IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)
WILLIAM M. TACKETT,	) Supreme Court # 86522
	)
Respondent.	)

BRIEF AMICUS CURIAE OF ATTORNEY BISGES IN SUPPORT OF DISBARMENT/SUSPENSION OF RESPONDENT FOR HIS MISCONDUCT

NOEL “NEAL” BISGES
529 EAST HIGH STREET
JEFFERSON CITY, MISSOURI 65101
573-635-6850
ATTORNEY FOR AMICUS CURIAE

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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 Section 484.040 RSMo 2000.

STATEMENT OF FACTS

The parties stipulated to the facts of the violations and presented an agreement on public reprimand as the punishment. The Disciplinary Hearing Panel reviewed the recommendation and rejected it. The case was heard by the Panel on the issue of punishment. After the hearing on punishment, the Panel recommended a thirty day suspension of Respondent's law license for what it termed serious violations of the Rules of Professional Conduct. Respondent did not accept the panel's punishment and the case was filed in this Court.

Mr. Tackett was admitted to Missouri's bar in 1988. He had been an assistant prosecuting attorney since 1989 (Tr. 145). He was an Assistant Prosecuting Attorney and Prosecutor elect on December 18, 2002 when he appeared before Judge Holt in Callaway County for Ronald Tackett, his brother's speeding ticket and the ticket for Brandon Manumaluena , a professional football player. Later, in an unconnected violation while he was Prosecuting Attorney of Cole County, he wrote a letter to Judge Thomas J. Brown III, Presiding Judge of the 19th Circuit Court, in response to a letter from the Court en banc, in which he knowing made statements about the Judge which he knew were false.

The parties stipulated at the disciplinary panel hearing that Mr. Tackett violated Rules 4-1.7, 4-3.3(a), 4-3.3(d), 4-3.5 and 4-8.2(a) based on the following stipulated facts:

On December 18, 2002, Mr. Tackett met privately in the chambers of Callaway County Associate Judge Joe D. Holt on two Callaway County speeding ticket files. In one, the Callaway County Prosecutor charged Mr. Tackett's brother, Ronald Tacket with

speeding 91 mph in a 70 mph zone and in the other he charged Brandon Manumaleuna, a St. Louis Rams professional football player, with speeding 87 mph in a 70 mph zone. At the time of the meeting Mr. Tackett was an Assistant and Prosecuting Attorney-Elect for Cole County. Mr. Tackett failed to identify his capacity in appearing before Judge Holt as Defense Counsel, Prosecutor, Special Prosecutor, Mediator, or a Representative, thereof. Judge Holt had a reasonable belief and made reasonable docket entries reflecting the agreement disposing of both cases purported and represented by Mr. Tackett. Mr. Tackett made such representations to the Court outside the scope of his authority as Special Prosecutor on other Callaway County cases, without any authorization or consultation with the actual prosecutor (Callaway County Prosecutor), outside the scope of his authority and expectations from the defense attorney, Attorney Curtis Hanrahan.

Additionally, on a separate occasion, September 7, 2003, Mr. Tackett made disparaging comments about Judge Thomas J. Brown's integrity. Mr. Tackett knew the statements to be false or made them with reckless disregard to their truth or falsity at the time when made. Said comments were contained in a letter dated September 7, 2003, which among other things contained Mr. Tackett's assertion that Judge Brown had acted individually against him in a personal dispute without approval of the Circuit Court en banc during an investigation into allegations that Mr. Tackett had sexually harassed a Deputy Circuit Court Clerk.

At the hearing on punishment on October 25, 2004, the following evidence was adduced:

In December, 2002, Mr. Tackett contacted Judge Holt stating that he needed to get a time to talk to him to wind up his special prosecutor cases because he had been elected Cole County Prosecuting Attorney (Tr. 54-55).

On December 18, 2002, Mr. Tackett appeared in the courtroom of Judge Joe D. Holt in the Associate Division of the Callaway County Circuit Court (Tr. 121). At the time, Judge Holt was presiding over the Fulton Municipal Court and conducting a trial on an alleged ordinance violation (Tr. 123). Carol England, Prosecutor was appearing for the Fulton City Prosecutor's Office, who also was employed as an Assistant Prosecutor for Callaway County, Missouri (Tr. 14). In her capacity as Assistant Prosecutor for Callaway County, she had been handling the speeding tickets which the Callaway County Prosecuting Attorney's office had filed against Mr. Tackett's brother Roland Tackett and professional football player Brandon Manumaleuna (Tr. 9-10). During a trial break, Ms. England advised Mr. Tackett that the City trial would take another forty minutes. Mr. Tackett advised he was there to see Judge Holt (Tr. 14). Mr. Tackett did not advise Ms. England why he was in Judge Holt's courtroom, nor did not advise he intended to talk to Judge Holt about the charges against his brother and the football player (Tr. 14-15). Neither Mr. Tackett, nor Mr. Hanrahan, the Defense Attorney of Record had talked to the Assistant Prosecutor about a plea or disposition in the case (Tr. 15). Attorney Curtis Hanrahan acknowledged the normal disposition of such matters in advising Mr. Tackett he wanted to just enter open pleas on behalf of both clients in front of Judge Holt (Tr. 96).

