.4(c)" by virtue of his admission in his Answer of "conduct involving deceit and misrepresentation." (R. 59).

Rule 4-8.4(d): The panel found "The Respondent is not guilty of professional misconduct under Rule 4-8.4(d)." (R. 59). According to the panel, Missouri cases indicate that violations of the rule typically involve an attorney whose actions "were designed to subvert the judicial process." (e.g., threats, conflicts of interest, lying, submitting false court papers, making false statements in discovery or to the court, signing and attempting to enforce an impermissible fee agreement). (R. 59-60). Acknowledging that motions to disqualify Respondent were made and allowed and causing at least some delay, the panel found: "Respondent did not intend to subvert the judicial process." (R. 60). Furthermore,

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the panel found: "There is also no evidence that Respondent intended to access confidential attorney-client information or attorney work-product or that he did so." (R. 60).

Rule 4-8.4(g): The panel found: "The Respondent is not guilty of professional misconduct under Rule 4-8.4(g)." (R. 60). According to the panel, the email "was not overtly sexual in nature." (R. 61). Moreover, citing a Missouri Human Rights Act case, the panel found that Respondent's conduct did not rise to an "actionable level of [sex or sexual orientation] harassment as a matter of law." (R. 61).

Rule 4-4.4(a): The panel found: The Respondent is not guilty of professional misconduct under Rule 4-4.4(a). (R. 61). According to the panel, Respondent sent the email as a joke: "Respondent did not intend to embarrass [CA], and no client rights were violated by sending the email." (R. 61).

The panel acknowledged this Court has held that reprimand is appropriate only where the attorney's breach of discipline does not involve dishonest, fraudulent, or deceitful conduct, but found "the facts of [this] case warrant relief from the rule." (R. 62).

The panel found that Respondent did not engage in deceitful conduct "to further his own interests or those of his client," thus distinguishing his actions from other cases where the Court has imposed suspension. (R. 62-63). According to the panel, this case involved a joke: "Respondent as a joke represented himself to be another attorney in sending an email, admitting to doing so thereafter, was truthful thereafter, and attempted to rectify the situation. Respondent has no prior discipline." (R. 64).

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Moreover, the panel found: "Even in cases involving disbarment, the recommended discipline is presumptive and aggravating and mitigating factors must be considered in arriving at an appropriate discipline." (R. 64).

The panel then listed the following mitigating factors. According to the panel:

1. Respondent had no disciplinary history.
2. Respondent had no dishonest or selfish motive. Respondent did not benefit financially nor was seeking to benefit financially from his act.
3. Respondent acted timely to rectify the consequences of his act. At his supervisor's direction, he wrote apology letters to Mr. [CA] and [the sheriff] within three to four weeks of the incident. The letters were not delivered until March 2024, but this appears to have been due to the fact that his supervisor held onto the letters.
4. Respondent made full and free disclosure to the disciplinary board and was cooperative during the proceedings and at the hearing.
5. Respondent did not seek to delay the disciplinary proceedings.
6. Respondent received other penalties and sanctions. His employer placed him on a six-month performance improvement plan.

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7. Respondent was remorseful. In addition to [CA] and [the sheriff]'s letters, he apologized to [CA] at the hearing and admitted that his conduct was not appropriate.

8. The three witnesses testifying on behalf of the OCDC testified that Respondent had a reputation for "unprofessionalism" because he tells "inappropriate jokes" and is "flirtatious" with female attorneys. On the other hand, Respondent had been elected President of the Jefferson County Bar Association, which is some evidence that he is held in regard by other members of the local bar. None of the witnesses testified that Respondent had a reputation for dishonesty. Given the foregoing, this factor is neutral.

(R. 64-65).

With respect to the argument that Respondent engaged in a pattern of misconduct, the panel stated that it heard evidence only of the "isolated incident" regarding the "afternoon delight" comment, "which Attorney [NP] interpreted as a sexual statement." (R. 65). According to the panel, the other testimony regarding prior or subsequent misconduct was "inadmissible hearsay" with "no probative value." (R. 65). In a footnote, the panel stated that the isolated incident "might be relevant had the panel determined Respondent violated Rule 4-8.4(g)." (R. 66).

