Ethics Update 2026

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Order of Presentation

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- Changes to the Missouri Disciplinary System
- Recent Missouri Supreme Court Disciplinary Cases
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MO Statewide Discipline Statistics

- In 2024, the Office of Chief Disciplinary Counsel ("OCDC") received 2,026 complaints statewide.
  - 2023: 1,970 complaints
  - 2022: 1,892 complaints
  - 2021: 1,739 complaints
  - 2020: 1,709 complaints
- Investigative files were opened on 641 (37%) of the complaints received. Files were either handled by OCDC in Jefferson City or transferred to the differing Regions.
  - 109 of the opened files (17%) were referred to Region XV.
- Jurisdiction rejected for a variety of reasons, including fee disputes, trial strategy, or legal advice.
- Source: 2024 OCDC Annual Report (available at: https://mochiefcounsel.org/annual-reports-for-ocdc/)

MO Statewide Discipline Statistics

- Of the 641 complaints on which investigative files were opened in 2024:

- 379 (59%) involved communication (Rule 4-1.4)
- 271 (42%) involved diligence (Rule 4-1.3)
- 156 (24%) involved excessive fees (Rule 4-1.5 and other rules)
- 137 (21%) involved dishonesty, fraud, deceit or misrepresentation (Rule 4-8.4(c) and other rules)

- Complaints cover multiple issues and/or rules so totals do not equal 100%

MO Statewide Discipline Statistics

- Of the 641 complaints on which investigative files were opened in 2022, roughly two-thirds involved one of these practice areas:

- 143 (22%) domestic law
- 131 (20%) criminal law
- 99 (15%) litigation

MO Statewide Discipline Statistics

Excluding tax suspensions, during 2024 there were 111 Disciplinary Actions taken (up from 101 in 2023):

- 10 lawyers were disbarred
  - 2023: 18
  - 2022: 12
- Nine lawyers received disciplinary suspensions
  - 2023: 17
  - 2022: 17
- Only one of the nine suspensions was stayed and the lawyer placed on probation
  - 2023: 4
  - 2022: 7
- One lawyer was reprimanded
  - 2023: 2
  - 2022: 3
- 91 lawyers received admonitions
  - 2023: 71
  - 2022: 63

Region XV Caseload

- As of June 4, 2026, there are 105 open files in Region XV.
  - June 2025: 184
  - June 2024: 112
  - June 2023: 80
  - June 2022: 71

- In 2024, Region XV (Southwest Missouri) (two committees) was referred 109 files for investigation and disposed of 91 files, which consisted of both 2024 cases and cases from previous years.
  - Region IV (Kansas City and surrounding metro) (three committees): 90 cases opened
  - Regions X and XI: (St. Louis and surrounding metro) (five committees): 155 cases opened
  - OCDC (remainder of State): 244 cases opened

MO Statewide Discipline Statistics Future Trends

- Tentative statistics show that in 2025, the OCDC received 2,523 complaints and opened 823 files. That is a 20% increase in complaints and a 22% increase in opened files from 2024.

- So what is the solution????

Changes to the Disciplinary System

- In February 2026, the Supreme Court of Missouri issued new rules restructuring the disciplinary system in Missouri. These new rules, effective January 1, 2027, consolidate all complaint investigations within the OCDC.
- There will no longer be Regional Disciplinary Committees based in St. Louis, Kansas City and Southwest Missouri. Instead, full-time staff employed by OCDC will be responsible for investigating all complaints.
- The OCDC is hiring more full-time staff and to keep local flavor, the OCDC is implementing "regional counsel" positions which consist of attorneys primarily based in St. Louis, Kansas City and Springfield.
- More information:
  - Supreme Court February 24, 2026 Order: https://www.courts.mo.gov/page.jsp?id=231534
  - *Ethics: Lawyer Disciplinary System to Undergo Restructure* (Mo. Bar Journal Vol. 82, Issue 2) by the Hon. Zel Fischer and Andrea Spillars, Chief Disciplinary Counsel: https://news.mobar.org/ethics-lawyer-disciplinary-system-to-undergo-restructure/

