

Ethics Update from the Region XV Disciplinary Committee 2025

Kevin Rapp
Special Representative
Region XV Disciplinary Committee

kjrapp.OCDC@gmail.com

Order of Presentation

- Disciplinary System Overview and Statistics
- Recent Missouri Supreme Court Disciplinary Cases
 - *In re Hollingsworth*
 - *In re Agron*
 - *In re Petruska*
- Recent Supreme Court Advisory Committee Guidance
 - Reporting Professional Misconduct
 - Text Message Solicitation
 - Cryptocurrency Payments

MO Statewide Discipline Statistics

- In 2023, the OCDC received 1,970 complaints statewide.
 - 2022: 1,892 complaints
 - 2021: 1,739 complaints
 - 2020: 1,709 complaints
 - 2019: 1,733 complaints
- Investigative files were opened on 522 (26%) of the complaints received. Files were either handled by OCDC in Jefferson City or transferred to the differing Regions.
 - 69 of the opened files (13%) were referred to Region XV.
- Jurisdiction rejected for a variety of reasons, including fee disputes, trial strategy, or legal advice.
- Source: 2023 OCDC Annual Report (available at: <https://mochiefcounsel.org/annual-reports-for-ocdc/>)

MO Statewide Discipline Statistics

- Of the 522 complaints on which investigative files were opened in 2023:
 - ❑ 320 (61%) involved communication (Rule 4-1.4)
 - ❑ 248 (48%) involved diligence (Rule 4-1.3)
 - ❑ 130 (25%) involved dishonesty, fraud, deceit or misrepresentation (Rule 4-8.4(c) and other rules)
 - ❑ 124 (24%) involved excessive fees (Rule 4-1.5 and other rules)
- Complaints can raise multiple issues or rules so totals do not equal 100%

MO Statewide Discipline Statistics

- Of the 522 complaints on which investigative files were opened in 2022, roughly three-quarters involved one of these practice areas:
 - ❑ 128 (25%) criminal law
 - ❑ 97 (19%) domestic law
 - ❑ 71 (14%) litigation
 - ❑ 53 (10%) other

MO Statewide Discipline Statistics

During 2023 there were 101 Disciplinary Actions taken:

- ❑ 18 lawyers were disbarred (up from 12 in 2022)
- ❑ 17 lawyers received disciplinary suspensions (same as 2022);
 - Four of the suspensions were stayed and the lawyers placed on probation with conditions (down from seven in 2022)
- ❑ Two lawyers were reprimanded (down from three in 2022); and
- ❑ 71 lawyers received admonitions (up from 63 in 2022)

Region XV Caseload

- As of June 8, 2025, there are 184 open files in Region XV.
 - June 2024: 112 open files
 - June 2023: 80 open files
 - June 2022: 71 open files
- In 2023, Region XV was referred 69 files and disposed of 87 files, which consisted of both 2023 cases and cases from previous years.
- In 2024, 21 Informations before a disciplinary hearing panel were filed statewide. Five of these Informations (24%) were filed by Region XV.
- There are currently five open disciplinary Informations at the disciplinary hearing stage from Region XV, covering approximately 74 of the 184 open files. About 50 of those files are time share related. An additional 25 cases have been placed in “held” status – stayed pending the results of the disciplinary hearings.

Recent Supreme Court Disciplinary Cases

- *In re Hollingsworth*, SC 100697 (*Per Curiam* Order, January 14, 2025)
- *In re Agron*, 701 S.W.3d 623 (Mo. banc December 10, 2024)
- *In re Petruska*, 707 S.W.3d 598 (Mo. banc March 4, 2025)