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The panel found one aggravating factor, - "the fact that Respondent is an experienced attorney who has been practicing law for over 20 years." (R. 65).

The panel then analyzed the ABA Model Standards for Imposing Lawyer Sanctions, specifically ABA Standard 5.2 (Failure to Maintain the Public Trust), specifically for reprimand and admonition:

> Standard 5.23 provides that: Reprimand is generally appropriate when a lawyer in an official or governmental position negligently fails to follow proper procedures or rules, and causes injury to or potential injury to a party or to the integrity of the legal system.
>
> Standard 5.24 provides that: Admonition is generally appropriate when a lawyer in an official or governmental position engages in an isolated instance of negligence in not following proper procedures or rules, and causes little or potential injury to a party or to the integrity of the legal process.

(R. 66-67).

The panel concluded:

> Respondent, as an Assistant Prosecuting Attorney is an attorney in a government position, Respondent engaged in a single, isolated act which caused little or no injury to the integrity of the legal process. Under the ABA Standards, an

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admonition would be the appropriate sanction. Under the ABA Standards, the sanction should be no more than a reprimand.

(R. 66-7).

Based on the evidence, the panel held that Respondent violated Rule 4-8.4(c), only. "The Panel recommend[ed] that Respondent be given a reprimand." (R. 67).

On June 24, 2024, Respondent sent a letter to the Advisory Committee "under Rule 5.16(k)" accepting "my admonition" from the Disciplinary Hearing Panel. (R. 69).

On July 9, 2024, Informant rejected the written decision of the Disciplinary Hearing Panel. (R. 70).

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POINT RELIED ON

I.

RESPONDENT IS SUBJECT TO DISCIPLINE FOR VIOLATING THE FOLLOWING RULES OF PROFESSIONAL CONDUCT:

[A] RULE 4-8.4(c): RESPONDENT, A PROSECUTOR, ACCESSED A PUBLIC DEFENDER'S COMPUTER, AND WHILE IMPERSONATING THE PUBLIC DEFENDER, SENT AN EMAIL TO ANOTHER PUBLIC OFFICIAL. THESE ACTS CONSTITUTED CONDUCT INVOLVING DISHONESTY, DECEIT OR MISREPRESENTION.

[B] RULE 4-8.4(d): RESPONDENT, A PROSECUTOR, ACCESSED A PUBLIC DEFENDER'S COMPUTER, AND WHILE IMPERSONATING THE PUBLIC DEFENDER, SENT AN EMAIL TO ANOTHER PUBLIC OFFICIAL. THIS CAUSED HARM IN JEFFERSON COUNTY AND IN THE CRIMINAL JUSTICE SYSTEM, RESULTING IN THE PUBLIC DEFENDER FILING NINETEEN MOTIONS TO DISQUALIFY RESPONDENT AND THE TRANSFER OF THOSE CASES TO OTHER ASSISTANT PROSECUTORS. THESE ACTS CONSTITUTED CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE.

[C] RULE 4-8.4(g): RESPONDENT, A PROSECUTOR, SENT A SEXUALLY SUGGESTIVE EMAIL PURPORTEDLY FROM THE

PUBLIC DEFENDER TO ANOTHER PUBLIC OFFICAL. THIS ACT CONSTITUTED HARASSMENT BASED ON SEX OR SEXUAL ORIENTATION.

[D] RULE 4-4.4(a): RESPONDENT, A PROSECUTOR, SENT AN EMAIL PURPORTEDLY FROM THE PUBLIC DEFENDER TO ANOTHER PUBLIC OFFICIAL FOR NO SUBSTANTIAL PURPOSE OTHER THAN TO EMBARRASS A THIRD PERSON. THIS ACT CONSTITUTED A LACK OF RESPECT FOR THE RIGHTS OF THIRD PERSONS.

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

State v. Boyd, 560 S.W.2d 296 (Mo. App. 1977)

In re Schuessler, 578 S.W.3d 762, 773 (Mo. banc 2019)

Iowa Supreme Court Disciplinary Board v. Neff, 5 N.W.3d 296 (Iowa 2023)

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POINT RELIED ON

II.

