Summary of SC93279, *State ex rel. Missouri Lawyers Media LLC v. Disciplinary Hearing Panel Number DHP-11-029, Bennett Keller, in his official capacity as disciplinary hearing officer, Chad Engler, in his official capacity as disciplinary hearing officer, Frederick Switzer III, in his official capacity as disciplinary hearing officer,*

Original proceeding
Determined on pleadings and opinion issued April 5, 2013

Attorneys: Missouri Lawyers Media was represented by Benjamin J. Siders and Benjamin A. Lipman of Lewis, Rice & Fingersh LC in St. Louis, (314) 444-7886; the disciplinary hearing panel and its hearing officers were represented by Chief Disciplinary Counsel Alan D. Pratzel of Jefferson City, (573) 635-7400; Shevon L. Harris, a solo attorney in St. Louis, (314) 997-7700. The chief disciplinary counsel – the informant in the underlying disciplinary case – was represented by Legal Ethics Counsel Melinda J. Bentley of Jefferson City, (573) 638-2263; and Chief Disciplinary Counsel Alan D. Pratzel of Jefferson City, (573) 635-7400. The attorney in the underlying disciplinary action was represented by Alan S. Mandel of Mandel & Mandel LLP in St. Louis, (314) 621-1701; and Michael P. Downey of Armstrong Teasdale LLP in Clayton, (314) 621-5070.

Overview: In a case of first impression, a media organization seeks a writ (order) directing a disciplinary hearing panel to open an attorney discipline hearing to the public. The panel concedes the challenged order is overbroad but restates its concern that matters otherwise sealed or protected remain confidential. In a unanimous per curiam decision that cannot be attributed to any particular judge, the Supreme Court of Missouri issues its permanent writ prohibiting the disciplinary panel from enforcing its prior order making confidential all proceedings in the case. Any protective order must be drafted narrowly to prohibit disclosure of confidential information and records without negating the otherwise essentially public nature of the proceeding.

Facts: A disciplinary hearing panel issued a blanket protective order making confidential the entire proceedings of a particular case involving attorney discipline. Missouri Lawyers Media LLC seeks this Court's writ directing the disciplinary panel to open the hearing to the public.

WRIT IS PERMANENT.

Court en banc holds: (1) The panel erred in making all aspects of the disciplinary proceeding confidential subject to later review to determine whether portions should be made public. The proceeding is public except as provided by protective order, which should be drafted narrowly to prohibit disclosure of confidential information and records without negating the otherwise essentially public nature of the proceeding.

> (a) This is the Court's first opportunity to construe its recently adopted Rule 5.31, governing records of investigations and formal proceedings in attorney discipline matters. Because the disciplinary hearing panel concedes that the challenged order is overbroad, the Court finds that the interests of justice are best served by issuing a determination without the proceedings – including briefing or arguing – pursuant to Rule 84.24 that typically would accompany such a case.

(b) Rule 5.31 governs introduction of evidence at a disciplinary hearing. Some of that evidence may involve a lawyer's handling of other lawsuits. As is alleged to be true here, records or transcripts from those other lawsuits may be required by law or court order to be sealed or otherwise kept confidential. A disciplinary hearing panel has no authority over whether such documents are or should remain confidential outside the disciplinary proceeding, nor may it violate or modify an existing order of confidentiality.

(2) Pursuant to Rule 5.31, the disciplinary hearing panel is prohibited from enforcing its prior blanket protective order making all proceedings confidential. It is directed to follow the requirements of the rule, which require the remainder of this or any disciplinary hearing to be open to the public, except as provided in Rule 5.31. The standards set forth in that rule and this opinion shall be applied to future days of hearing in this matter and should be applied promptly in reviewing portions of the hearing already undertaken to determine what should be made public under the rule.