Recent Supreme Court Disciplinary Cases

Attorney Discipline

- *In re McCarty*, 716 S.W.3d 245 (Mo. banc July 22, 2025)
- *In re Arensberg*, 727 S.W.3d 119 (Mo. banc January 13, 2026)
- *In re Goldstein*, 727 S.W.3d 443 (Mo. banc January 23, 2026)

Judicial Discipline

- *In re Thornhill*, 725 S.W.3d 272 (Mo. banc December 29, 2025)

In re McCarty Facts

- McCarty was a former associate general counsel for KCPD. From day one, his relationship with his supervisor was contentious and McCarty filed a hostile work complaint which was closed.
- McCarty claimed that he was concerned about KCPD's policies and compliance with legal authority such as Missouri's Sunshine Law and *Brady* and began emailing himself detailed notes and documents related to his representation of KCPD.
- McCarty was terminated for unsatisfactory performance. That same day, he emailed two DOJ attorneys who he knew were investigating KCPD for alleged discriminatory practices and offered to provide them documents. Three days later, McCarty emailed 143 separate addresses an eight page "letter to the world" and 372 pages of attachments, including internal KCPD emails and memoranda. Recipients included elected officials, law enforcement, and members of the media.
- After OCDC filed an Information, McCarty alleged that his conduct was allowed by several Rules of Professional Conduct; Missouri's whistleblower statute; and the First Amendment.
- The Disciplinary Hearing Panel ("DHP") recommended a reprimand and the OCDC rejected the recommendation.

In re McCarty Analysis

- The OCDC charged McCarty with violations of Rule 4-1.9 (Conflict of Interest: Duties to Former Clients). Specifically, Rule 4-1.9(c) states as follows:

  (c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

    (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client or when the information has become generally known; or

    (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

In re McCarty
Analysis

- McCarty raised three defenses, all of which were rejected by the Court:
  - Defense #1: he was required to report unlawful conduct to his organizational client pursuant to Rule 4-1.13(b);
  - Defense # 2: the disclosures were permissible under Rules 4-1.6(b)(4) (Confidentiality) and 4-1.9(c) because he was seeking to comply with other law; and
  - Defense # 3: he was protected from discipline for speaking out about issues of public concern under the First Amendment and Missouri's public-employee whistleblowing statute.
- In a unanimous opinion authored by Chief Justice Powell, the Court found that McCarty violated Rule 4-1.9 and after consideration of aggravating and mitigating circumstances, suspended McCarty indefinitely with no leave to apply for reinstatement for at least one year.

In re McCarty Analysis

- The First Amendment does not prohibit the Court from regulating the practice of law or imposing lawyer discipline.
  - Citing *Garcetti v. Ceballos*, 547 U.S. 410 (2006), the Court noted when employees make statements pursuant to their official duties, they are not speaking as citizens for First Amendment purposes and there is no protection from employer discipline:
  - Additionally, lawyers abdicate some of their rights, including their First Amendment Rights when they take their oath of admission:
    - “When he took this oath, McCarty swore he would conduct himself in accordance with the Rules of Professional Conduct – including Rules 4-1.6, 4-1.9(c)(1), and 4-1.9(c)(2), which prohibit disclosure of ‘information relating to the representation of the client.' Any rights McCarty had to engage in political speech as a citizen or a government employee were limited on that fateful day in accordance with the Rules of Professional Conduct. McCarty, therefore, cannot ignore his oath and claim his First Amendment rights protect him from the Rules of Professional Conduct.” *McCarty*, 716 S.W.3d at 257.