BECAUSE RESPONDENT'S MISCONDUCT AS A PROSECUTOR WAS DONE BOTH INTENTIONALLY AND KNOWINGLY AND CAUSED HARM IN JEFFERSON COUNTY AND IN THE CRIMINAL JUSTICE SYSTEM, THIS COURT SHOULD IMPOSE AN INDEFINITE SUSPENSION ON RESPONDENT'S LICENSE, WITH NO LEAVE TO REAPPLY FOR SIX MONTHS.

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

In re Littleton, 719 S.W.2d 772 (Mo. banc 1986)

In re Purdy, 661 S.W.3d 796 (Mo banc. 2023)

Mo. S. Ct. Rule 5.175

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ARGUMENT

I.

RESPONDENT IS SUBJECT TO DISCIPLINE FOR VIOLATING THE FOLLOWING RULES OF PROFESSIONAL CONDUCT:

[A] RULE 4-8.4(c): RESPONDENT, A PROSECUTOR, WITHOUT AUTHORIZATION, ACCESSED A PUBLIC DEFENDER'S COMPUTER, AND WHILE IMPERSONATING THE PUBLIC DEFENDER, SENT AN EMAIL TO ANOTHER PUBLIC OFFICIAL. THESE ACTS CONSTITUTED CONDUCT INVOLVING DISHONESTY, DECEIT OR MISREPRESENTION.

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[A] Rule 4-8.4(c) Violation

According to Rule 4-8.4(c): "It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation." "Questions of honesty go to the heart of fitness to practice law. Misconduct involving subterfuge … undermine[s] public confidence in not only the individual but in the bar." *In re Donaho*, 98 S.W.3d 871, 874 (Mo. banc 2003) citing *In re Disney*, 922 S.W.2d 12, 15 (Mo. banc 1996).

In his Answer, Respondent admitted to violating Rule 4-8.4(c). (R. 40, Ex. 9). In addition, Respondent testified that accessing the public defender's computer and sending the email involved "dishonesty, deceit, and misrepresentation." (Tr. 110-11).

In a remarkably similar case, *In re Carpenter*, 95 P.3d 203, 209-10 (Or. 2004), the Supreme Court of Oregon held that a lawyer who knowingly made affirmative false statements in an online message purportedly written by a high school teacher, stating that

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the teacher engaged in sexual conduct with students, engaged in conduct involving dishonesty for purposes of determining that he violated the rules of professional conduct.

As he admits, Respondent is in violation of Rule 4-8.4(c).

[B] Rule 4-8.4(d) Violation

According to Rule 4-8.4(d): "It is professional misconduct for a lawyer to engage in conduct prejudicial to the administration of justice." "Lawyers must execute their professional responsibilities ethically and pursuant to the rules, carefully considered, in order to ensure the confidence of both litigants and the public." *In re Westfall*, 808 S.W.2d 829, 836 (Mo. banc 1991). "The strictures of Rule 4-8.4 are not limited to a lawyer's conduct before the court but are directed to the conduct of a lawyer as an officer of the court in general." *In re Madison*, 282 S.W.3d 350 (Mo. banc 2009).

Respondent's prejudicial misconduct is two-fold: first, as a prosecutor employed in Jefferson County, and second, as a prosecutor who must avoid the "appearance of impropriety." *Boyd*, 560 S.W.2d at 297-98 .

Good Relations in the County

This Court has held that the principles reflected in the prosecutor's office personnel manual are relevant in determining violations of the rules of professional conduct. *In re Schuessler*, 578 S.W.3d 762, 773 (Mo. banc 2019) ("[The St. Louis Circuit Attorney's Office'] manual states circuit attorneys assume two paramount obligations: to serve the public interest; and to perform public service with high personal integrity, … [which includes] being a true public servant.")

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Similarly, the Jefferson County Personnel Administration Program prohibits a county employee from engaging in conduct which tends to destroy "good relations" between the County and its employees. The Program also prohibits "[h]ate mail, harassment, discriminatory remarks, and other antisocial behaviors using the network." Prosecuting Attorney TS issued Respondent a Written Reprimand finding that he violated the relevant Program provisions. (R. 18-21, Ex. 3).

