SUPREME COURT OF MISSOURI
en banc

IN RE: MARK W. ARENSBERG,	)	*Opinion issued January 13, 2026*
	)	No. SC101157
Respondent.	)	

ORIGINAL DISCIPLINARY PROCEEDING

Attorney Mark W. Arensberg and the office of chief disciplinary counsel ("OCDC") entered into a joint stipulation, agreeing Arensberg should be reprimanded for negligently drafting fraudulent loan documents for a client. The parties' stipulation informs, but does not limit this Court's independent, *de novo* review of the record. The preponderance of the evidence shows Arensberg acted knowingly and should be suspended. Arensberg's law license is suspended indefinitely, with no leave to apply for reinstatement for six months. The suspension is stayed pending the successful completion of a one-year probation period.

Facts

Arensberg was licensed as a Missouri attorney in 1990. His practice focuses on business transactions. Arensberg has no disciplinary history.

This disciplinary matter arose from Arensberg drafting a promissory note, security interest, and default notices encumbering his client's ("Client") son's ("Son") business interests during the pendency of Son's contentious, high-net-worth divorce. The circuit

court adjudicating the dissolution action found Client's and Son's "joint attempts to deceive [Wife] and this Court are among the most egregious conduct this Court has observed in over 14 years of hearing contested domestic matters." Arensberg did not participate in the divorce case as counsel or a witness, but the circuit court found Arensberg had a "clear intent … to create a fraudulent document" to diminish the marital estate.

In 2010, Client hired Arensberg to establish a limited liability company, RMG, to fund his children's business ventures. Client had a trust ("Family Trust") he used to fund RMG. At Client's request, Arensberg established additional limited liability companies, Chasestone and VC. VC was later changed to MM, and was used to purchase a medical supply company. Chasestone was formed to purchase real estate. The three companies were owned by Son, his two siblings, and the Family Trust. Son acquired ownership interests in these companies while he was married to Wife.

In February 2017, Son filed for divorce. In the summer of 2017, Arensberg attended a meeting with Client, Son, and Son's divorce attorney to discuss whether RMG and MM would be considered marital assets. Client informed Arensberg he had loaned money to Son since February 2017. Arensberg and Client discussed the need to document a loan from the Family Trust to Son. Client did not know the amount or duration of the loan, so no documentation was prepared at that time.

In 2018, Wife alleged a marital interest in MM and RMG, and both companies were added as third-party respondents to the dissolution action. In 2019, Client instructed Arensberg to prepare an unsecured promissory note obligating Son to pay $900,000 to the Family Trust. The Family Trust ledger indicated the loan began in January 2018, but the

promissory note had an "effective date" of February 1, 2017, which coincides with the date Client said he began loaning money to Son. The Family Trust ledger showed the Family Trust and/or Client began loaning Son money in January 2018, and Son's debt exceeded $900,000 as of January 2020.

On January 3, 2020, while Son's dissolution action remained pending, Client emailed Arensberg to prepare a document pledging Son's interest in MM as collateral to secure Son's promissory note. Client told Arensberg he wanted the security interest added "asap." Arensberg responded, "I will let you all determine the Effective Date of the Modification document—To be consistent with any prior discovery responses … related to the loan." In a subsequent telephone conversation, Arensberg advised Client that adding collateral to the loan risked Wife claiming the security interest was a fraudulent conveyance aimed at reducing the marital estate. Client told Arensberg he wanted to add collateral to the loan to protect his other children's inheritance and to recoup funds loaned to Son. Arensberg prepared the security interest.

On January 4, 2020, Client emailed Arensberg, Son, and Son's divorce attorney. Client asked Son's divorce attorney to return the security agreement with Son's signature "ASAP." Client reiterated, "We have a minimal amount of time to get this right." Two days later, Arensberg emailed Client and Son confirming he received the signed security agreement from Son's divorce attorney. Before adding the security interest to the loan, Arensberg explained to Client that the security interest diminished the value of the marital estate and again advised that Wife could claim the security interest was fraudulent. Client told Arensberg via email he wanted to take the risk and "see what happens."

On January 25, 2020, Client emailed Arensberg, "Can we file this as debt … [Wife's] attorney is trying to grab this position, so please get this registered asap[.]" Later that day, Arensberg filed Uniform Commercial Code financing statements in Missouri and Kansas showing Son pledged his interest in MM to the Family Trust. In March 2020, Client instructed Arensberg to serve Son and Wife with a demand for payment on the promissory note, which was now secured by Son's interest in MM.

