Electronically Filed - SUPREME COURT OF MISSOURI - September 16, 2021 - 10:38 AM

IN THE SUPREME COURT OF MISSOURI
EN BANC

IN RE:	)	
	)	
MARK McCLOSKEY,	)	**Supreme Court No. SC**
[redacted]	)	
[redacted]	)	
St. Louis, MO [redacted]	)	
	)	
Missouri Bar No. 36144	)	
	)	
Respondent.	)	

INFORMATION AND MOTION FOR FINAL ORDER OF DISCIPLINE

COMES NOW the Chief Disciplinary Counsel and pursuant to Rule 5.21(e) states:

1. Respondent Mark McCloskey was admitted to Missouri's bar in 1986. He was assigned bar number 36144. The address Respondent most recently furnished the Court and Bar is: [redacted] St. Louis, MO [redacted]

2. Respondent's license is in good standing. He has no disciplinary history.

3. On June 17, 2021, Respondent pled guilty to the Class C Misdemeanor of Assault in the Fourth Degree, admitting that he violated Section 565.056.1(3) RSMo by purposely[1] placing at least one other person in apprehension of immediate physical injury

[1] The Missouri Criminal Code states "purposely", when used with respect to a person's conduct or to a result thereof, means when it is his or her conscious object to engage in that conduct or to cause that result. §556.061(39), RSMo (2016). Black's Law Dictionary defines "purposely" as "intentionally; designedly; consciously; knowingly. A person acts purposely with respect to a material element of an offense when: (i) if the

Electronically Filed - SUPREME COURT OF MISSOURI - September 16, 2021 - 10:38 AM

by waving a Colt semi-automatic rifle in the direction of one or more individuals in front of his home [redacted] in the City of St. Louis on June 28, 2020.

4. On the same date on which he pled guilty, June 17, 2021, Respondent was sentenced to pay a $750 fine. He was also ordered to forfeit the Colt rifle.

5. Certified copies received from the Clerk of the Circuit Court within and for the City of St. Louis, State of Missouri, as of June 28, 2021, which include the complete case file and docket sheets are attached as **EXHIBIT 1.** Included are copies of the Substitute Information in Lieu of Indictment, Order of Forfeiture, and the "Plea, Judgment and Sentence" in *State v. Mark McCloskey*, 2022-CR01301.

Respondent's criminal act involves moral turpitude.

6. Respondent admitted committing a criminal act that shows indifference to public safety and involves moral turpitude, just as the Court found when a lawyer was convicted of a felony third offense of Driving While Intoxicated. *In re Stewart*, 342 S.W.3d 307 (Mo. banc 2011).

7. This Court has defined "moral turpitude" as "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to

---

element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and (ii) if the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist." Black's Law Dictionary, 5th Edition, West Publishing 1979.

society in general, contrary to the accepted and customary rule of right and duty between man and man; everything done contrary to justice, honesty, modesty and good morals." *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985). Missouri lawyers have been disciplined under this rule, and its predecessor Rule 5.20, upon conviction of misdemeanor assault and misdemeanor harassment charges. In these cases and in felony cases, the Court determined that the lawyer's conduct involved moral turpitude.

In the *Frick* case, the lawyer was convicted of the unlawful use of a weapon, a Class D felony. This Court ruled that the lawyer's criminal conduct involved moral turpitude when he vandalized a college campus and then fired a gun toward campus security officials, "knowingly placing these people in fear for their lives." Additionally, the Court held that the circumstances surrounding an assault related crime may establish an offense involving moral turpitude. *Id.* at 478. In this latter regard, the Court determined that the lawyer's harassing conduct - including sending vile and threatening letters to a former client - also involved moral turpitude. *Id.* at 479.

Nine years later, in another attorney disciplinary case processed under Rule 5.20, this Court ruled that both misdemeanor nonsupport and misdemeanor harassment convictions constituted moral turpitude. In describing child support obligations, the Court wrote:

> "The failure to discharge this responsibility therefore, is an act of moral turpitude."