After the municipal court trial was completed, Ms. England left the courtroom (Tr. 15). At that time, Mr. Tackett entered Judge Holt's chambers and began discussing the two traffic tickets, (Tr. 56). Both files containing the Callaway County speeding charges against Mr. Tackett's brother and the football player (Tr. 126-127) were brought to the Judge Holt's chambers at Mr. Tackett's request (Tr. 122). Only Mr. Tackett and Judge Holt were present for the transactions that followed regarding the two files (Tr. 55).

Judge Holt did not recall Mr. Tackett talking about the Schafer case, an uncharged case involving alleged theft of gravel for which Mr. Tackett was the Special Prosecutor which was the "pretense" in which Mr. Tackett arranged his travel and meeting with Judge Holt. (Tr. 56, 116). On the speeding cases, Mr. Tackett advised Judge Holt that there was an agreement with the State. Judge Holt was apparently indifferent to the actual matter disposition due to the "Represented Agreement". Judge Holt reasonably recognized the representation by Mr. Tackett, that the defendant, represented by Mr. Hanrahan was agreeable as well as the actual Prosecutor to the "Represented Agreement" and the proposed disposition. Yet, Mr. Tackett, in fact had not conferred with the actual Prosecutor. Mr. Tackett chose not to confer with the Callaway County Prosecutor or the Assistant Prosecutor when in fact he had the opportunity immediately before or after conferring with Judge Holt. Assistant Prosecutor, Carol England discovered the case disposition during her inventory of subpoenaed cases, a procedure not necessarily known by Mr. Tackett (Tr. 11-12). Mr. Tackett's proposed disposition was outside the normal realm of Prosecutorial recommended dispositions for such matters, beyond Defense Counsel's scope of authority, expectations, and understanding. (Tr. 57). Judge Holt

reasonably and appropriately referred to Mr. Tackett in the docket entries on both cases as the prosecutor – PA Tackett in Manumaleuna's and APA in Roland Tackett's file (Tr. 58). Judge Holt in his docket entries at that time did not specifically distinguish whether Mr. Tackett was appearing as a special prosecutor or not—"Just simply putting him in as PA was all I did" (Tr. 59).

Following the hearing, the Disciplinary Hearing Panel on November 5, 2004, recommended that Respondent's law license be suspended for thirty days.

POINTS RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE VIOLATED MULTIPLE DUTIES REGARDING HONESTY WITH THE PROFESSION AND BENCH IN THAT HE INTENTIONALLY MISLED A JUDGE TO GET HIM TO DISPOSE OF TWO CRIMINAL CASES, ONE INVOLVING RESPONDENT'S BROTHER; HE FAILED TO COMMUNICATE MATERIAL INFORMATION TO THE JUDGE, SUCH AS THAT HE WAS NOT PROSECUTOR REPRESENATIVE OR A SPECIAL PROSECUTOR ON THE CASES, AND REPSONDENT MADE STATEMENTS ABOUT ANOTHER JUDGE IN AN ENTIRELY DIFFERENT MATTER WHICH WERE FALSE AND RESPONDENT KNEW THAT WERE FALSE AND HIS ACTIONS IN BOTH INSTANCES RESULTED IN BRINGING THE JUDICIARY INTO DISREPUTE.

In re Westfall,

Rule 4-1.7
Rule 4-3.3(a)
Rule 4-3.3(d)
Rule 4-3.5
ABA Standards for Imposing Lawyer Sanctions (1992 ed.)

