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**OPINION OF THE UNITED STATES COURT
OF APPEALS FOR THE EIGHTH CIRCUIT
(SEPTEMBER 13, 2022)**

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

SAMUEL EDWARD TRAPP,

Plaintiff-Appellant,

v.

JOHN GUNN; STATE OF MISSOURI;
JOHN W. GRIMM; LAUREN MCCUBBIN;
THOMAS VINCENT BENDER; MISCHA EPPS;
JULIA LASATER; CHRISTA BARBER MOSS;
JASON ARTHUR PAULSMAYER; SAM PHILLIPS;
PAUL C. WILSON; JOHN DOE I, Members of the
Missouri Bar Client Security Fund Committee;
JOHN DOE, II, Members of the Board of Governors
of the Missouri Bar,

Defendants-Appellees.

No: 21-3726

Appeal from U.S. District Court for the Western
District of Missouri - Jefferson City
Before: LOKEN, GRUENDER, and
BENTON, Circuit Judges.

PER CURIAM.

Samuel Trapp, a Missouri attorney whose license to practice law was suspended indefinitely in 2014, appeals the district court's¹ dismissal of his civil complaint against various individuals and entities associated with the Missouri Bar and Missouri's licensing and disciplinary proceedings. Upon careful review, we affirm. *See Skit Int'l, Ltd. v. DAC Techs. of Ark., Inc.*, 487 F.3d 1154, 1156 (8th Cir. 2007) (reviewing de novo dismissal for lack of jurisdiction under *Rooker-Feldman*² doctrine). We agree with the district court that Trapp's claims are barred under the *Rooker-Feldman* doctrine. *See Feldman*, 460 U.S. at 485-86 (holding that while lower federal courts have subject-matter jurisdiction over general constitutional challenges to state bar rules, they do not have jurisdiction over challenges to state court decisions in particular cases arising out of judicial proceedings); *see also Neal v. Wilson*, 112 F.3d 351, 356 (8th Cir. 1997) (finding the district court could not review disbarred attorney's claims and grant relief without effectively reviewing and reversing the decisions of the Arkansas Supreme Court related to his disbarment; because federal claims were inextricably intertwined with the state case, the court lacked jurisdiction under *Rooker-Feldman*). We also conclude the district court did not err in dismissing Trapp's state law claims. *See* 28 U.S.C. § 1367(c)(3) (district courts may decline to exercise supplemental jurisdiction over a claim if the

¹ The Honorable M. Douglas Harpool, United States District Judge for the Western District of Missouri.

² *See D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462, 482 n.16 (1983); *Rooker v. Fid. Tr. Co.*, 263 U.S. 413, 415-16 (1923).

App.3a

court has dismissed all claims over which it has original jurisdiction); *King v. Crestwood*, 899 F.3d 643, 651 (8th Cir. 2018) (standard of review). Finally, we deny as moot the motion to dismiss filed by the State of Missouri and Chief Justice Wilson.

Accordingly, we affirm. *See* 8th Cir. R. 47B.

**JUDGMENT OF THE UNITED STATES COURT
OF APPEALS FOR THE EIGHTH CIRCUIT
(SEPTEMBER 13, 2022)**

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

SAMUEL EDWARD TRAPP,

Plaintiff-Appellant,

v.

JOHN GUNN; STATE OF MISSOURI;
JOHN W. GRIMM; LAUREN MCCUBBIN;
THOMAS VINCENT BENDER; MISCHA EPPS;
JULIA LASATER; CHRISTA BARBER MOSS;
JASON ARTHUR PAULSMAYER; SAM PHILLIPS;
PAUL C. WILSON; JOHN DOE I, Members of the
Missouri Bar Client Security Fund Committee;
JOHN DOE, II, Members of the Board of Governors
of the Missouri Bar,

Defendants-Appellees.

No: 21-3726

Appeal from U.S. District Court for the Western
District of Missouri - Jefferson City
(2:21-cv-04006-MDH)

Before: LOKEN, GRUENDER, and
BENTON, Circuit Judges.

App.5a

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

Order Entered in Accordance with Opinion:

/s/ Michael E. Gans
Clerk, U.S. Court of Appeals,
Eighth Circuit.