In re Warren, 888 S.W.2d 334, 336 (Mo. banc 1994).

Electronically Filed - SUPREME COURT OF MISSOURI - September 16, 2021 - 10:38 AM

More pertinent to the instant case, the Court described Mr. Warren's harassment charge this way:

> "Respondent's written and oral threats to his ex-wife and her husband speak for themselves. Respondent's written death threat and further threat that he would be waiting in the dark for the Kennards clearly involve baseness, vileness or depravity. This Court finds that respondent's convictions involve moral turpitude."

In re Warren, 888 S.W.2d 334, 336 (Mo. 1994).

In other reported decisions, this Court has found moral turpitude when lawyers have been convicted of various misdemeanors, including: failure to file tax returns [*In re Burrus*, 258 S. W. 2d 625 (Mo. banc 1953)]; seduction under promise of marriage [*In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)]; failure to pay taxes, [*In re Duncan*, 844 S.W. 2d 443, 445 (Mo. banc 1992)]. In finding moral turpitude in the *Duncan* decision, the Court relied on the lawyer's willful criminal conduct, noting that he was "more than careless" and that "he voluntarily and intentionally violated the legal duty to pay taxes." *In re Duncan*, 844 S.W. 2d 443, 444 (Mo. banc 1992).

The Court has also applied this rule and found moral turpitude when disciplining lawyers for numerous felonies, including possession of cocaine. *In re Shunk*, 847 S.W. 2d 789 (Mo. banc 1993).

In the following unreported orders processed under Rule 5.21, this Court has decided that moral turpitude was involved in lawyers' criminal conduct:

Electronically Filed - SUPREME COURT OF MISSOURI - September 16, 2021 - 10:38 AM

a. In 2019, the Court suspended a lawyer under Rule 5.21(e) upon his convictions of four misdemeanors, including Driving While Intoxicated and three related counts of Third-Degree Assault, based on "recklessly causing physical injury to another." *In re Healea,* SC97490 (Order dated January 29, 2019).

b. The Court disbarred a lawyer in 2016 upon his felony conviction for sending threats via interstate commerce. *In re Walsh*, SC95987 (Order dated December 5, 2016).

c. In 2014, seven years after discipline for other criminal misconduct, a lawyer was again disciplined under Rule 5.21, upon two more DWI convictions and a Careless and Imprudent Driving conviction. In that later case, the Court ruled that his crimes involved moral turpitude. *In re Mask,* SC94219 (Order dated August 19, 2014).

d. The Court disbarred an attorney under Rule 5.21 in 2013, upon proof that he knowingly had physical conduct with a minor, causing significant emotional distress. That lawyer was convicted of the Class D Felony of Harassment in Section 565.090 RSMo. *In re Milzark.* SC93027, (Order dated March 19, 2013.)[2]

[2] The records in *Michel-Setzer, Shohet, and McHaney* are not available on Casenet. Informant has provided copies of the key pleadings and Supreme Court orders to Respondent.

Electronically Filed - SUPREME COURT OF MISSOURI - September 16, 2021 - 10:38 AM

Electronically Filed - SUPREME COURT OF MISSOURI - September 16, 2021 - 10:38 AM

e. In 2007, the court suspended a lawyer upon her conviction of a misdemeanor stealing offense. *In re Michel-Setzer,* SC88610 (Order dated July 19, 2007).

f. In a 1998 case, the Court reprimanded a lawyer who had plead guilty to two unrelated Class C misdemeanor assault charges, finding that the criminal conduct involved moral turpitude. *In re Shohet*, SC79883 (Order dated May 28, 1998).

g. In 1996, the Court suspended a lawyer under Rule 5.21 following his misdemeanor conviction of stalking. The Court explicitly ruled that the stalking offense involved moral turpitude. *In re McHaney*, SC78846 (Order dated September 24, 1996). Mr. McHaney's criminal conduct was defined as purposeful and repeated harassment by way of sexually explicit conduct that caused a reasonable person to suffer substantial emotional distress.[3]