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE VIOLATED MULTIPLE DUTIES REGARDING HONESTY WITH THE PROFESSION AND BENCH IN THAT HE INTENTIONALLY MISLED A JUDGE TO GET HIM TO DISPOSE OF TWO CRIMINAL CASES, ONE INVOLVING RESPONDENT'S BROTHER; HE FAILED TO COMMUNICATE MATERIAL INFORMATION TO THE JUDGE, SUCH AS THAT HE WAS NOT A PROSECUTOR REPRESENTATIVE OR SPECIAL PROSECUTOR ON THE CASES, AND REPSONDENT MADE STATEMENTS ABOUT ANOTHER JUDGE IN AN ENTIRELY DIFFERENT MATTER WHICH WERE FALSE AND RESPONDENT KNEW THAT WERE FALSE AND HIS ACTIONS IN BOTH INSTANCES RESULTED IN BRINGING THE JUDICIARY INTO DISREPUTE.

In this amicus brief, it is asserted that Respondent's violations are serious enough to warrant disbarment versus a thirty day suspension recommended or in the least the punishment imposed upon Respondent should warrant the imposition of the sanction of a thirty day suspension by the disciplinary panel. As such it is a brief filed as a friend of the court. This brief points the Court away from considerations germane to a decision by this court in respect to one attorney, but considerations germane to the Attorney Practicing Profession, the Relationship Prosecutors have with Judges, Defense Counsel and the General Public. There is a need for punishment imposition in this case that leaves

the General Public little doubt about the Court's and the Bar's unfailing efforts to ensure integrity in the disposition of cases in our criminal justice system.

The Respondent's violations of his ethical duties as a lawyer occurred in a traffic case, the largest single reason most of the citizens of a society ever appear in Court. Mr. Tackett's misconduct has gathered huge media attention shaking the General Public's confidence not only in Cole and Callaway County, but surrounding counties, the state and the country. Immeasurable citizens now believe (because they read it in the newspaper or heard in on the news) if you are "related" or "know" the right person, you can "fix" any ticket, <u>including going 91 miles per hour in a 70 mile per hour zone</u>. It is "OKAY" to falsely accuse the Presiding Judge of conducting a "Star Chamber". Or is it? A "Whack on the Wrist" such as a thirty day suspension simply does not "Cut it!" in that it sends, an "OKAY" message. **Only Disbarment sends the appropriate message** to an Attorney who had Thirteen (13) years Assistant Prosecutor experience, other Attorneys and the General Public that the Judiciary cannot and will not tolerate such inappropriate behavior!

The issue presented is what punishment the Court should impose where an attorney serving as an assistant prosecutor in one county anoints himself "PROSECUTOR AT LARGE" then travels to another county to misrepresent his professional capacity to a Judge in order to obtain a favorable disposition of his brother's

speeding ticket case behind the back of the actual prosecutor. Should such a person be permitted to continue in a position of great public trust?[1] The answer is simply, NO!

The purpose of attorney discipline is to protect the public and maintain the integrity of the legal profession. *In re Disney*, 922 S.W.2d 12, 15 (Mo. banc 1996). In matters of attorney discipline, the Court reviews the evidence de novo and reaches its own conclusions of law. *In re Oberhellmann*, 873 S.W.2d 851, 852 (Mo. banc 1994). When determining an appropriate penalty, the Court considers the gravity of Respondent's misconduct, as well as any mitigating or aggravating factors that tend to shed light on Respondent's moral and intellectual fitness as an attorney. *In re Donaho, Jr*., 98 S.W.3d 871, 875 (Mo. banc 2003). The court may adopt a stipulation of fact entered into by Respondent and appropriate disciplinary authorities. *In re Wiles*, 107 S.W.3d 228 (Mo. banc 2003).

[1] It is a fair characterization of the lawyer's responsibility in our society that he stands "as a shield," to quote Devlin, J., in defense of right and to ward off wrong. From a profession charged with such responsibilities there must be exacted those qualities of truth-speaking, of a high sense of honor, of granite discretion, of the strictest observance of fiduciary responsibility, that have, throughout the centuries been compendiously described as "moral character." *Schware v. Bd. Of Bar Exam'rs*, 353 U.S. 232, 247, 1 L. Ed. 2d 796, 77 S. Ct. 752 (1956) (Frankfurter, J., concurring). As quoted by J. Price in *In re Carey*, 89 S.W.3d 477 (Mo. banc 2002).

Respondent's conduct was established by the evidence adduced at the hearing and the stipulated facts. That evidence along with the inferences properly drawn from it shows that Respondent used his "position" and "status" of having previously been appointed by the Judge as special prosecutor in several cases to mislead the Judge. The Respondent "knowingly" positioned himself to create a situation where the Judge reasonably believed Mr. Tackett had "negotiated" or "mediated" a "special" disposition favorable to his brother speeding and another unrelated case. Respondent's selfish motivation was to procure a benefit for his brother while undermining the judicial system that he is sworn to uphold.