In April 2020, Son agreed to settle the divorce case by paying Wife $1,090,000. Son stated he had not encumbered his interest in any family businesses. A few days later, Arensberg was copied on an email in which Son asked Client about taking dividends from MM. Arensberg advised Client to stop communicating in writing about this because those communications could be discoverable and used to show the note modification was a fraudulent conveyance. Arensberg reviewed the divorce settlement and notified all parties that Son had pledged his interest in MM to the Family Trust.

On June 17, 2020, Wife filed a motion alleging the assignment of Son's interest in MM to the Family Trust was a fraudulent conveyance. Arensberg was aware of Wife's motion. On June 24, 2020, Client emailed Arensberg:

> Mark, we are going to have to write the formal documents of loans between The [Family] Trust and RMG, and then a loan document between RMG and Chasestone. We have been informally making periodic payments from RMG to The [Family Trust], but they have only been documented since the beginning of this year. I realize it may leave us open to [Wife's attorney], but I want to do it anyway. Please go ahead and prepare the documents between The [Family Trust] and RMG, then another between RMG and Chasestone. If they make an issue of it, we may have to do additional tax filing, but there will be no IRS penalty. I'd like to get this done soon. Use the loan amounts that I have already given you.

Arensberg advised Client that drafting loan documents not reflected on prior tax returns exposed Client to a fraudulent conveyance claim.

A few days later, Arensberg requested additional details to prepare the loan documents. Client responded with an unverified recitation of the interest rates and amounts due on the loans for the purpose of preparing default notices on the loans. Client emailed Arensberg, "I just want to get these default notices out ASAP." On July 8, 2020, Arensberg sent a default notice to RMG for a $5,975,000 loan from the Family Trust and a default notice for loans from RMG to MM.

On July 20, 2020, Wife filed a motion to join the Family Trust in the divorce proceeding as an indispensable party due to alleged fraudulent conveyances of marital property to the Family Trust. Client emailed Arensberg regarding concerns about Wife's motion to join the Family Trust as a party to the divorce. Arensberg reviewed the motion and advised Client to retain an experienced domestic relations attorney. Arensberg responded via email:

> The accusations you refer to are what I have been concerned about and we've discussed that 1) Original loans from RMG to [MM] Chasestone; and 2) The Assignment of the RMG loans to MM & Chasestone to the [Family Trust] were both fraudulent or done for the purpose of reducing the value of [Son's] marital assets.

The circuit court held an additional hearing in the dissolution proceeding. Arensberg did not participate as counsel or as a witness. The circuit court found the promissory note and security agreement were fraudulent and aimed at diminishing the marital estate. The circuit court also found the default notice for the Family Trust was fraudulent because there was no written promissory note and, therefore, no basis for a

default. The circuit court emphasized back-dating the security interest to be consistent with prior discovery responses in Son's divorce case was a strong indication of fraud. The circuit court found Client, Son, and Arensberg engaged in fraudulent conduct to reduce the marital estate.

The OCDC filed an information alleging Arensberg violated Rule 4-1.1 (competence), Rule 4-l.2(f) (assisting a client with fraud), and Rule 4-l.16(a) (withdrawal when representation will violate the Rules of Professional Conduct) by drafting loan agreements that were later set aside as fraudulent in Son's divorce case. The OCDC alleged Arensberg was "willfully blind" to Client's fraudulent intent.

The OCDC and Arensberg entered into 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 disciplinary hearing panel ("DHP") adopted the joint stipulation and recommended a public reprimand and a $750 payment to the clerk of the Court, with costs taxed to Arensberg. The OCDC filed a statement of acceptance, requesting this Court issue a final order of discipline consistent with the DHP decision.

Standard of Review

In an attorney disciplinary proceeding, "[t]his Court will review the matter *de novo*." Rule 5.19(e). *De novo* review requires this Court to "independently determine[] all issues pertaining to credibility of witnesses and the weight of the evidence, and draw[] its own conclusions of law." *In re Neill*, 681 S.W.3d 194, 198 (Mo. banc 2024) (internal quotation

omitted). "Professional misconduct must be proven by a preponderance of the evidence before discipline will be imposed." *Id.* (internal quotation omitted).

The Stipulation Does Not Bind This Court

The DHP adopted the parties' joint stipulation that Arensberg acted negligently rather than knowingly. The OCDC and Arensberg are bound by their stipulation, but this Court is not.

