

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**PHIL JOHNSON**

**RESPONDENT,**

**v.**

**J. EDWARD MCCULLOUGH, M.D. AND MID-AMERICA GASTRO-  
INTERSTINAL CONSULTANTS, P.C.,**

**APPELLANT.**

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DOCKET NUMBER WD69772

DATE: June 30, 2009

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Appeal From:  
JACKSON COUNTY CIRCUIT COURT  
THE HONORABLE GARY DEAN WITT, JUDGE

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Appellate Judges:  
DIVISION THREE: HAROLD L. LOWENSTEIN, Presiding Judge, JOSEPH M.  
ELLIS and LISA WHITE HARDWICK, Judges

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Attorneys:  
Jonathan P. Kieffer, Esq., and Brandon D. Henry, Esq., Kansas City, MO, **for  
appellant.**  
Laura L. Del Percio, Esq., Independence, MO, **for respondent.**

# MISSOURI APPELLATE COURT OPINION SUMMARY

## COURT OF APPEALS -- WESTERN DISTRICT

PHIL JOHNSON

RESPONDENT,

v.

J. EDWARD MCCULLOUGH, M.D. AND MID-AMERICA GASTRO-INTERSTINAL  
CONSULTANTS, P.C.,

APPELLANT.

WD69772

Jackson County

Before Division Three Judges: Harold L. Lowenstein, Presiding Judge, Joseph M. Ellis and Lisa White Hardwick, Judges

Defendants in a medical malpractice suit appeal the trial court's grant of a new trial based upon juror non-disclosure.

**Affirmed.**

**Division Three holds:**

This court finds that counsel's question about whether any juror had been a plaintiff or defendant in a lawsuit was reasonably clear and should have triggered the juror's duty to disclose multiple, recent debt collection efforts and a personal injury lawsuit. The failure to provide the trial court with any direct evidence whether the juror intentionally withheld the information during voir dire, either through testimony or affidavit of the juror, does not render the trial court's finding that the non-disclosure was intentional an abuse of discretion given the recent and extensive nature of the lawsuits in which the juror was named defendant. The

evidence of juror non-disclosure supporting the motion for a new trial was not untimely. Judgment affirmed.

**Opinion by: Harold L. Lowenstein, Judge**

June 30, 2009

**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.**