To accomplish his purpose, the Respondent "knowingly" requested a meeting with the Judge on another matter as Special Prosecutor on that case. Additionally, Mr. Tackett "knowingly" requested the court files to be taken to the Judge. Once in front of the Judge, Respondent "knowingly" misrepresented by his "position" words and actions, the capacity in which he was appearing by talking about "wrapping up his special prosecution cases" and his knowingly used his "position" of being recently elected Cole County Prosecutor. Respondent continued his misrepresentation to Judge Holt when Respondent purported an "agreed disposition" of the cases. Afterward, when his acts were revealed, Respondent sought to "re-characterize" his statements to the media by blaming Judge Holt entirely for making a "clerical" mistake.

The only issue Respondent had previously told Judge Holt was he would be talking about was his special prosecutor case or cases which he needed to complete because he had recently been elected prosecutor in another county. Mr. Tackett

"knowingly" failed to inquire with the Callaway County Prosecutor's office or conferred with the Assistant Prosecutor assigned to the case when he had requested the cases be brought Judge Holt's chambers for "his" anticipated disposition.

Whatever initial discussion there was about the initial case, it in itself is not an unethical ex parte contact with the court, if it involved the subject discussed as presented by Respondent in his testimony before the panel. But, Respondent "positioned" himself, his brother's and the Ram football players ticket cases by having them delivered to Judge Holt's chambers for disposition as he would purport. Respondent had gained Judge Holt's respect by being a Cole County Assistant Prosecutor for thirteen years, appointed Special Prosecutor on several cases. (Tr. 69) and recently been elected Cole County Prosecutor at the time he appeared before Judge Holt. Respondent's knowledge that the Callaway County Prosecutor would not assent to his purported disposition is evidenced by Defense Counsel's assent to an "open" plea and his non inquiry to the Callaway County Prosecutor. (Tr. 102-104, 145).

The American Bar Association's Standards for Imposing Lawyer Sanctions (1992) (ABA Standards) recommends suspension when a lawyer knowingly violates a duty owed to the profession, and "causes injury or potential injury to a client, the public, or the legal system." ABA Standards, Rule 7.2. The complete lack of integrity in this case requires a severe sanction. The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged . . . their professional duties to clients, the public, the legal system, and the legal profession. ABA Standards, Rule 1.1.

In *In re Oberhellmann*, 873 S.W.2d 851, 856 (Mo. banc 1994) the Court disbarred a lawyer from the practice of law, following ABA Standards, Rule 6.12, where the lawyer "knowingly" lied to a tribunal in an attempt to retain federal diversity jurisdiction by "knowingly" asserting that his client resided in a state in which the client did not reside. In *In re Storment*, 873 S.W.2d 227, 231 (Mo. banc 1994), the Court disbarred a lawyer for submitting false evidence to a court.

Missouri, by criminal statue has made the conduct committed by Respondent criminal. Section 575.120 RSMo. provides in relevant part as follows:

> 575.120. False impersonation--penalties. 1. A person commits the crime of false impersonation if such person: (1) Falsely represents himself or herself to be a public servant with purpose to induce another to submit to his or her pretended official authority or to rely upon his or her pretended official acts, and (a) Performs an act in that pretended capacity; or (b) Causes another to act in reliance upon his or her pretended official authority; * * *
>
> 5. False impersonation is a class B misdemeanor unless the person represents himself to be a law enforcement officer in which case false impersonation is a class A misdemeanor.

Another noteworthy statute provides as follows:

> Section 56.360 RSMo. Employment in criminal cases prohibited--civil practice authorized. It shall be unlawful for any prosecuting attorney or circuit attorney, or any assistant prosecuting attorney or any assistant circuit attorney, during the term of office for which he shall have been elected or

appointed, to accept employment by any party other than the state of Missouri in any criminal case or proceeding; provided, that nothing in this section shall be deemed to preclude the officers specified in this section from engaging in the civil practice of law. Any violation of the provisions of this section shall be deemed a misdemeanor.