In re McCarty
Analysis

The Court also found that the Missouri's Whistleblower Statute (RSMo. Section 105.055) inapplicable, holding that while the statue may prohibit KCPD from discipling McCarty, the statute "does not limit the Court from taking disciplinary action against McCarty for violating the Rules of Professional Conduct or restrict this Court from sanctioning lawyers from violating their ethical duties to their clients." *McCarty*, 716 S.W.3 at 258.

In re McCarty
Key Takeaways from the Court

- The duty of lawyers to maintain client confidences and confidentiality is paramount, even over First Amendment and Whistleblower concerns:
  - "Whether the disclosures were the acts of a disgruntled, recently terminated employee or of a dutiful public servant, McCarty knowingly disclosed client information in violation of his sworn duty of confidentiality. No matter how noteworthy his disclosure may have been, it does not justify violating his sacred duty to his client. If a client cannot trust its lawyer to keep in confidence the information it has shared, then the legal representation is irreparably compromised." *McCarty*, 716 S.W.3d at 259.

In re Arensberg Facts

- Arensberg is as transactional attorney. The disciplinary matter arose after it was discovered that Arensberg drafted a promissory note and other documents encumbering his client's son's business interests during a contentious, high net worth divorce. Although Arensberg did not participate in the divorce case, the trial court set aside the documents as fraudulent and noted that Arensberg's client and client son's actions "among the most egregious conduct this Court has observed in over 14 years of hearing contested domestic matters."
- The OCDC filed an Information charging Arensberg with violations of Rules 4-1.1 (Competence); Rule 4-1.2(f) (Assisting a client with fraud); and other rules. Notably, the OCDC alleged Arensberg was "**willfully** blind" to his client's fraudulent intent.
- The OCDC and Arensberg later entered a joint stipulation that Arensberg acted **negligently**, not knowingly, and that he violated Rule 4-8.4(d) by engaging in conduct prejudicial to the administration of justice. The DHP adopted the joint stipulation and recommended a public reprimand, which the OCDC accepted.
- The Court rejected the OCDC's acceptance and ordered the matter briefed and argued.

In re Arensberg Analysis

- The Court found that while the stipulation between Arensberg and the OCDC is informative, it does not limit the Court's *de novo* review.
  - "Unlike appellate review of a circuit court's judgment resolving a criminal or civil case, this Court has inherent authority to administer attorney discipline, and exercises independent, *de novo* review of the facts, irrespective of the parties' stipulation. While this Court is not bound by a stipulation, an attorney's admitted misconduct is highly relevant and will inform the determination of the appropriate discipline." *Arensberg*, 727 S.W.3d at 124 (internal citations and punctuation omitted).

- Thus, while the OCDC and Arensberg stipulated to negligence, "[t]he acknowledged badges of fraud . . . were obvious, numerous, and demonstrate more than negligence." *Arensberg*, 727 S.W.3d at 125.
- In an unanimous opinion written by Judge Fischer, the Court found by a preponderance of evidence that Arensberg acted knowingly, justifying a higher level of attorney discipline. The Court suspended Arensberg's law license indefinitely, with no leave to apply for reinstatement for six months, but stayed the suspension pending the successful completion of a one-year probation period.

In re Arensberg
Key Takeaways from the Court

- Like *McCarty*, the Court is reasserting its role as the ultimate arbitrator of lawyer discipline.
- There is no "I was just following orders" defense to attorney discipline involving fraud.
  - "An attorney is not obligated to follow a client's instructions to facilitate a fraudulent act . . . Based on this commonsense rule, this Court agrees with the observation . . . that it is no excuse for an attorney to say that he only did what he did because he was directed to do so by his client." *Arensberg*, 727 S.W.3d at fn. 3 (internal citations and punctuation omitted).
- Evidence of fraudulent conduct or the assisting of fraudulent conduct by clients, is knowing—not negligent—conduct thereby justifying a higher level of attorney discipline.

In re Goldstein Facts

- Goldstein worked as a non-equity partner in a Kansas City firm, where he earned a base salary and the opportunity to earn a bonus based on income earned in excess of firm target expectations.