---

[3] In some cases processed under Rule 5.21, the court has considered whether certain criminal conduct warrants discipline because it violates Rule 4-8.4(b). Lawyers violate that rule by "committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." Comment 2 to Rule 4-8.4 helps define the rule; it specifically includes crimes related to violence. Examples of crimes leading to discipline (in this Court) upon the factors established by Rule 4-8.4(b) include the following: Driving While Intoxicated and Third-Degree Assault (recklessness), *In re*

Electronically Filed - SUPREME COURT OF MISSOURI - September 16, 2021 - 10:38 AM

8. Respondent, Mark McCloskey, pled guilty to a Class C misdemeanor of assault in the fourth degree, admitting that he violated Section 565.056.1(3) RSMo by purposely placing at least one other person in apprehension of immediate physical injury by waving a Colt semi-automatic rifle in the direction of one or more individuals in front of his home on June 28, 2020.

9. Before accepting his plea, the trial court asked Respondent, Mark McCloskey, several questions, including this: "And is it true that on that date, time, and place in question, you placed a person in immediate physical - - apprehension of immediate physical injury by waving a Colt automatic rifle in the direction of one or more individuals?" Mr. McCloskey responded: "I sure did, your honor." Respondent also acknowledged hearing the Special Prosecutor describe the events in this way:

> "Judge, if this case were tried, the State's evidence would show that on June 28th [2020] of last year, a group of protesters were headed north on north Kingshighway. And some of the group - - they were on their way to the Mayor's house to protest some information she had released.... And some of the group thought they were taking a shortcut, and they turned left and went down Portland Place. And - - and as they confronted - - and the McCloskey's, when they saw a crowd coming down into the gate in front of

---

Healea, SC97490 (Order dated January 29, 2019). One misdemeanor of Driving While Intoxicated and an unrelated misdemeanor for Third-Degree Assault (following a fight at a poker game). I*n re Mask*, SC88434 (Order dated May 2, 2007).

Electronically Filed - SUPREME COURT OF MISSOURI - September 16, 2021 - 10:38 AM

> their house, they went outside with guns". . . . "The charge against Mr. McCloskey is that, again on that date, he purposely placed at least one individual in apprehension of immediate physical injury by waving a rifle in the direction of one or more individuals in front of his home. That is a class - - that is assault in the fourth degree, and that is a Class C misdemeanor." **EXHIBIT 2 Transcript (Pg.14 line 8 - Pg. 15 line 11).**

Respondent told the trial judge that he understood that the prosecutor would have to prove his guilt beyond a reasonable doubt and that he could bring witnesses and make arguments to convince a jury that he was not guilty. He also told the trial judge that he understood that he was giving up all these rights.

10. When Respondent pled guilty, he admitted the purposeful criminal conduct of placing others in apprehension of physical harm by waving his automatic rifle in their direction. When he pled guilty, Respondent waived any defenses he may have felt applicable to his circumstances. In other words, by pleading guilty, he admitted that he was not lawfully defending himself, other people, or his property. Sec. 563.011 RSMo, Sec.563.031 RSMo; Sec. 563.041 RSMo. By pleading guilty, he also admitted that he was not executing any public duty and that he was not authorized to make an arrest. Sec. 563.021; Sec. 563.051 RSMo. Finally, by pleading guilty, Respondent admitted that his purposeful conduct was not justified. Sec. 563.074 RSMo. Any statement that his conduct was justified is contradicted by his guilty plea, which was made after consultation with counsel and after questioning by the court. As the court noted in 1997 when a Missouri lawyer received a Suspended Imposition of Sentence following a guilty

verdict for felony assault, "Whether the attorney successfully completes his probation or he violates its terms and his sentence is imposed, the conduct of which he was found guilty warrants an evaluation as to his fitness to currently practice law." *In re McBride*, 938 S.W.2d 905,907 (Mo. banc 1997). The court added: "Mr. McBride may not relitigate his guilt or his defense of self-defense in this proceeding." *In re McBride*, 938 S.W.2d at 907.

