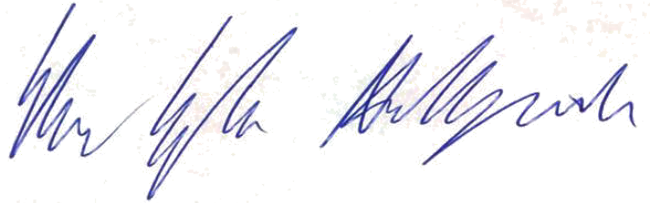


IN THE SUPREME COURT OF MISSOURI

In RE:)
Thomas Eagleton Hollingsworth) SC100697
Respondent)

RESPONDENT'S BRIEF



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Table of Authorities

Joy, Peter, A. Do No Wrong: Ethics for Prosecutors and Defenders / Peter A. Joy and Kevin C. McMunigal, 1st ed. ABA publications, 2009

Article 134 of the Uniform Code of Military Justice, 10 U.S.C. 934

ABA model rule 3.8

Missouri Rules 4-3.8, 4-8.4 (a), (c), (d) and (g), 5-1.7, 5.175

M. W. by & through KW. v. Six Flags St. Louis, LLC, 605 S.W. 3d 400, at 412 (Mo. App. E.D. 2020).

St. v. Boyd 506 S.W.2d at 297 (Mo App 1977)

Statement of Jurisdiction

Respondent adopts Informant's statement of jurisdiction.

Statement of facts

Respondent adopts Informant's statement of facts, including the description of the proceedings before the Disciplinary Hearing Panel.

Argument

For clarity of expression and ease of composition, I will address the court in my own voice. No familiarity or disrespect is intended.

Because Informant rejected the decisions of the disciplinary hearing panel, you are free to disregard them all. This court reviews the facts of the matter *de novo*. You have the power to find me guilty of all four violations, some of them, or none of them. The recommendation of the disciplinary hearing panel as to punishment is, at best, advisory.

I am accused of being professionally dishonest (Rule 4-8.4(c)), of sexually harassing a person while representing a client (Rule 4-8.4(g)), of acting contrary to the administration of justice (Rule 4-8.4(d)), and of engaging in conduct with no other purpose than to embarrass a third person while representing a client (Rule 4-4.4(a)).

Rule 4-8.4(c)

I have already admitted that my conduct was not honest. Record, Page 8 at 19. As I told the disciplinary hearing panel, Rule 4-8.4(c) admits no nuance. Transcript, Page 124 Line 1. If I were to tell you a story that happened to a friend of mine but I were to tell it as if it happened to me, that is deception, deceit and misrepresentation, regardless of my purpose or the context of the telling. If I were to tell you what happened to the priest, the rabbi and the minister when they walked into a bar, that would be lying if I didn't believe it to be true.

In a profession that tolerates puffing, hyperbole, rhetorical comparison and other forms of dishonesty, it seems strange that a falsity unrelated to any pending case or matter is punishable by suspension, regardless of whether anything of value was obtained or whether any public harm was done.

Rule 4-8.4(d)

I am also accused of conduct prejudicial to the administration of justice. This, we are told, is because the public defender's office, having seen an opportunity to disqualify me in cases where they found it advantageous to do, took that advantage. I am being blamed for the conduct of others. No motion to disqualify me was ever taken up before a judge. Transcript Page 84, Line 7, *et sequitur*. Part of the punishment administered to me by the elected prosecutor I serve under was that I was forbidden from contesting the claim that I spied in the public defender's files. Transcript, Page 115, Line 19. I denied spying, I deny it still, and no one has ever claimed otherwise, only that I had the opportunity to do so. We don't punish people for wrongs they had the opportunity to commit, absent some proof that they acted with the purpose to do so, as in the case of criminal attempt.

Rule 4-8.4(g)

I am accused of harassment based on sex or sexual orientation. I deny violating that rule, partially because I had no client. I did comment on the sheriff looking good in certain clothes. I admit the comment, taken without context or nuance, was flirtatious. It was also clearly impossible and was not taken as true by anyone.