In re Hollingsworth

Textbook Example of What Not to Do

- Hollingsworth has been a prosecuting attorney for 16.5 years.
- Hollingsworth and other attorneys were working in a jury room while Court was in session. A public defender left his computer in the jury room to appear in Court.
- Hollingsworth accessed the public defender's computer, emailing the sheriff: "You look sooooo good in khaki pants and that black shirt." He signed the email with the public defender's name.
- Hollingsworth told another attorney, who told the public defender to check his email. The public defender then had to notify his clients that Hollingsworth potentially had access to their files.
- Hollingsworth represented himself throughout the proceedings. He argued at the hearing that he was not acting as a prosecutor when he sent the email and therefore did not commit a rule violation.
- The disciplinary hearing panel recommended that Hollingsworth be reprimanded. The OCDC rejected this recommendation and asked that Hollingsworth be suspended.
- After oral argument, the Court ultimately suspended Hollingsworth for six months.

In re Hollingsworth

Takeaways

- Do not represent yourself in a serious discipline proceeding.
- Your “lawyer hat” is always on – arguing that you were not engaging in legal work is not a defense.
- Lack of remorse and failure to accept consequences for your actions will not be to your benefit.
- Don’t argue with a Supreme Court Judge, especially now that the whole world can see!

In re Agron

Facts

- Agron entered into an agreement with National Accident Consulting (NAC) to refer personal injury clients to him, paying \$500 per referral. All told Agron paid NAC \$77,000 for 154 referrals. NAC was not a registered referral company with the OCDC as required by Rule 4-9.1 (Lawyer Referral and Information Service).
- Agron also used a NAC runner (R.W.) to refer clients to him. Another attorney filed a complaint when his client was contacted by R.W. who claimed he worked with Agron.
- During the OCDC investigation, Agron first denied using or paying for referrals. He further claimed that he did not know R.W. The OCDC elected to audit Agron's operating account. Agron then retained counsel and submitted a "Statement of Clarification and/or Correction" admitting that his initial responses to OCDC were misleading and that he did know R.W. and that he did pay NAC for referrals.
- At the disciplinary hearing, Agron and the OCDC stipulated to the facts and violations but disagreed on recommended discipline. The OCDC recommended a one-year suspension or alternatively, a six-month suspension. Agron requested straight probation or stayed suspension with probation.
- Two members of the Disciplinary Hearing Panel (DHP) voted for stayed suspension with probation. The lay member of the panel dissented and stated that Agron should be suspended without probation.

In re Agron Analysis

- The Court found that Agron violated the following Missouri Rules of Professional Conduct:
 - 4-9.1(b) (Lawyer Referral Service)
 - 4-5.3 (Supervision of Non-lawyer Assistants)
 - 4-7.2(c) (Advertising – referral fees)
 - 4-8.1(a) (Disciplinary Matters – lying to the OCDC)
 - 4-8.4(c) and (d) (Misconduct – dishonesty and conduct prejudicial to the administration of justice)
- The Court then applied ABA Standard 6.11 and 6.12 finding that Agron’s “lack of veracity and intentional obfuscation of facts pertinent to the OCDC’s inquiry warrant disbarment, or at the very least, suspension.” *Agron*, 701 S.W.3d at 631.

In re Agron

Analysis

- The Court next considered aggravating and mitigating factors. Agron argued that his mitigating factors (which included no previous discipline) warranted a stayed suspension.
- In support, Agron cited *In re Krigel*, 480 S.W.3d 294 (Mo. Banc 2016). *Krigel* involved an attorney who initially misled a circuit court and child's father in a family law case. The Court granted *Krigel* a stayed suspension with probation.
- The Court rejected this argument:
 - “*Krigel*, however, was an anomaly and should not be relied upon as persuasive authority for determining the appropriate discipline in a professional misconduct proceeding. The misconduct in *Krigel* was egregious, and it is highly unlikely **current disciplinary norms** could support the substantial deviation from the presumed discipline imposed in that case.” *Agron*, 701 S.W.3d at 632 (emphasis added).
- The Court imposed a one-year suspension.