For many years, this court has ruled that guilty pleas admit the elements of crimes and waive defenses: "A plea of guilty and the ensuing conviction comprehend all of the factual and legal elements necessary to sustain a binding, final judgment of guilt and a lawful sentence." *United States v. Broce*, 488 U.S. 563, 569, 109 S.Ct. 757, 102 L.Ed.2d 927 (1989). "By entering a plea of guilty, the accused is not simply stating that he did the discrete acts described in the indictment; he is admitting guilt of a substantive crime." *Id.* at 570, 109 S.Ct. 757. Consistent with these principles, "the general rule is that a guilty plea waives all non-jurisdictional defects, including statutory and constitutional guarantees." *State v. Rohra*, 545 S.W.3d 344, 347 (Mo. 2018), citing *Garris v. State*, 389 S.W.3d 648, 651 (Mo. banc 2012). Also, "The general rule in Missouri is 'that a plea of guilty voluntarily and understandably made waives all non-jurisdictional defects and defenses.' " *Hagan v. State,* 836 S.W.2d 459, 461 (Mo. banc 1992) (quoting *State v. Cody,* 525 S.W.2d 333, 335 (Mo. banc 1975)), *both cases overruled on other grounds by State v. Heslop,* 842 S.W.2d 72 (Mo. banc 1992). *Feldhaus v. State*, 311 S.W.3d 802, 805 (Mo. 2010).

Electronically Filed - SUPREME COURT OF MISSOURI - September 16, 2021 - 10:38 AM

Application of this Court's previous disciplinary opinions and orders dealing with lawyers guilty of criminal assault, harassment, and stalking - whether involving reckless, willful or purposeful conduct - and causing distress and fear, establishes that Respondent's criminal conduct involved moral turpitude. Opinions and orders applying Rule 4-8.4(b) also support a determination that Respondent's criminal conduct reflects adversely on his fitness as a lawyer.

The matter is ripe for discipline under Rule 5.21(e).

11. Respondent has been sentenced and the criminal case is finally disposed for purposes of Rule 5.21. No information seeking interim suspension was filed, so, in accordance with Rule 5.21(e), Informant requests that the Court issue an order to show cause why Respondent should not be disciplined.

12. Missouri Governor Mike Parson pardoned Respondent on July 30, 2021. The Governor's pardon has no impact on these proceedings. In Missouri, a pardon obliterates a person's conviction, but the person's guilt remains. *Guastello v. Department of Liquor Control*, 536 S.W.2d 21, 23, 25 (Mo. 1976). In that case, involving an application for a liquor license following a conviction and pardon, this Court addressed the following question: "in the case of an application for an office or license which is prohibited to one who has been convicted of a crime, does a pardon reestablish eligibility?" *Guastello v. Dep't of Liquor Control*, 536 S.W.2d at 24. The Court in the *Guastello* case relied on an earlier treatise, noting: "...if character is a necessary qualification and the commission of a crime would disqualify even though there had been no criminal prosecution for the crime, the fact that the criminal has been convicted and

Electronically Filed - SUPREME COURT OF MISSOURI - September 16, 2021 - 10:38 AM

pardoned does not make him any more eligible." *Guastello v. Dep't of Liquor Control*, 536 S.W.2d at 24.

The Western District more recently addressed a similar issue. That court relied on *Guastello* to affirm a circuit court ruling that prohibited a lawyer from running for an Associate Circuit Court judgeship. *Fay v. Stephenson,* 552 S.W. 3d 753 (Mo. App. W.D. 2018). Despite a governor's pardon, the trial court had disallowed the candidacy on the basis of the lawyer's *guilty plea* to two felonies when he was seventeen. The Court of Appeals noted that the statute prohibited candidacy by any person "who has been found guilty of or pled guilty to … a felony under the laws of this state." *Fay v. Stephenson*, 552 S.W.3d 753, 756 (Mo. Ct. App. 2018) (referring to Section 115.306.1 RSMo). Like that statute, Rule 5.21 permits discipline upon proof of guilty pleas, nolo contender pleas or findings of guilt. No conviction is required; not even a conviction unobliterated by pardon is required.