While Respondent was not charged with any crime, the suggestion that a reprimand is an appropriate punishment for such dishonest conduct is squarely refuted by the Court's prior decision in *In re Littleton*, 719 S.W.2d 772, 777 (Mo. banc 1986), where the Court stated, ***"Reprimand . . . is appropriate only where the attorney's breach of discipline . . . does not involve dishonest, fraudulent, or deceitful conduct on the part of the attorney."*** Lawyers practicing before Judges know that appearing on cases in a capacity that does not actually exist is unethical. There can be no serious argument that Respondent here acted negligently. His intentional misrepresentative acts cumulated to carry out his fraud on the court include the following: a) a "knowingly" contact by telephone with the Judge to set up an appointment to talk about special prosecutor cases he was winding up due to his election as Cole County prosecutor; b) a "knowingly" well timed call to the clerk of Callaway County to request the files of his brother and another person be taken to the Judge; c) "knowingly" discussing the files in the context of the special prosecutor meeting with the Judge, and d) "knowingly" stating to the Judge that an agreement had been worked out on the case when Respondent knew very well that the Callaway County Prosecutor had not even been approached regarding disposition of the cases, and finally, e) and "knowingly" failing to correct the docket entry after hearing the

Judge read the docket entry as he routinely does in each case. The Judge testified he believed he read the docket entries to Respondent. Respondent confirmed that the Judge at least read the parts of the docket entries after "PA Tackett" or "APA" in the cases.

Any lay person or lawyer practicing in Callaway County, admitted to practice, who had practiced law in any field, much less criminal law, would recognize when the Judge read the docket entry of such things in both files as: ". . . defendant on one year unsupervised probation. Terms, one, pay costs in thirty days, two, defendant to do 20 hours of community service in 30 days or in lieu thereof pay $100 to charity of his choice within 30 days and file receipt with court of same," that the Judge was depositing of the cases. Most importantly, if this court determines that Respondent lied in his testimony to the disciplinary panel regarding the events before Judge Holt, then disbarment is the only viable option to deal with Respondent. Even the parts of the docket entries which Respondent admits the Judge read to him, when read to any person, would leave no doubt in a reasonable person's mind but that the cases were concluded. Respondent's ethical violations in this case involved scheming and a devious plan to mislead a Judge into believing Respondent was appearing as a Prosecutor representative or "Special" Prosecutor. Respondent's suggestion to the contrary is as ludicrous as his proposed disposition is to Callaway County Prosecutor, any attorney who practices in Cole or Callaway County or the General Public.

Standard Court procedure requires the parties (the Prosecutor and Defense Counsel) to confer with the Court to remove a case from a trial docket. The Court must control its schedule, as most Prosecutors and Defense Counsel appreciate their ability to

manage their practices, an opportunity to cancel subpoenas promptly, etc. Respondent carried out his plan with the selfish motive to aid his brother in escaping the measure of justice he deserved for an offense of speeding 91 miles per hour in a 70 mile per hour zone. Respondent's actions were as deliberate as they were dishonest.

The ABA Standards define "intent" as "the conscious objective or purpose to accomplish a particular result." In a case where the accused, an assistant prosecutor who had moved to the state of Washington, misrepresented his address in renewing his Oregon driver license, he did so with the "conscious objective or purpose" to obtain a valid driver license in time to rent a car at the upcoming conference. In light of that conscious purpose, the court held the trial panel's conclusion that the accused acted merely with "knowledge" was incorrect, but with intent. *In re Flannery*, 47 P.3d 891 (Ore. 2002). The same reasoning is applicable in the present case and this Court should find Respondent's conduct intentional.

Honesty and Candor to the Court is **the** fundamental principle of our Legal System. ***The travesty done to the Legal System by this Prosecutor's dishonesty is immeasurable!*** Lawyers are officers of the Court. The very least a lawyer owes a court is the duty to act and speak to the court with honesty. "The Code of Professional Responsibility requires an attorney to comply with applicable disciplinary rules at all times, regardless of whether he is acting in a professional capacity." *In Re Carey*, 89 S.W.3d 477 (Mo.banc 2002) quoting *In re Disciplinary Action Against Selmer*, 529 N.W.2d 684, 687 (Minn. 1995). "Honesty and integrity are chief among the virtues the public has a right to expect of lawyers. Any breach of that trust is misconduct of the

highest order and warrants severe discipline." *In Re Carey*, 89 S.W.3d 477 (Mo.banc 2002) quoting *In re Disciplinary Action Against Thedens*, 602 N.W.2d 863, 865 (Minn. 1999). Before they are allowed to sit for the Bar, potential lawyers are required to pass the ethics exam so that even the most inexperienced lawyer knows that he or she cannot mislead a Court. When a lawyer's substantial experience places him in a position that would be unavailable to a less experienced lawyer, his experience (or position) also affords, or should afford, a greater appreciation of the advantages of eliciting false testimony, then such experience ought to be considered a relevant aggravating factor. *In re Peasley*, 90 P.3d 764 (Ariz. 2004). **Here, Respondent by virtue of his previous thirteen years experience as Cole County Assistant Prosecutor, election as Cole County Prosecutor and as a special prosecutor for Judge Holt, betrayed not only Judge Holt, the Callaway and Cole County Prosecutor's Office, Attorneys who practice in Callaway and Cole County, Cole and Callaway Citizens, but anywhere where Judges, Prosecutors, Attorneys practice, and the General Public, everywhere.**