In re Agron

Side Note on Referral Fees and Fee Sharing

- Notably, although the Court focused primarily on Agron's dishonesty and misleading conduct in imposing discipline, the Court further opined about the dangers of fee sharing and paying for client referrals.
- The Court discussed *In re Randolph*, 347 S.W.2d 91 (Mo. Banc 1961). There, an attorney was disbarred for paying non-attorneys for client referrals and splitting resulting fees with them. The *Randolph* court stated that such conduct "leads to many evils;" is "unfair to other members of the bar;" and "tends to degrade the legal profession and breed disrespect for the courts." *Id.* at 110.
- Accordingly, such conduct "constitutes serious ethical violations and merits appropriate discipline." *Agron*, 701 S.W.3d at 632.

In re Agron

Key Takeaways from the Court

- Do not lie or mislead the OCDC or the Regional Disciplinary Committees. Cooperate fully and be honest. Better late than never.
 - Contrast this with *In re: Hollingsworth*.
- The Court again emphasized that mitigating factors do not constitute a defense to misconduct but can reduce the degree of discipline imposed.
 - “Agron [] eventually confessed his misdeeds, cooperated with OCDC, exhibited remorse, and made good faith efforts to rectify his misconduct. These mitigating factors justify departing from disbarment.” *Agron*, 701 S.W.3d at 633.
- This Court does not feel bound by attorney discipline precedent, especially when the discipline for serious misconduct falls below straight suspension or disbarment.
 - “Current disciplinary norms.”
- The Court is further telegraphing that fee-sharing and referral fee cases will probably warrant significant discipline, either at the suspension or disbarment level.

In re Petruska

Facts

- Petruska worked as in-house/captive counsel for Zurich Insurance Company.
- In 2018, Petruska was assigned to represent an automobile dealership and its employee as defendants in a serious automobile accident brought by mother and daughter plaintiffs.
- Petruska had difficulty locating the employee who failed to appear for depositions or cooperate. Plaintiffs sought and were awarded sanctions which Petruska did not disclose to Zurich.
- In October 2019, with trial scheduled for November, Petruska emailed Plaintiffs' counsel that he had authority to settle the case for \$120,000. Plaintiffs accepted on the condition that Defendants also pay the sanctions. Petruska later admitted that Zurich had not given him this authority to settle the case.

In re Petruska

Facts

- The Court continued the November 2019 trial to allow time to effect settlement. In December 2019, Plaintiffs filed a motion to enforce the settlement, and by agreement, Defendants were granted until January 10, 2020, to pay the settlement. The entire time Zurich still did not know about the settlement.
- In January 2020, Petruska sent a check for \$2,185 to cover the sanctions. However, Petruska used an invoice listing the charge as “expert reimbursement” so that Zurich would issue the check.
- Finally, Petruska sent Plaintiffs’ counsel a FedEx envelope purporting to contain the check, but was in fact, empty. He did this from a personal FedEx account.
- In February 2020, Plaintiffs filed a motion for civil contempt. Petruska attempted to obtain authority from the dealership to advance the settlement funds. The dealership’s independent counsel wisely questioned this approach asking why Zurich had not paid and the dealership did not advance the funds.
- Ultimately, a different Zurich attorney reviewed the file and discovered the motion to enforce the judgment. Petruska was fired, and Zurich paid Plaintiffs \$125,000 - \$5,000 more than the settlement for the difficulties and delays.

In re Petruska

Analysis

- The Court found that Petruska violated the following Rules:
 - 4-1.2(a) (Scope of Representation – following client directives)
 - 4-1.3 (Diligence)
 - 4-1.4 (Communication)
 - 4-3.3 (Candor Toward the Tribunal)
 - 4-8.4(c) (Misconduct – dishonesty)
- The Court found that ABA standard 6.11 for disbarment applied because Petruska's conduct was done intentionally.
- Petruska argued for a stayed suspension with probation, citing *Krigel*. The court rejected this citing *Agron* for the proposition that *Krigel* "should not be relied upon as persuasive authority."
- Petruska was given a three-year suspension.