Respondent affirmatively stated his understanding that he could not later take back his guilty plea. Transcript p. 21-22. He admitted guilt in court and remains guilty.

Suspension is the appropriate sanction.

13. This Court's reported and unreported decisions in cases based on criminal misconduct support Informant's recommendation that Respondent be suspended. The following cases involving criminal misconduct resulted in suspension:

- Reckless Third-Degree Assault (three counts) and Driving While Intoxicated (all misdemeanors): Indefinite suspension with no leave

Electronically Filed - SUPREME COURT OF MISSOURI - September 16, 2021 - 10:38 AM

to apply for reinstatement for six months, no probation. *In re Healea,* SC97490 (Order dated January 29, 2019).

- Third-Degree Assault (poker game fight) and Driving While Intoxicated (misdemeanors): Indefinite suspension with no leave to apply for reinstatement for two years, with probation. *In re Mask,* SC88434 (Order dated May 2, 2007).
- Stealing (misdemeanor): Indefinite suspension with no leave to apply for reinstatement for six months- no probation. *In re Michel-Setzer,* SC88610 (Order June 19, 2007).
- Driving While Intoxicated and Careless and Imprudent Driving (misdemeanors - after previous discipline): Indefinite suspension with no leave to apply for reinstatement for six months – no probation. *In re Mask*, SC94219 (Order dated August 19, 2014).
- Criminal Non-support and Harassment (misdemeanors - plus dishonesty in bar application): Indefinite suspension with no leave to apply for reinstatement for six months – no probation. *In re Warren*, 888 S.W.2d 334, 337 (Mo. banc 1994).
- Stalking, by explicit conduct causing substantial emotional distress (misdemeanor): Indefinite Suspension with leave to apply for reinstatement after two months – no probation. *In re McHaney*, SC78846 (Order dated September 24, 1996).

Electronically Filed - SUPREME COURT OF MISSOURI - September 16, 2021 - 10:38 AM

- Endangering the Welfare of a Child by failing to seek medical attention (felony): Indefinite suspension with no leave to apply for reinstatement for one year – no probation. *In re Wilson*, SC92843 (Order dated October 18, 2012).
- Driving While Intoxicated (third Offense – felony): Indefinite suspension with no leave to apply for reinstatement for six months, no probation. *In re Stewart*, 342 S.W.3d 307 (Mo. banc 2011); *In re Sebold*, SC92047 (Order dated April 3, 2012).
- Willful Failure to Pay Income Tax (misdemeanor): Indefinite suspension with no leave to apply for reinstatement for six months – no probation. *In re Duncan*, 844 S.W. 2d 443, 445 (Mo. banc 1992)
- Involuntary Manslaughter with criminal negligence - by drag racing (felony): Indefinite suspension with no leave to apply for reinstatement for three years – no probation. *In re Bailey*, SC98928 (Order dated May 4, 2021).

In a 1997 decision split over sanction, a majority of the Court reprimanded a lawyer found guilty of Second-Degree Assault following a shooting on his property. The three dissenting judges would have suspended the lawyer. *In re McBride*, 938 S.W.2d 905 (Mo. banc 1997). The following year, the court reprimanded a lawyer convicted of two misdemeanor assaults. *In re Shohet,* SC79883 (Order dated May 28, 1998).

Upon a conviction for a felony harassment related to knowing physical conduct causing distress, the Court disbarred the attorney. *In re Milzark.* SC93027 (Order dated

Electronically Filed - SUPREME COURT OF MISSOURI - September 16, 2021 - 10:38 AM

March 19, 2013). The Court also disbarred an attorney upon conviction of a felony of communicating a threat through interstate commerce. *In re Walsh*, SC95987 (Order dated December 5, 2016). The Court disbarred an attorney for conduct involving moral turpitude, which included firing a gun toward a campus security guard, vandalism, and sending anonymous threatening letters to a former client. *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985).