September 13, 2022

**ORDER OF THE SUPREME COURT OF
MISSOURI DENYING REINSTATEMENT
(FEBRUARY 4, 2020)**

**CLERK OF THE SUPREME COURT
STATE OF MISSOURI
POST OFFICE BOX 150
JEFFERSON CITY, MISSOURI 65102**

Betsy Aubuchon, Clerk
Telephone: (573) 751-4144

via regular mail

Mr. Samuel Trapp
P.O. Box 835
Columbia, MO 65205

via regular mail

Mr. Samuel Trapp
Suite 201
308 E. High Street
Jefferson City, MO 65101

In Re: In re: Samuel Trapp, Petitioner.
Missouri Supreme Court No. SC96695

Dear Mr. Trapp:

This is to advise this Court entered the following order on this date:

“Petition for reinstatement after discipline denied. Reinstatement will not be considered until the Missouri Bar Client Security Fund has been reimbursed.”

App.7a

Very truly yours,

/s/ Betsy Aubuchon

cc:

Mr. Alan D. Pratzel and Mr. Sam S. Phillips
via e-filing system

**ORDER OF THE SUPREME COURT OF
MISSOURI DENYING REINSTATEMENT
(AUGUST 22, 2017)**

**CLERK OF THE SUPREME COURT
STATE OF MISSOURI
POST OFFICE BOX 150
JEFFERSON CITY, MISSOURI 65102**

Betsy Aubuchon, Clerk
Telephone: (573) 751-4144

via e-filing system

Mr. David G. Bandre
Bandre Hunt & Snider, LLC
227 Madison Street
Jefferson City, MO 65101

In Re: Samuel E. Trapp, Petitioner.
Missouri Supreme Court No. SC95445

Dear Mr. Bandre:

This is to advise that the Court entered the following order on this date:

“Petition for reinstatement after discipline denied.”

Very truly yours,

/s/ Betsy Aubuchon

cc:

Mr. Alan D. Pratzel via e-filing system
Mr. Sam S. Phillips via e-filing system

**ORDER OF THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT OF
MISSOURI GRANTING MOTION TO DISMISS
(NOVEMBER 18, 2021)**

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SAMUEL TRAPP,

Plaintiff,

v.

THE STATE OF MISSOURI, ET AL.,

Defendants.

Case No. 2:21-cv-04006-MDH

Before: Douglas HARPOOL,
United States District Judge.

Before the Court are Defendants' Motions to Dismiss (Docs. 70, 73, 75) Plaintiff's Fourth Amended Complaint ("Complaint") (Doc. 108), Motion to Dismiss Defendant Wilson (Doc. 111), and Motion to Strike (Doc. 98). The matter has been fully briefed, and it is ripe for judicial review. The Court held a hearing on the instant motions on October 19, 2021. For the reasons set forth herein, all Motions to Dismiss (Docs. 70, 73, 75) are GRANTED and the Motion to Dismiss Defendant Wilson (Doc. 111) is GRANTED. The Court

finds the Motion to Strike (Doc. 98) to be moot. The above-captioned case is dismissed.

BACKGROUND

Plaintiff brings this action against Defendants pursuant to 42 U.S.C. § 1983 for alleged violations of his civil rights under the 14th Amendment to the United States Constitution. Plaintiff additionally seeks declaratory relief as authorized by 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure. Plaintiff asserts both federal law and state law claims and asks the Court to exercise concurrent jurisdiction for the state law claims.

Plaintiff's license to practice law in Missouri was suspended for an indefinite period by the Missouri Supreme Court in 2014. Plaintiff does not contend the Missouri Supreme Court erred in his suspending license. Plaintiff has applied for reinstatement of his law license twice, and the Missouri Supreme Court denied both of Plaintiff's applications for reinstatement. In his Complaint (Doc. 108), Plaintiff requests that the Court declare that the rules and procedures utilized by the Missouri Supreme Court in making its licensing decisions unconstitutional. Plaintiff also seeks damages under § 1983 for alleged constitutional violations by all named Defendants. Plaintiff sues all Defendants in both their individual and official capacities.

Defendant State of Missouri ("the State") is the licensing authority for all professions authorized to conduct business in Missouri, including attorneys. The State, through its Supreme Court, oversees the discipline of any person engaged in the practice of a licensed profession for the violation of professional

and/or ethical rules of conduct. Plaintiff also names the current Chief Justice of the Missouri Supreme Court, Paul Wilson, as a Defendant in his individual, representative, and official capacities.