Therefore, Respondent's misconduct breached the trust between the county and its employees, which is conduct prejudicial to the administration of justice, in violation of Rule 4-8.4(d). (The disciplinary power of the Court extends beyond instances of misconduct in a professional capacity and can be exercised for actions outside the scope of professional duties. (See, e.g., *In re Belz*, 258 S.W.3d 38 (Mo. banc. 2008)) (misappropriation of client funds is a Rule 4-8.4(d) violation); and see generally, *In re Panek*, 585 S.W.2d 477, 479 (Mo. banc 1979)).

Appearance of Impropriety

Rule 4-8.4 Comment [6] states: "Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers." That is particularly true in the criminal justice system where prosecutors are held to the standard of avoiding the "appearance of impropriety:"

> A prosecuting attorney is a quasi-judicial officer, an arm of the state, and he has the duty not only to see that the guilty are brought to justice but also the innocent go free. A vital

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> concomitant in the exercise of either function is to assure a fair trial and avoid impropriety in any prosecution. Equally important is the duty to avoid any *appearance of impropriety*. In the latter area there must be included a meaningful component the strict avoidance of any appearance of conflict of interest, whether such conflict operates for the benefit of the state or the accused.
>
> * * *
>
> It is also worthy of note that [the] ethical restrictions as to prosecutors are not couched in terms of prejudice to the accused or to the state but are rather directed to the public welfare and need that prosecutorial conduct be beyond reproach and the integrity of judicial proceedings remain beyond reproach, criticism or appearance of impropriety.

Boyd, 560 S.W.2d at 297 (emphasis included).

In *Boyd*, for one month prior to joining the local prosecutor's office, the prosecutor was employed in the local public defender's office. There was no evidence that the prosecutor had any direct connection to or knowledge of the case during that time. The defendant's motion to disqualify the prosecutor based on a conflict of interest was denied, however, the appellate court reversed:

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> It is unnecessary that the prosecuting attorney be guilty of an attempt to betray confidence; it is enough if it places him in a position which leaves him open to such charge.

Boyd, 560 S.W.2d at 298 citing *People v. Gerold*, 265 Ill. 448, 107 N.E. 165, 177 (Il. 1914).

In the instant case, Respondent entered the secure Missouri State Public Defender's computer system and thereby had access to the database of case information. (Tr. 39-40, 93-94; R. 21, Ex. 3). As a result, nineteen defendants filed motions to disqualify Respondent. Each motion cited *Boyd v. State* as the primary authority. (Tr. 38-39, 64-67; R. 24-28, Ex. 6). All nineteen cases were reassigned to other prosecutors, who, according to Prosecuting Attorney TS, "already ha[d] an excessive caseload." (R. 19, Ex. 3). Respondent confirmed that the case transfers delayed justice for those defendants. (Tr. 64-67; 123).

Therefore, Respondent's misconduct caused burdens and delays in nineteen cases, which is conduct prejudicial to the administration of justice, in violation of Rule 4-8.4(d).

[C] Rule 4-8.4(g)

According to Rule 4-8.4(g): "It is professional misconduct for a lawyer to manifest by words or conduct, in representing a client, bias or prejudice, or engage in harassment, including, but not limited to bias, prejudice, or harassment based upon … sex, … [or] sexual orientation ..." According to Rule 4-8.4 Comment [4], " … the engagement in harassment by a lawyer, in representing a client, fosters discrimination in the provision

of services in the state judicial system, creates a 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."

In *Schuessler*, 578 S.W.3d at 775, this Court held that an assistant prosecutor need not be performing a specific act in a case to be found liable under Rule 4-8.4(g):

> Ms. Schuessler was in her office at [the Office of Circuit Attorney "OCA"], during working hours, when she made the racist and homophobic comment. She was required, as an assistant circuit attorney, to act in the best interest of OCA and the citizens of the city of St. Louis. A prosecutor is not representing a client only when performing a specific act in a case. Ms. Schuessler's conduct, therefore, violated Rule 4-8.4(g).