Courts generally recognize that the ethical rules impose high ethical standards on prosecutors, due to their special position and power in the Judicial system. Recognizing a Government official or lawyer's role as a Justice Shepherd, we cannot forget that the Government's official or lawyer's authority does not arise from any *Right* of the Government's official or lawyer's *Power* entrusted to the Government official or lawyer. When a Government official or lawyer, with enormous resources at his or her disposal, abuses this power and ignores ethical standards, he or she not only undermines the public

trust, but inflicts damage beyond calculation to our Justice System. *In re Peasley*, 90 P.3d 764 (Ariz. 2004) (prosecutor presented false testimony).

Respondent's misdirected effort to "re-characterize" his involvement and to blame Judge Holt for making a "reasonable" mistake based on his "misrepresentation" and disposing of the cases improperly is further indication of the need for a severe sanction. Failure to acknowledge the consequences of the Disciplinary Counsels thirty day suspension as an inability to act as Cole County Prosecutor allowing "Assistants" to act in his behalf disavows his duties as an "elected" official demonstrates the continuing need of severe punishment of an "official" who knows no boundaries!

The Callaway County incident is unfortunate, the Respondent's criticism of Callaway County Judge Holt alone would be serious, this violation is compounded by his deceit of the General Public involving his own Cole County Presiding Circuit Court Judge.[2]

Respondent was already facing public allegations regarding his Callaway County actions when the Respondent was confronted with the Circuit Court en banc's findings and orders regarding a sexual harassment allegation against him. The Respondent "knowingly" made false statements about Judge Brown in a letter which he delivered to

[2] The OCDC dismissed two alleged violations against Respondent. In Count II OCDC alleged misconduct in connection with the Cole County Grand Jury and in Count III OCDC alleged that Respondent committed sexual harassment against a deputy circuit court clerk.

the news media. Instead of resolving "legal" issues in the "legal" system, the Respondent resorted to the press to divert attention from him by accusing Judge Brown conducting a "Star Chamber", when in fact the investigation was conducted en banc according to Supreme Court guidelines on this subject. Respondent's acts indicate such a serious lack of respect for the law and judiciary that a severe sanction ought to be imposed.

In considering the issue of punishment, the Court should consider the enormous "power" at a prosecutor's disposal. Here, even the Presiding Judge came under Respondent's attack for conducting what Respondent termed a "Star Chamber", and was reported to be under FBI investigation, etc. all of which are forwarded by the Respondent to the press to intimidate persons who oppose Mr. Tackett and to mislead the General Public. A review the public media accounts (attached in the appendix of this brief) of these incidents as an indication of the serious harm Respondent's violations and public statements have caused to our Justice System. All levels of the disciplinary system must be mindful of the responsibility to uphold the public's faith in the legal profession's ability to police itself. This faith has been in decline for many years and given the news reports in the appendix quoting statements made by Respondent, one can clearly conclude that Respondent's conduct and his statements which followed are contributing to the decline. Especially reprehensible is Respondent's statement that a suspension will have no effect on him, as his job is ministerial only. Some of the Respondent's reported statements are set out here:

2/11/03 ***St. Louis Post*** "Joe wrote down what the lawyer was asking for, and he made a docket entry, even though I don't have

jurisdiction in those cases," Tackett said. "It's the first case I've seen where a Judge concedes he made a mistake, corrects it, and then gets accused of something. He is an honorable guy."

2/11/03 ***Columbia Tribune*** "At the center of the investigation is Cole County's new prosecutor, Bill Tackett, who acknowledges discussing pleas and sentences in the speeding cases with a Judge in neighboring Callaway County but insists he did nothing illegal or unethical." . . . Tackett said he saw "nothing inappropriate" in discussing his brother's speeding case with Holt "because I wasn't a party to the case, either as defense lawyer or prosecutor."