Factual stipulations are generally binding on the parties, and this Court will enforce them. *Pierson v. Allen,* 409 S.W.2d 127, 130 (Mo. 1966). But unlike appellate review of a circuit court's judgment resolving a criminal or civil case, this Court has "inherent authority to … administer attorney discipline[,]" *Neill*, 681 S.W.3d at 197-98, and exercises independent, *de novo* review of the facts, irrespective of the parties' stipulation. *Id*. at 199. 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 Acted Knowingly

"This Court considers the American Bar Association's *Standards for Imposing Lawyer Sanctions* (1992) … when determining discipline." *In re McCarty*, 716 S.W.3d 245, 258 (Mo. banc 2025) (internal quotation omitted). "The recommended discipline for violations under the ABA Standards differs based on whether the lawyer acted intentionally, knowingly, or negligently." *In re Gardner*, 565 S.W.3d 670, 677-78 (Mo. banc 2019). The baseline discipline is disbarment for intentional misconduct, a suspension for knowing misconduct, and a reprimand "for isolated instances of negligent misconduct[.]" *Id*. at 678.

The ABA Standards define "intention" as "the conscious objective or purpose to accomplish a particular result." *Id*. (internal quotation omitted. "Knowledge" is the "conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a result." *Id.* (internal quotation omitted). "Negligence" is the "failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in that situation." *Id.* (internal quotation omitted). Direct evidence of mental state "is rarely available," so "the actor's mental state will often rest on circumstantial evidence and permissible inferences." *State v. Perry*, 275 S.W.3d 237, 248 (Mo. banc 2009); *see also Strake v. Robinwood W. Cmty. Improvement Dist.*, 473 S.W.3d 642, 646 (Mo. banc 2015) (inferring mental state from the circumstances of a civil case).

The OCDC and Arensberg stipulated that, while it was a "very close call" and there were "many badges of fraud," Arensberg acted negligently by failing "to ascertain [Client's] true intent and his conduct prejudicial to the administration of justice." The acknowledged badges of fraud, however, were obvious, numerous, and demonstrate more than negligence.

In the Joint Stipulation, the OCDC and Arensberg agreed the security agreement was granted to a related party, that pledging Son's ownership interest in MM to secure the loan reduced Son's net worth by $900,000 and significantly reduced the marital estate, and that Client's repeated communications with Arensberg, Son, and Son's divorce attorney "provided insight into [Client's] true intent." These stipulated facts fail to fully account for the abundant circumstantial evidence showing Arensberg knew Client's true intent was to

engineer fraudulent transactions specifically to diminish his Son's marital estate during the pending divorce.

Arensberg was fully aware of Son's pending dissolution case and Client's desire to minimize Wife's claim to marital assets. The record also shows Arensberg was increasingly aware that any lawful interest Client had in legitimate asset protection was, in practice, giving way to fraud. That is why, beginning in early January 2020, Arensberg expressly advised Client on multiple occasions that adding Son's interest in MM as collateral to secure Son's loan from the Family Trust could lead to a fraudulent conveyance claim by Wife. Nonetheless, in response to Client's request to prepare the security interest "asap," Arensberg suggested backdating the document "[t]o be consistent with any prior discovery responses … related to the loan." Shortly thereafter, Arensberg again advised Client that adding collateral to the loan risked Wife claiming the security interest was a fraudulent conveyance aimed at reducing the marital estate. Nonetheless, Client instructed Arensberg to execute the security interest "asap" to prevent Wife from "trying to grab this position[.]"[1] Arensberg, therefore, was consciously aware that Client's underlying motivation was to prevent Wife from "trying to grab" a potential marital asset in a manner Arensberg had repeatedly warned could be fraudulent. Against this backdrop, and in the midst of a contentious divorce case that had been pending for three years, Arensberg did as Client asked.

[1] Son's divorce attorney was included in most of these communications, further reinforcing the already obvious conclusion the transactions were aimed at impacting Son's pending divorce case.

The indicia of Client's fraudulent intent, and Arensberg's conscious awareness of it, only deepened from there. In April 2020, days after Son executed the fraudulent settlement agreement representing he had not encumbered any marital assets, Arensberg advised Client to stop communicating in writing regarding Son's inquiries about taking income from MM because the communications could be discoverable and used to show the note modification was a fraudulent conveyance. Nonetheless, when Wife later filed a pleading asserting the security interest was fraudulent, Arensberg, after again warning Client of the risk of a fraudulent conveyance claim, prepared documentation of substantial loans between the Family Trust and the limited liability companies in which Son had an interest. When Client instructed Arensberg to prepare default notices for the loans, he again did as Client asked. Finally, after Wife filed a second pleading alleging the conveyances were fraudulent, Arensberg confirmed what the preponderance of the evidence shows: he was aware the transactions at issue "were both fraudulent or done for the purpose of reducing the value of [Son's] marital assets." Arensberg acted knowingly, with "conscious awareness of the nature or attendant circumstances of the conduct." *Gardner*, 565 S.W.3d at 678.