- Goldstein, clearly unsatisfied with his compensation, began taking on side clients without informing his firm but utilizing firm resources, including associates to work on those cases.

- Goldstein hid his conduct by directing clients to make payments directly to Goldstein by check, cash, money order and credit card, even obtaining equipment and software to allow funds to be deposited directly into his personal account. He also kept checks in a personal safe in his basement. This was done even though the retainer agreements signed by the clients stated the funds would be held in the firm trust account.

In re Goldstein Facts

- Goldstein further created fake files with fake client numbers and instructed associates to bill their time to Goldstein's individual practice numbers. When the firm raised concerns about his large number of hours, he instructed associates to email their time directly to him.

- The firm began investigating Goldstein in 2023 and found he had taken a significant amount of client money without the firm's knowledge. Goldstein was terminated and reached a settlement with the firm.

- The OCDC charged Goldstein with violations of Rule 4-1.15 (Trust Accounting) and Rule 4-8.4(c) (Misconduct – dishonesty). The DHP found that Goldstein violated said rules and recommended that he be disbarred, which Goldstein rejected.

In re Goldstein
Analysis

- The Court found that Goldstein's diversion of client funds to his personal accounts constituted a violation of Rule 4-1.15 and that he intentionally and repeatedly violated Rule 4-8.4(c).

- In determining what discipline to impose, the Court analyzed Rule 5.17(b) (Discipline), which provides the following list of factors the Court may consider:
  - (1) recommendations from the parties;
  - (2) a recommendation from the hearing panel;
  - (3) discipline imposed by this Court in previously **reported** decisions;
  - (4) ABA Model Standards for Imposing Lawyer Sanctions;
  - (5) the mental health considerations set forth in Rule 5.285;
  - (6) the probation criteria set forth in Rule 5.175;
  - (7) prior accepted admonitions; and
  - (8) any other appropriate factor.

  (Emphasis added)

In re Goldstein
Analysis

- Goldstein argued for a reprimand, citing an unreported order to argue that the respondent in that case was reprimanded for conduct that Goldstein contended was more egregious than his own. The Court emphatically rejected Goldstein's reliance on the unreported order:
  - "References to unreported orders in attorney disciplinary cases are improper and need to stop. Rule 5.17(b)(3) makes it clear only 'reported decisions' may be consulted. *Cf* Rule 84.16(b). This Court made it clear respondents should not cite to unreported orders in *In re: Neill*, 681 S.W.3d 194, 200 (Mo. 2024) ('[T]his Court's dispositions [of attorney discipline cases] by written order [without reported opinion] have no precedential value.'). The Court now emphasizes this point again: Unreported orders in attorney discipline cases are not precedential and should not be cited as a basis for a respondent's argument concerning the appropriate discipline." *Goldstein*, 727 S.W.3d at 448.

In re Goldstein Analysis

- The Court also rejected Goldstein’s reliance on an older published opinion, *In re Cupples*, 952 S.W.2d 226 (Mo. banc 1997):
  - “Goldstein also relies, as so many have, on [*Cupples*] which resulted in a reprimand. Rule 5.17(b)(3) permits this Court to consider discipline ordered in prior published opinions, but counsel should be warned this is a thin reed on which to rely . . . Deciding the appropriate discipline, on the other hand, is a discretionary calculation based on the totality of the circumstances in each case. Ultimately, this Court will be guided in such decisions by the need to ensure the public is protected and the integrity of this profession preserved . . . It is a difficult task, and slight variances in circumstances, the passage of time, the lessons of experience, and the changing backdrop of society all play a role in diminishing the usefulness of prior published opinions in making these decisions. *Cupples* is a good example. This Court finds Goldstein's misconduct was more egregious than Cupples’ by several orders of magnitude. But, even if Goldstein's conduct were the same in every respect as Cupples’ misconduct a generation ago, it is highly unlikely a reprimand would result. Accordingly, the Court is not persuaded by Goldstein's reliance on *Cupples*.