02/10/03 ***News Tribune*** "Bill Tackett said this morning that judges correct docket entries when clerical mistakes are made in them. 'I've never seen a case when a judge has conceded that he made a clerical error and corrected it, that it has been reviewed for possible wrong-doing,'" Tackett said.

09/03/03 ***News Tribune*** "I am shocked by this letter from Judge Brown," Tackett said. "Critical witnesses were either not interviewed or were briefly interviewed. "I am disappointed the people in charge of due process have decided to ignore it, or decided it doesn't apply to them." "This is outside of the

powers possessed by a circuit judge and it is an abuse of power," Tackett said. "I believe this 'Star Chamber' style of investigation was motivated by something other than a search for the truth, or what's in the best interest of the people of Cole County."

09/08/03 ***News Tribune*** "Tackett said Brown 'took three actions, each of which could be perceived to either threaten me quietly or, in the end, injure me politically and personally.' And Tackett said he's seeking counsel to determine if he can take civil action against Brown for "slander and other torts."

01/05/05 ***KRCG TV*** "And it [suspension] wont have any effect uh but for, if there were, if they upheld the thirty days, then you wouldn't be able to go into court for thirty days but that's the sum and short of it and hopefully we wont have to even do that."

01/05/05 ***News Tribune*** "But even if the high court agreed with the suspension, Tackett said, he won't be forced out of office. A previous Supreme Court ruling involving 'a prosecutor who was suspended for 12 months,' Tackett explained, 'said that is not grounds for removal (from office), because it's a suspension, not a disbarment. And an elected prosecutor, in

large part, is ministerial and has assistants who can go into trial in the court.'"

Finally while on the issue of news media coverage, it was reported in an Associated Press article carried on the front page of the February 12, 2003, ***Fulton Sun***:

"My mistake was in not looking at the file to see whether he [Tackett] was the special prosecutor,' Holt told the AP last week. 'I screwed up, but when these prosecutors come in and say there is an agreement with the defense, I trust them.'"

In the same article it was reported that "Manumaleuna sent a $200 check to a St. Louis charity while Roland Tackett mailed in a receipt indicating he gave three pair of pants to Goodwill to cover his $100 donation."

Even a decision ordering a suspension may fall far short of what is required given the Respondent's steadfast efforts to blame the judiciary. Statements by a lawyer impugning the integrity and qualifications of a Judge, made with knowledge of the statements' falsity or in reckless disregard of their truth or falsity, can undermine public confidence in the administration and integrity of the judiciary, thus in the fair and impartial administration of justice. *In re Westfall*, 808 S.W.2d 829, 836 (Mo. 1991). Where an attorney criticizes the bench and bar, the issue is not simply [**25] whether the criticized individual has been harmed, but rather whether the criticism impugning the integrity of Judge or legal officer adversely affects the administration of justice and adversely reflects on the accuser's capacity for sound judgment. *In re Westfall*, supra at 837. Respondent's statements regarding Judge Brown went beyond the statements in

Westfall. The *Westfall* court stated: "He accused the Judge of purposely ignoring the law to achieve his personal ends." *In re Westfall*, supra 838. Respondent's statements in his letter to Judge Brown went far beyond the statements in the *Westfall* case. In *Westfall*, the court independently noted that the statements did not accuse the Judge of criminal conduct or of being subject to inappropriate influence. *In re Westfall*, supra 838. Respondent's false statements about Judge Brown did both.

Unfortunately the Informant in its recommendation of a reprimand may have inadvertently failed to apply this court's guidance given in past cases. The Court may wish to consider the theoretical framework from the ABA Standards: (1) What ethical duty did the lawyer violate? (2) What was the lawyer's mental state? (3) What was the extent of the actual or potential injury caused by the lawyer's misconduct? and (4) Are there any aggravating or mitigating circumstances? In the preface to the ABA Standards it is mentioned that sanctions which are too lenient fail to adequately deter misconduct and thus lower public confidence in the profession. An important question is whether or not -- and to what extent -- the misconduct resulted from intentional or malicious acts of the lawyer. The intentional conduct of the Respondent is a relevant factor. In addition the Court should also consider the damage which the Respondent's misconduct causes to the client, the public, the legal system, and the profession. The community expects lawyers to exhibit the highest standards of honesty and integrity, and lawyers have a duty not to engage in conduct involving dishonesty, fraud, or interference with the administration of justice. Lawyers also owe duties to the *legal system.* Lawyers are officers of the court, and must abide by the rules of substance and procedure which shape