Like Schuessler in her office, Respondent was on duty as an assistant prosecutor in Division 1 in Jefferson County, when he commandeered Argana's computer in the attorneys-only jury room to send a harassing email. (Tr. 91-95; R. 15, Ex. 1). Respondent's use of letterhead containing the seal of the State of Missouri for his apology letters further supported the fact that Respondent was acting in his role as a prosecutor regarding the incident. (R. 22, Ex. 4; R. 23, Ex. 5).

Therefore, Respondent was representing a client when he sent the email message, subjecting him to a violation of Rule 4-8.4(g).

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According to Rule 4-8.4 Comment [4], harassment based on sex or sexual orientation does not necessarily need to rise to the level of a human rights law violation to be unethical under the Rule. The "gravity of the act" as part of a "pattern of prohibited conduct" will inform the Court as to whether harassment occurred. *See* American Bar Association Formal Op. 493, p. 4 (2020) ("[A] single instance of a lawyer making a derogatory sexual comment directed toward an individual in connection with the practice of law would likely not be severe or pervasive enough to violate Title VII, but would violate Rule 8.4(g).")

Respondent's "act" was sending an email with sexual innuendo about how the sheriff's body looked in his uniform. (Tr. 92-95). The informality of using first names of CA and the sheriff insinuated attraction. (R. 15, Ex. 1). Respondent's use of the term "towel-snapping" in his apology letter to the sheriff evoked the image of unclothed men in a locker room. (R. 22, Ex. 4; T. 98).

As a result of Respondent's act, CA experiencing shock, anger, and fear for his job. (T. 33). As a young public defender, CA was concerned that the elected sheriff of the county where he worked and lived might believe that CA was harassing him, given the sheriff's power, authority, and influence. (Tr. 33). Further, in the written reprimand to Respondent, Prosecuting Attorney TS characterized Respondent's email as "[h]ate mail, harassment, discriminatory remarks, and other antisocial behaviors using the network." (R. 18-21, Ex. 3).

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Respondent's act was not an isolated incident. It was part of a "pattern of prohibited conduct."[4] Assistant Public Defender CA recalled previous instances of sexually inappropriate comments in the workplace made by Respondent. (Tr. 27-8). Family attorney NP and District Defender PA shared similar testimony. (T. 58-9, 78-9). More notably, Respondent admitted to a history of "ma[king] sexual jokes, sexually (sic) innuendo type jokes to members of the Bar." (Tr. 103).

The "gravity of [Respondent's] act" as part of his "pattern of prohibited conduct" makes the case that Respondent engaged in harassment based on sex or sexual orientation. (See *Iowa Supreme Court Disciplinary Board v. Neff*, 5 N.W.3d 296 (Iowa 2023) (holding that jokes with sexual innuendo can constitute harassment under Iowa Rule of Professional Conduct 32:8.4(g)).

Consequently, Respondent engaged in sexual harassment, in violation of Rule 4-8.4(g).

[D] Rule 4-4.4(a)

According to Rule 4-4.4(a): "In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass a third person."

[4] Although Respondent was not charged with specific conduct previous or subsequent to the email incident, other states have recognized that uncharged misconduct can be considered an aggravating factor in an attorney disciplinary proceeding. *Lorain County Bar Association v. Weir*, 156 N.E.3d 886, 890 (Ohio 2020) and *Matter of Kaplan*, No. 89-O-16723, 1996 WL 741586 (Cal. Bar. Ct. 1996). But see, *Matter of Levine*, 847 P.2d 1093, 1118-119 (AZ 1993) ("pattern of misconduct" requires a prior disciplinary record) and *In re Complaint as to Conduct of Redden*, 153 P.3d 113, 115 (Or. 2007).

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As previously analyzed herein, Respondent, as a prosecutor on duty at the time of his misconduct, was acting in a representative capacity. (*supra*, p. 41).

Respondent confirmed that embarrassing CA was essential to the joke: "I sent what I thought was a harmless, flirtatious email to an elected official under the name of my friend, [CA], and it was funny." (R. 16, Ex. 2). Respondent, who described the joke as "surprising, shocking and amusing," (Tr. 92) knew the joke would sting CA:

Q (Respondent)	Other than this event, have you ever been the butt of a joke?
A (CA)	I'm sure I have.
Q	It's unpleasant, isn't it?
A	Yes.
Q	And yet it can be objectively funny to other people?
A	Yes.