In re Petruska

Dissent

Judge Wilson dissented, arguing that while he agreed that a serious disciplinary sanction was warranted, he felt that a three-year suspension “imposes a sanction greater than that necessary to protect the public and the integrity of the legal profession.” *Petruska*, 707 S.W.3d at 610. Judge Wilson felt that a one-year suspension was sufficient.

In re Petruska

Key takeaways from the Court

- The Court continues to consider any type of dishonesty as a serious offense, with the baseline sanction being disbarment for intentional conduct.
- *Krigel* is dead, and the Court will look to more recent disciplinary cases issued by the current members of the Court for support.
 - “Current disciplinary norms.”
- Good mitigating factors can lessen discipline, but probably not to the level of probation.
- Judge Wilson’s dissent shows that there may be wiggle room to argue for a shorter suspension as a sanction – but not much else.

Recent Supreme Court Advisory Committee Guidance

- Reporting Professional Misconduct
- Text Message Solicitation
- Cryptocurrency Payments

Reporting Professional Misconduct

Informal Opinion 2025-02 (May 2, 2025)

- **Rule:** 4-8.3 (Reporting Professional Misconduct)
- **Issue:** Lawyer has determined that they must report opposing counsel in an ongoing matter, but case is close to trial and settlement discussions are ongoing. Lawyer is worried that reporting counsel now may impact the case. May lawyer wait to inform the OCDC?
- **Answer:**
 - Obligation to report exists regardless of timing to protect the public and legal profession.
 - But see Comment [2] to the Rule – confidentiality concerns and prejudice to client may be considered in seeking consent to disclose.
 - “This reference suggests that lawyer may consider the adverse impact on the client when determining the timing of the report ... [however] a report should be made reasonably promptly to the [OCDC].”

Text Message Solicitation

Informal Advisory Opinion 2025-03 (May 2, 2025)

- **Rule:** 4-7.3 (Direct Contact with Prospective Clients)
- **Issue:** Are text messages considered real-time electric solicitation of legal business under Rule 4-7.3(a) or written solicitation under Rule 4-7.3(b)?
- **Answer:** Text messages are real time electric solicitation of legal business under Rule 4-7.3(a) and are therefore prohibited unless the solicitation is to an “existing or former client, lawyer, close friend, or relative.”
- Rule 4-7.3(b) regarding written solicitations only applies to mailed solicitations. (Informal Opinion 20090040).

Cryptocurrency Payments

Informal Opinion 2025-04 (May 2, 2025)

- **Rules:** 4-1.5 (Fees); 4-1.8 (Prohibited Transactions); 4-1.15 (Trust Accounting)
- **Issue:** Lawyer would like to make agreement at beginning of case to accept payment at the conclusion of the case in crypto. Lawyer would use a service to convert crypto payments into dollars (USD) at the point of sale.
- **Answer:** Lawyer may accept crypto for the payment of **earned fees only**.
 - “Since a third-party service must be used to convert the crypto[] to [USD] . . . such payments are only appropriate for earned fees that are not to be placed in a client trust account, not advanced paid fees or expenses . . .”
- Crypto is considered payment in property and must be reasonable under Rule 4-1.5(a) and is also subject to Rule 4-1.8(a)(1)-(3) protections.

Any Questions or Comments?

Resources for Researching Ethics Issues

☐ **Legal Ethics Counsel– www.Mo-Legal-Ethics.org**

- ☐ Informal Opinions given over the phone or in writing – 573-638-2263
- ☐ Articles
- ☐ Approved Financial Institutions for Trust Accounts

☐ **Missouri Supreme Court - www.courts.mo.gov**

- ☐ Rule 4 – Missouri Rules of Professional Conduct
- ☐ Rule 5 – Disciplinary Procedural Rules
- ☐ Disciplinary Decisions

☐ **Office of Chief Disciplinary Counsel – www.mochiefcounsel.org**

- ☐ Articles
- ☐ Overview of Disciplinary Process