the administration of justice. Lawyers must always operate within the bounds of the law, and cannot create or use false evidence, or engage in any other illegal or improper conduct [Rules 3.1 through 3.6, 3.9, 4.1 through 4.4, 8.2, 8.4(d)(e)&(f)/DR7-102 through DR7-110]. When a lawyer acts with the conscious objective or purpose to accomplish a particular result his act is intentional. The next most culpable mental state is that of knowledge, when the lawyer acts with conscious awareness of the nature or attendant circumstances of his or her conduct both without the conscious objective or purpose to accomplish a particular result. The least culpable mental state is negligence, when a lawyer fails to be aware of a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. Here, the Court should find Respondent's conduct was intentional. The extent of the injury is defined by the type of duty violated and the extent of actual or potential harm. The ABA Standards refer to various levels of injury: "serious injury," "injury," and "little or no injury." A reference to "injury" alone indicates any level of injury greater than "little or no" injury. The standards do not account for multiple charges of misconduct. The ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct. Either a pattern of misconduct or multiple instances of misconduct should be considered as aggravating factors (See standard 9.22).

The following are the relevant provisions of the ABA Standards providing guidance on when the punishment should be disbarment and suspension (the portions regarding admonishment and reprimand have been omitted).

6.1 ***False Statements, Fraud, and Misrepresentation***

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a court:

6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

5.2 ***Failure to Maintain the Public Trust***

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally

appropriate in cases involving public officials who engage in conduct that is prejudicial to the administration of justice or who state or imply an ability to influence improperly a government agency or official:

5.21 Disbarment is generally appropriate when a lawyer in an official or governmental position knowingly misuses the position with the intent to obtain a significant benefit or advantage for himself or another, or with the intent to cause serious or potentially serious injury to a party or to the integrity of the legal process.

5.22 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 to the integrity of the legal process.

5.1 ***Failure to Maintain Personal Integrity***

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

5.11 Disbarment is generally appropriate when:

(a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice,

false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

(b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

6.3 ***Improper Communications with Individuals in the Legal System***

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving attempts to influence a Judge, juror, prospective juror or other official by means prohibited by law:

6.31 Disbarment is generally appropriate when a lawyer:

(a) intentionally tampers with a witness and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding; or

(b) makes an ex parte communication with a Judge or juror with intent to affect the outcome of the proceeding, and causes serious or potentially

serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding; or

(c) improperly communicates with someone in the legal system other than a witness, Judge, or juror with the intent to influence or affect the outcome of the proceeding, and causes significant or potentially significant interference with the outcome of the legal proceeding.

6.32 Suspension is generally appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper, and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding.

6.33 Reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding.

9.2 ***Aggravation***

9.21 Definition. Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed.

The 9.22 factors which the Court should find apply in aggravation in Respondent's case include:

(b) dishonest or selfish motive;

(c) a pattern of misconduct;

(d) multiple offenses;

(f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;

(g) refusal to acknowledge wrongful nature of conduct;

(h) vulnerability of victim;

(i) substantial experience in the practice of law;

(k) illegal conduct, including that involving the use of controlled substances.

As asserted in this argument, Respondent should be punished by disbarment for his misconduct.

CONCLUSION

Mr. Tackett engaged in dishonesty before one Judge and knowingly made false statements about another Judge. These repeat violations warrant a severe sanction.

Respectfully submitted,

_____
Noel "Neal" Bisges #42411
529 East High Street
Jefferson City, Missouri 65101
573-635-6850
ATTORNEY FOR AMICUS

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2005, two copies of Amicus' Brief have been sent via First Class mail to:

Mr. Carl Schaeperkoetter
Staff Counsel
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400
Attorney for Informant; and

Mr. Edward D. Robertson, Jr.
200 Madison Street, Suite 1000
Jefferson City, Missouri 65101
(573) 659-4454
Attorney for Respondent

_____
Noel "Neal" Bisges

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. Complies with the limitations contained in Rule 84.06b);
3. Contains 6,926 words, according to Microsoft Word, which is the word processing system used to prepare this brief and 670 lines of monospaced type; and
4. That Norton Anti-Virus software was used to scan the disk for viruses and that it is virus free.

_____

APPENDIX

Recommendation i

Metro St. Louis News Article 2/11/2003 ii

Columbia Daily Tribune Article 2/11/2003 iii

Jefferson City Post Tribune Article 2/10/2003 ix

Jefferson City Post Tribune Article 9/3/2003 x

Jefferson City Post Tribune Article 9/8/2003 xi

Jefferson City Daily Article 1/5/2005 xii

Fulton Sun Article 2/12/2003 xiii