(T. 46).

Moreover, Respondent explicitly acknowledged the impact of embarrassment in his hand-written apology to CA, stating: "I deeply regret any embarassment (sic) it caused you." (R. 23, Ex. 5).

In summary, Respondent's purpose in sending the email was to embarrass CA. Respondent placed his reputation as a "mischief maker" over his duty to maintain good relations with fellow county employees as well as his duty to refrain from violating the rules of professional conduct.

Consequently, Respondent is in violation of Rule 4-4.4(a).

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ARGUMENT

II.

BECAUSE RESPONDENT'S MISCONDUCT AS A PROSECUTOR WAS DONE BOTH INTENTIONALLY AND KNOWINGLY AND CAUSED HARM IN JEFFERSON COUNTY AND IN THE CRIMINAL JUSTICE SYSTEM, THIS COURT SHOULD IMPOSE AN INDEFINITE SUSPENSION ON RESPONDENT'S LICENSE, WITH NO LEAVE TO REAPPLY FOR SIX MONTHS.

"This Court has inherent authority to regulate the practice of law and administer attorney discipline." *In re Gardner*, 565 S.W.3d 670, 675 (Mo. banc 2019). "The DHP's findings of fact and conclusions of law are advisory. This Court decides the facts *de novo*, independently determining all issues pertaining to credibility of witnesses and the weight of the evidence, draws its own conclusions of law." *In re Farris*, 472 S.W.3d 549, 557 (Mo. banc 2015) (citations and quotations omitted). "Professional misconduct must be proven by a preponderance of the evidence before discipline will be imposed." *Id*.

"The purpose of discipline is not to punish the attorney, but to protect the public and maintain the integrity of the profession. Those twin purposes may be achieved both directly, by removing a person from the practice of law, and indirectly, by imposing a sanction which serves to deter other members of the Bar from engaging in similar conduct." *In re Kazanas*, 96 S.W.3d 803, 807-08 (Mo. banc 2003).

"This Court determines appropriate discipline by considering its prior cases and the American Bar Association's Standards for Imposing Lawyer Sanctions (1992) ("ABA Standards"). *Gardner*, 565 SW.3d at 677. After finding a lawyer has committed

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professional misconduct, this Court considers four primary factors when applying ABA Standard 3.0 in imposing sanctions: "(a) the duty violated; (b) the lawyer's mental state; (c) the potential or actual injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors." *Belz*, 258 S.W.3d at 42. These four factors provide a framework for all disciplinary matters, although other ABA Standards can also "provide guidance as appropriate for specific types of misconduct." *Id*.

"When this Court finds a lawyer has committed multiple acts of misconduct, it imposes discipline consistent with the most serious violation." *In re Ehler*, 319 S.W.3d 442, 451 (Mo. banc 2010). Rule 4-8.4 stands out among the rules of professional conduct because it is dedicated to preserving the integrity of the legal profession by explicitly prohibiting a broad spectrum of unethical behaviors. In this instance, Respondent's email 'prank' involved dishonesty, conduct prejudicial to the administration of justice, and harassment, thereby violating Rule 4-8.4(c), (d), and (g). Respondent's role as an assistant prosecuting attorney amplified the gravity of his misconduct. As noted in Rule 4-8.4 Comment [6]: "Lawyers holding public office assume legal responsibilities going beyond those of other citizens."

Ethical Duty Violated

Respondent's ethical violations, which arose out of his job as an assistant prosecuting attorney, involved a "Failure to Maintain the Public Trust." ABA Standard 5.2. "The duties owed to the public are protected in part by Rule 4-8.4, attorney misconduct. This rule helps guarantee that the public can trust lawyers to protect their interest and

property." *In re Coleman,* 295 S.W.3d 857, 869 (Mo. banc 2009). As a "minster of justice," Respondent's integrity is his currency. *See* Rule 4-3.8 Comment [1].