Informant likens my behavior to that of (then) assistant prosecutor Ambry Nicole Schuessler. Schuessler lied during the investigation into criminal misconduct by other prosecutors and a policeman. She compared the forcing of that policeman's pistol into a man's mouth to an act of fellatio. The difference is not one of degree, but of kind. Schuessler's conduct shocks the conscience. Mine causes heads to shake.

Further, it has been said that "(s)ome inappropriate behavior does not rise to the level of actionable harassment as a matter of law." *M. W. by & through KW. v. Six Flags St. Louis, LLC*, 605 S.W. 3d 400, at 412 (Mo. App. E.D. 2020).

As to the claim that a prosecutor must avoid even the appearance of impropriety, Informant cites to *State. v. Boyd* 506 S.W.2d at 297 (Mo App 1977). That case is 47 years old. The issue in that case was whether a prosecutor was disqualified from prosecuting a criminal case against a defendant whose case had been assigned to the public defender's office at a time when the relevant prosecutor was an employee of the public defender's office. More recent decisions citing *Boyd* have similarly been confined to analysis of conflicts of interest. See e.g. *State. v. Lemasters*, 456 S.W.3d 416 (Mo. 2015), at 425. This case is not a conflict of interest case.

Also, "... many jurisdictions have eliminated appearance of impropriety as a basis for an ethics violation." Joy, pg 101. Neither the current ABA model rule 3.8, nor its comment, nor its Missouri counterpart, Rule 4-3.8, apply the appearance of impropriety standard to prosecutors.

I am reminded of Article 134 of the Uniform Code of Military Justice (UCMJ), which provides, in relevant part: “... all disorders and neglects to the prejudice of good order and discipline in the armed forces ... shall be taken cognizance of by a ... court-martial ... and shall be punished at the discretion of that court.” Article 134 is comprehensive and is generally among the charges that any court-martialee faces, just in case the others don’t stick.

Rule 4-4.4(a)

I am also accused of violating Rule 4-4.4(a), which provides, in relevant part: “In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass ... a third person ...” I deny that I was representing a client when I sent that email. If, as this court did in *Schuessler*, I am held to be always representing the State of Missouri, then there is merit in that claim. Any humor to be found in the matter is shameful, unprofessional, and of no legally substantial purpose.

Conclusion

I deeply regret my conduct and the trouble other people have been put to on account of it. I should not have done it. I have been punished by my employer, I have expressed contrition here and elsewhere and I wish to continue to serve the public in the role I have filled for 17 years.

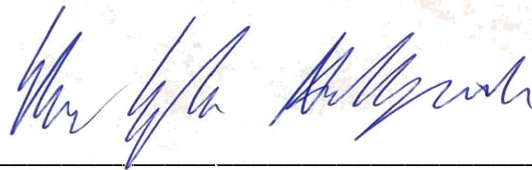
Given that I admit breaking the rules of professional conduct, it seems inappropriate to ask this court for no discipline, as recommended by the lone dissenting voice on the hearing panel. Because Informant has rejected the decision of the disciplinary hearing panel, an admonition is not possible. Under Rule 5.17(a)(1), this court may impose a reprimand. As to the

Informant's request to suspend my law license, Rule 5.175(a) allows for probation with or without a stayed suspension, if the respondent:

- “(1) Is unlikely to harm the public during the period of probation and can be adequately supervised;
- (2) Is able to perform legal services and is able to practice law without causing the courts or profession to fall into disrepute; and
- (3) Has not committed acts that, absent mitigating factors, would warrant disbarment.”

FOR THESE REASONS, Respondent prays for a reprimand, or for whatever other outcome this court deems just.

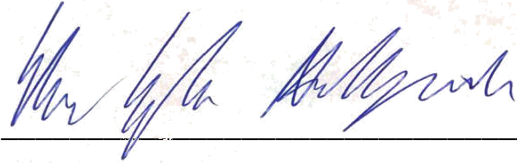
Respectfully Submitted,



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RULE 84.06(c) CERTIFICATION

To the best of my knowledge and belief this brief includes the information required by rule 55.03, was served on the Informant through the Missouri e-filing system pursuant to Rule 103.08 on the same day it was filed, complies with Rule 84.06(b) and contains 1,396 words.

A handwritten signature in blue ink, appearing to read "Thomas E. Hollingsworth", is written over a horizontal line.

Thomas E. Hollingsworth #54915