14. The Court routinely considers the ABA Standards for Imposing Lawyer Sanctions in determining appropriate discipline. *In re Kayira*, 614 S.W.3d 530, 533 (Mo. banc 2021). Those standards anticipate that courts will generally look to the duty violated, the level of intent, the harm and potential harm, and then weigh any aggravating or mitigating factors. ABA Standard 3.0. Here, Respondent violated duties to the public and the legal profession. His admits that his conduct was purposeful. His crime and his post-guilty plea statements brought discredit to the profession.

15. This Court generally considers ABA Standards 5.1, 5.11, 5.12 and 5.13 when fashioning a sanction following criminal convictions. Those Standards are set out here:

> **Standard 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

Electronically Filed - SUPREME COURT OF MISSOURI - September 16, 2021 - 10:38 AM

other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

Standard 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.

Standard 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.

Standard 5.13. Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

This Court applied Standard 5.12 when deciding to suspend attorney Gerald Warren following his misdemeanor convictions of harassment and non-support. *In re*

Electronically Filed - SUPREME COURT OF MISSOURI - September 16, 2021 - 10:38 AM

Warren, 888 S.W.2d 334, 337 (Mo. 1994). The Court also applied Standard 5.12 when suspending attorney Byron Stewart for his Driving While Intoxicated conviction. *In re Stewart*, 342 S.W. 3d 307, 311 (Mo. banc 2011). In the 1997 *McBride* matter, the majority and dissent opinions both referred to Standard 5.12. *In re McBride*, 938 S.W.2d 905,909,910 Mo. banc 1997). In 2003, this Court relied on the language in ABA Standard 5.11 (as restated in the ABA/BNA LAWYERS' MANUAL ON PROFESSIONAL CONDUCT) when disbarring an attorney who willfully and deliberately failed to pay his taxes and misappropriated funds from his firm. *In re Kazanas*, 96 S.W.3d 803, 808 (Mo. banc 2003).

Previous sanctions imposed by this court are essential determinants in new cases. Whether looking to those sanctions themselves or to the express reasons behind them, it is apparent that ABA Standard 5.12 should be the starting point for sanction analysis here.

16. After finding the appropriate baseline standard, this Court routinely considers aggravating and mitigating circumstances, as set out in ABA Standards 9.2 and 9.3. *In re McBride*, 938 S.W.2d 905, 907, 908 (Mo. banc 1997); *In re Belz*, 258 S.W.3d 38, 42(Mo. banc 2008).

Mitigating circumstances include that Respondent Mark McCloskey has no previous discipline and has cooperated with disciplinary authorities. ABA Standards 9.32(a) and 9.32(e).

Aggravating circumstances include Respondent's statements made to the media after his guilty plea. On the courthouse steps immediately following his sentencing,

Electronically Filed - SUPREME COURT OF MISSOURI - September 16, 2021 - 10:38 AM

Respondent publicly declared: "The prosecutor dropped every charge except for alleging that I purposely placed other people in imminent risk of physical injury; right, and I sure as heck did. That's what the guns were there for and I'd do it again any time the mob approaches me, I'll do what I can to place them in imminent threat of physical injury because that's what kept them from destroying my house and my family." **EXHIBIT 3 (dvd).** Minutes after admitting in court that his behavior was not legally justified in that setting, he told the news media that he would commit the same crime under the same circumstances.

He repeated and expanded his comments in a national news television interview over the next few days. "… That's what the whole purpose of the guns was – to stand out in front of the house, make people back up, put them in immediate fear of physical injury. That's what kept them from killing me and burning down the house. And it's kind of hard for me to say that I didn't do that, because that's what I did. It's kind of a, you know, non-event Class C misdemeanor fine. It's a, you know, a little face-saving for the prosecution's office." **EXHIBIT 3 (dvd)**. Respondent's public statements aggravate because they indicate his refusal to acknowledge wrongdoing and demonstrate his lack of respect for the judicial process that he had recently participated in. ABA Standard 9.22(g).