Mental State

Respondent's misconduct was both intentional and knowing:

> The most culpable mental state is that of intent, when the lawyer acts with conscious objective or purpose to accomplish a particular result. The next most culpable mental state is that of knowledge, when the lawyer acts with conscious awareness of the nature or attendant circumstances both without the conscious objective or purpose to accomplish a particular result.

ABA Standards Theoretical Framework.

Respondent testified that he had been waiting for an opportunity to send a flirtatious email to the sheriff from an unsuspecting attorney's unattended computer. He confessed to intentionally accessing CA's computer and sending the email. He narrated his actions aloud to the two young attorneys who were present. (Tr. 91-5). His deliberate actions were rewarded with "Schadenfreude" and laughter from the attorneys present and others who heard about it, enhancing his self-described reputation in the legal community as a "mischief maker." (Tr. 95-7, 100).

Additionally, Respondent knew that when he was accessing CA's computer, he was bound by the Jefferson County Personnel Administration Program, which required him to maintain good relations and abide by internet rules prohibiting the sending of: "Hate mail,

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harassment, discriminatory remarks, and other antisocial behaviors using the network." (R. 17-21, Ex. 3).

Moreover, Respondent knew that he was accessing the public defender's computer system via the Wi-Fi connection, which gave him access to confidential client information. (Tr. 93-4).

Furthermore, Respondent, an experienced prosecutor, knew the criminal justice system holds him to an appearance of impropriety standard. See *Boyd*, 560 S.W.2d at 297. He admitted that his actions created an impropriety. (Tr. 110-11). A seasoned prosecutor cannot credibly complain surprise if a defendant, aware of a prosecutor's appearance of impropriety, files a motion to disqualify.

Injury and Potential Injury

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

CA suffered actual injury. He was shocked, angry, and fearful for his job. He objectively viewed the content of the email as sexual innuendo. (Tr. 33, 55).

Although the sheriff responded to the incident by saying, "no worries," he potentially could have reacted with anger, frustration, or embarrassment. The email, purportedly from a public defender, was sexually suggestive regarding the physical appearance of the sheriff's body in his uniform at work. Because a public defender often advocates for clients by challenging the integrity of investigation, the email might be seen as undermining the work of law enforcement, including the sheriff.

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In addition, Respondent's breach of trust strained relations within the county, particularly between the prosecutor's office and the defender's office. The breach also impacted already overburdened assistant prosecutors and led to delays for criminal defendants due to the need to transfer nineteen cases. (R. 19, Ex. 3, p. 3; T. 123).

As a prosecuting attorney, Respondent holds the power to directly influence the fair administration of justice. Failing to properly address Respondent's misconduct would raise legitimate public concerns about the integrity of the criminal justice system and the legal profession.

Aggravating and Mitigating Factors

The relevant aggravating factors which may justify an increase in the degree of discipline to be imposed include dishonest and selfish motive, a pattern of misconduct, multiple offenses, the vulnerability of the victims, substantial experience in the practice of law, and a lack of remorse. ABA Standard 9.2.

Regarding the matter of remorse, Respondent exhibited a complete lack of it. Instead, Respondent seemed pleased when news of his prank spread throughout the legal community:

> Well, I thought that they would think it was inappropriate mischief and be amused by it. And that was in fact most of the feedback that I got.

(Tr. 99).

Respondent should have shown remorse immediately after pressing the send button. He knew sending the email was wrong but was overly confident that everyone would

recognize it as "obviously a joke." (T. 92, 99). Respondent chose not to personally reach out to CA or the sheriff to explain his actions or offer an apology. (Tr. 31, 97). Rather than humbly approaching Prosecuting Attorney TS, he waited until she called him into her office the following Monday. (Tr. 100). Regarding a formal apology to CA and the sheriff, it was TS's Written Reprimand that compelled Respondent to apologize in writing. (R. 18-20, Ex. 3, pp. 1-2). Finally, while Respondent finally offered a verbal apology to CA, that only occurred during Respondent's cross-examination of CA at the disciplinary hearing. (Tr. 34). See *In re Purdy*, 661 S.W.3d 796, 803 (Mo banc. 2023) ("Purdy's qualified, after-the-fact remorse is disingenuous.")