- In a unanimous decision authored by Judge Wilson, the Court disbarred Couples.

In re Goldstein
Key Takeaways

- In imposing lawyer discipline, the Court will only consider the factors enumerated in Rule 5.17(b).

- After giving notice in *Neill* and *Goldstein*, citation to or reliance on unreported orders or decisions will be dealt with harshly.
  - *See* May 13, 2026 Order in *In re Gohn*, SC101430 (*sua sponte* striking of Respondent's brief for "relying on and citing to disciplinary orders that lack precedential value.")

- Additionally, reliance on older, published opinions that result in lesser discipline (such as the reprimand in *Cupples*) are not persuasive.

In re Thornhill Facts

- The infamous “Elvis Judge” case
- Thornhill was charged with violations of the Code of Judicial Conduct in two Counts by the Commission on Retirement Removal and Discipline
  - Count I – Failure to maintain order and decorum in the Courtroom for wearing an Elvis wig; swearing people in to Elvis songs; making Elvis references; and playing Elvis music during Court proceedings
  - Count II – Improper political activity, including mentioning his political affiliation; naming his preferred political candidates; and referencing his judicial reelection campaign and campaign signs during Court proceedings. Additionally, on one occasion Thornhill asked an attorney if the union for which the attorney worked has “[w]armed up to Thornhill for judge.”
- Thornhill admitted the charges against him and the Commission and Thornhill jointly recommended that Thornhill would be suspended without pay for six months, after which he would resume serving for an additional 18 months and then resign.
- The Court rejected this recommendation and immediately removed Thornhill from the bench.

In re Thornhill
Analysis

- The Court noted that the Commission's recommendation was not binding on the Court.
- The Court ***really*** did not like the proposed sanction that presumably was crafted to allow Thornhill to receive or maximize his judicial pension:
  - "Anyone with knowledge of Judge Thornhill's dates of service can draw a reasonable inference why he agreed to this delayed-resignation recommendation, but this Court cannot justify accepting that recommendation."
  - "[T]he Court notes the lack of any rational basis to impose the delayed resignation term as recommended by the parties. Either Judge Thornhill is fit to serve or he is not. If a six-month suspension is the appropriate sanction for Judge Thornhill's admitted misconduct, there can be no justification for requiring he resign after serving that suspension." *Thornhill*, 725 S.W.3d at 278
- Although the Elvis antics demonstrated lack of appropriate courtroom decorum, the real reason he was removed was for his political activity from the bench.
  - "Judge Thornhill's removal is the result of his decision to engage in political activity in the courtroom."
  - "Political references and other such statements by judges in the courtroom are the antithesis of these principles and violate numerous provisions of the Code of Judicial Conduct. Any failure to ensure courtrooms and the conduct of judicial business are – and are ***seen*** to be – absolutely free of political interests will inexorably erode the public's confidence in the judicial system and, therefore, the rule of law. It cannot, and will not, be tolerated." *Thornhill*, 725 S.W.3d at 280-81 (emphasis in original).

Key Takeaways from all Discipline Cases

- All four of these opinions were unanimous and were authored by three different judges.

- The Court is again asserting that it and only it, and not the underlying parties or disciplinary authorities, is the final arbitrator of attorney discipline.
  - In practice that means is that underlying stipulations, recommendations, and agreements between the parties and/or made by the DHP in cases warranting suspension, disbarment, or removal that suggestion a lesser sanction are likely to be rejected.
  - *De novo* review of disciplinary matters means that instead of focusing on or trying to predict the final discipline, the litigants should instead focus on making a clean and clear record.
  - Admissions by Respondents carry significant weight.

- The Court expects disciplinary attorneys to read published opinions; follow its rules; and be aware of its position when citing to authorities.

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