The Preamble to Rule 4 is also relevant. Paragraphs 5 and 6 of the Preamble include these fundamental concepts:

> [5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal

Electronically Filed - SUPREME COURT OF MISSOURI - September 16, 2021 - 10:38 AM

affairs. … A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process. [6] … In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.

The Tennessee Supreme Court recently imposed a four-year suspension against a lawyer who publicly counseled a non-client on Facebook about how to commit a violent crime using the "castle doctrine" as a defense. Finding a violation of Rule 8.4(d) (conduct prejudicial to the administration of justice), the Tennessee court found an aggravating circumstance was that the lawyer made his comments so publicly:

"Here, Mr. Sitton's choice to post his comments on a public platform amplified their deleterious effect. We can think of few things more prejudicial to the administration of justice than publicly fostering a view of lawyers as co-conspirators whose role is to manufacture plausible but untrue defenses against criminal charges for the premeditated use of deadly force. It promotes a cynical view of the justice system as something to be manipulated instead of respected. Moreover, while the danger to [the target] is obvious (had Ms. Houston followed Mr. Sitton's instructions), the

Electronically Filed - SUPREME COURT OF MISSOURI - September 16, 2021 - 10:38 AM

public venue for Mr. Sitton's bad advice created a risk that others would use it as well.

In re Sitton, 618 S.W.3d 288, 304 (Tenn. 2021).

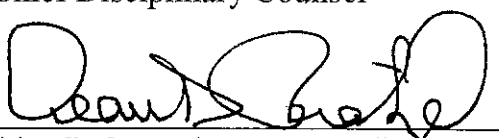
In the instant case, Respondent's repeated statements to the media that he would do the same thing, after admitting in court that his conduct was purposeful and criminal, also "amplified the deleterious effect" that his crime itself had on public perception of the legal profession. *In re Sitton*, 618 S.W.3d at 304 (Tenn. 2021). As in the Tennessee case, this respondent's statements to the media on the courthouse steps, and in a national news interview, created a risk that others might follow his lead.

WHEREFORE Informant prays the Court order Respondent to show cause why his license should not be disciplined based on his misdemeanor conviction of Assault in the Fourth Degree. Additionally, Informant prays that the Court, upon finding that Respondent has committed professional misconduct, enter a final order of discipline pursuant to Rule 5.21(e). Informant recommends that Respondent's law license be indefinitely suspended with no leave to apply for reinstatement for six months.

Electronically Filed - SUPREME COURT OF MISSOURI - September 16, 2021 - 10:38 AM

Respectfully submitted,

ALAN D. PRATZEL
Chief Disciplinary Counsel

By: 
Alan D. Pratzel, #29141
Chief Disciplinary Counsel
Alan.Pratzel@courts.mo.gov
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400 – Phone
(573) 635-2240 – Fax

INFORMANT

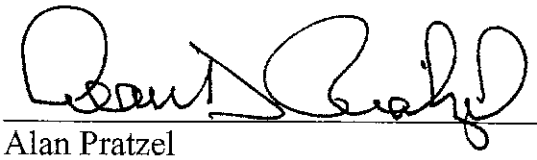
CERTIFICATE OF SERVICE

A true and correct copy of the foregoing was sent via the Missouri e-filing system.

In addition, a copy of the foregoing, including the referenced DVD, were mailed postage prepaid, Certified Mail, Restricted Delivery, Return Receipt Requested, to Respondent Mark McCloskey on this 16th day of September, 2021. The DVD included was scanned for viruses and it is virus free.

Mark McCloskey
[redacted]
St. Louis, MO [redacted]

Respondent


Alan Pratzel

Electronically Filed - SUPREME COURT OF MISSOURI - September 16, 2021 - 10:38 AM