The relevant mitigating factors which may justify a reduction in the degree of discipline imposed include absence of a prior disciplinary record, full and free disclosure to the disciplinary board, and cooperative attitude toward the proceedings. ABA Standard 9.3.

In toto, the aggravating factors far outweigh the mitigating factors. Respondent's actions were selfish and dangerous. Division 1 is a courtroom, not a locker room. What is particularly disturbing is that Respondent was attempting to impress young attorneys with his misguided philosophy, asserting that "many forms of humorous communication involve deceit or misrepresentation." (Tr. 90-91, 109; R. 40, Ex. 9). This not only reflected poorly on his professional judgment but also risked influencing impressionable attorneys with unethical practices.

Respondent dishonored his duty as prosecutor to "assume legal responsibilities going beyond those of other citizens." Rule 4-8.4 Comment [6].

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Recommended Discipline

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

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

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

Missouri has a number of cases involving discipline for a breach of the public trust: *In re Schuessler*, 578 S.W.3d 762 (Mo. Banc 2019) (suspension for multiple acts of misconduct, including dishonesty, deceit, and misrepresentation); *In re Donaho*, 98 S.W.3d 871 (Mo. banc 2003) (suspension for multiple acts of misconduct, including intentional deception); *In re Littleton*, 719 S.W.2d 772 (Mo. banc 1986) (suspension for multiple acts of misconduct, including misrepresentation); and *In re Frick*, 694 S.W.2d 473 (Mo. banc 1985) (disbarment for misconduct which damaged the image of the legal profession and showed willingness to break the law).

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

Based on the evidence, Respondent knowingly failed to follow proper rules and caused injury or potential injury to the integrity of the legal profession.

With respect to the issue of staying the suspension, Informant contends Respondent is ineligible for probation because he poses a threat of future harm, pursuant to Rule 5.175:

> (a) Eligibility. A lawyer is eligible for probation, or stayed suspension with probation, if the lawyer:
>
> (1) Is unlikely to harm the public during the period of probation and can be adequately supervised…

By his own admission, Respondent has a history of "ma[king] sexual jokes, sexually (sic) innuendo type jokes to members of the Bar." (Tr. 103). Of particular concern is a separate allegation of "an oral sex joke" made by Respondent to a female attorney, approximately two weeks prior to the disciplinary hearing, which District Defender PA thought significant enough to report to the public defender's human resources office. (Tr. 78-9). Furthermore, Respondent's "history and character" suggest he is unlikely to meet the mandatory condition of refraining from further violations of the Rules of Professional Conduct, as required under Rule 5.175(b)(1).

Therefore, this Court should order Respondent to be indefinitely suspended from the practice of law, with no leave to reapply for six months.

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CONCLUSION

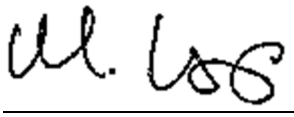
Informant asks this Court to find that Respondent violated Rule 4-8.4(c), (d), (g), and Rule 4-4.4(a).

Informant also asks the Court to suspend Respondent's license indefinitely. He should not be eligible for reinstatement for at least six months.

Finally, Informant asks the Court to tax all costs in this matter to Respondent, including a $1,000.00 fee pursuant to Rule 5.19(k).

Respectfully submitted,

LAURA E. ELSBURY #60854
Chief Disciplinary Counsel

By: 

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Informant's Brief is being served through the Missouri e-filing system pursuant to Rule 103.08 on this 6th day of September 2024, to Respondent:

Thomas Eagleton Hollingsworth
P.O. Box 100
Hillsboro, MO 63050

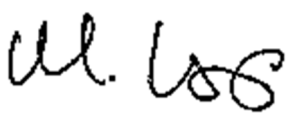
Respondent Pro Se

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. The brief was served on Respondent through the Missouri electronic filing. system pursuant to Rule 103.08.
3. Complies with the limitations contained in Rule 84.06(b).
4. Contains 10,415 words, according to Microsoft Word, which is the word. processing system used to prepare this brief.



Marc A. Lapp