Arensberg argues the fact he notified Wife's counsel of Son's false representation in the settlement agreement shows he did not knowingly perpetrate a fraud. Arensberg's candid disclosure to Wife's counsel is commendable. Yet, the fact he advised Wife's

counsel regarding Son's false representation does not negate the reasonable inference he acted knowingly, with "conscious awareness" of Client's fraudulent intent.[2]

Arensberg argues his case is analogous to *Iowa Disciplinary Board. v. Ouderkirk*, 845 N.W.2d 31 (Iowa 2014). In *Ouderkirk*, the Iowa Supreme Court's "*de novo* review of the record" led the Court to conclude the Iowa Supreme Court Attorney Disciplinary Board failed to prove by a preponderance of the evidence that an attorney knowingly assisted his clients with a fraudulent conveyance to shield assets from a wrongful death lawsuit. *Id*. at 47. The import of *Ouderkirk* is limited. This Court's independent, *de novo* review of the facts of this case is not dictated by the case-specific factual finding of a different case from a different state. Unlike *Ouderkirk*, this Court's *de novo* review of the record shows Arensberg acted knowingly.[3]

Suspension is Appropriate

"When determining the appropriate form of discipline under Rule 5.17(a), this Court generally considers (1) the duty violated; (2) the attorney's mental state; (3) the potential or actual injury caused by the attorney's misconduct; and (4) the existence of aggravating

[2] Considered in isolation, finding Arensberg acted with conscious awareness of Client's fraudulent intent may support a reasonable inference he intended to effectuate the fraud. Presumably, a lawyer who assists a client with knowledge of the client's objective is also intending to assist the client in achieving that objective. The fact Arensberg notified Wife's counsel persuades this Court to find Arensberg did not act intentionally with "the conscious objective or purpose to accomplish a particular result." *Gardner*, 565 S.W.3d at 678.

[3] An attorney is not obligated to follow a client's instructions to facilitate a fraudulent act. *In re Mirabile,* 975 S.W.2d 936, 939 (Mo. banc 1998). Based on this commonsense rule, this Court agrees with the observation in *Ouderkirk* that "[i]t 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." *Id.* at 44 (alteration in original) (quoting *In re Blatt,* 324 A.2d 15, 18 (N.J. 1974)).

or mitigating factors." *McCarty*, 716 S.W.3d at 258. Lawyers "owe duties to the legal system" because they are "officers of the court, and must abide by the rules of substance and procedure which shape the administration of justice." *ABA Standards, Theoretical Framework*.

Arensberg violated his duty as an officer of the court by knowingly engaging in conduct prejudicial to the administration of justice. His misconduct risked injury to Wife's interests in the pending dissolution action and caused actual injury by generating additional litigation and delay in resolving a family law matter involving minor children.

Arensberg's misconduct falls squarely within ABA Standard 6.12, which provides:

> Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

The presumptive discipline in this case is an indefinite suspension. Rule 5.17(a)(4) (providing "[s]uspension, whether stayed or not, shall be for an indefinite period but may include a period of not less than six months and not more than three years during which the respondent cannot apply for reinstatement").

Arensberg's substantial experience in the practice of law is an aggravating factor. *ABA Standard* 9.22(i). His lack of prior disciplinary record, cooperation with the OCDC, and reputation are mitigating factors. *ABA Standard* 9.32(a), (e), (g). On balance, these factors do not warrant deviation from the baseline discipline of an indefinite suspension for knowingly facilitating Client's fraudulent transactions.

Arensberg is eligible for a stayed suspension with probation because he is unlikely to harm the public and can be adequately supervised, he is able to practice law without causing the courts or the profession to fall into disrepute, and he has not committed acts warranting disbarment. Rule 5.175(a). Rule 5.175(b)(3) provides "[p]robation shall be imposed for a specified period of time" and "may be imposed in conjunction with a stayed suspension."

Conclusion

Arensberg's law license is suspended indefinitely, with no leave to apply for reinstatement for six months. The suspension is stayed pending the successful completion of a one-year probation period.

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Zel M. Fischer, Judge

All concur.