Defendants John Gunn, John Grimm, Lauren McCubbin, Thomas Bender, Mischa Epps, Julia Lasater, Christa Moss, and Jason Paulsmeyer are the current Executive Committee of the Board of Governors of the Missouri Bar (“the Bar”). Defendants John Doe members of the Board of Governors of the Bar are “any other Board of Governor members that reviewed and approved payment of funds to former clients of Plaintiff.” (Doc. 108 at 3). Defendant John Doe members of the Missouri Bar Client Security Fund Committee (“CSF”) “are appointed by the Missouri Bar Board of Governors to consider claims of former clients and render decision regarding such claims.” *Id.* Collectively, these Defendants are referred to as the “Bar Defendants”.

Defendant Sam Phillips is an employee of the State of Missouri, employed at the Office of Chief Disciplinary Counsel (“OCDC”). Defendant Phillips has the authority, granted by the State, to investigate attorneys that potentially could be subjected to discipline.

For purposes of ruling on a motion to dismiss, the Court accepts all factual allegations in Plaintiff’s Complaint as true. Plaintiff applied for and was granted a license to practice law in the State of Missouri in 2001 and practiced law in the state for 14 years. Prior to May 7, 2014, a disciplinary proceeding involving Plaintiff was instituted by the OCDC, alleging numerous violations of the Rules of Professional Conduct. Plaintiff believes he was targeted in the disciplinary process by Defendant Phillips. Plaintiff alleges that, prior to the

disciplinary proceedings, Defendant Phillips had provided unsolicited evidence to Plaintiff in a civil case Plaintiff had filed for an Osage Beach, Missouri area client against a local attorney. A conflict allegedly arose between Plaintiff and Defendant Phillips arising out of that matter. Plaintiff generally contends that Defendant Phillips targeted Plaintiff, based on “a particular animus toward Plaintiff,” throughout Plaintiff’s disciplinary and reinstatement processes. (Doc. 84 at 1).

Defendant Phillips filed a brief with the Supreme Court recommending that the Court not follow the recommendation offered by the OCDC’s three-person disciplinary panel when Plaintiff’s suspension was under consideration by the Missouri Supreme Court specifically seeking review of a property issue that the panel had decided was an action for which Plaintiff should not be disciplined. On October 14, 2014, Plaintiff’s license to practice law in Missouri was suspended by the Missouri Supreme Court. In the order of the Supreme Court, Plaintiff was found to have violated four Supreme Court rules in that (1) he failed to communicate with a client, (2) and (3) he failed to cooperate with the investigators of the Missouri Bar and (4) he had potentially co-mingled his own funds with those in his client trust account. In its Order regarding the suspension of Plaintiff, the Court did not find that Plaintiff violated any Rule regarding the taking of any interest contrary to any client, and no dishonesty, fraud or misappropriation of client funds or property were found to have occurred.

Plaintiff asserts that he is aware of numerous attorneys who have had their licensure as attorneys suspended in the state of Missouri, and such individuals have been swiftly reinstated following periods of

suspension upon application for readmission before the Supreme Court. Plaintiff claims he “had every reason to believe that his application for reinstatement would be considered favorably, as his infractions were minor, and he was aware of others who had committed fraud and other felony acts, and even served prison terms, and such applicants have been regularly reinstated.” (Doc. 108 at 11).

Plaintiff alleges that after the disciplinary process was completed and Plaintiff’s period of suspension had begun, Defendant Phillips began to solicit further complaints against Plaintiff from Plaintiff’s former clients, outside of any formal discipline process. These complaints were referred to the CSF, outside of any disciplinary or reinstatement process. The CSF is a committee of the Bar which considers requests for reimbursement from the Bar Fund to clients allegedly impacted by some event arising out of an attorney’s conduct. According to Plaintiff, “the Client Security Fund process is really used by Phillips and the Missouri Bar to garner sufficient complaints to attempt to continue to target certain reinstatement applicants, including Plaintiff.” (Doc. 108 at 12).

The CSF adopted rules that it uses to resolve complaints against dead, incompetent, disbarred or suspended attorneys. Section 2.2(a) of the CSF Rules states: “A formal claim shall qualify for recognition upon determination by the Committee that . . . [t]he claimant suffered a loss resulting from a fraudulent or dishonest act which occurred during, or in the context of an attorney-client relationship or a fiduciary relationship between the attorney and the claimant[.]” *Id.* Ex. 1. (Client Security Fund Rules, Sec. 2.2(a)). No other

portion of Section 2.2 or any other CSF Rule qualifies this statement.

Section 2.6 further provides:

The Committee may recommend payment or denial of a claim based upon the written information submitted to the Committee or it may hold a hearing on a claim . . . [t]he Committee may engage counsel, who shall not be compensated, who shall have the right to present witnesses and evidence, and to cross-examine witnesses on behalf of the Committee. Claimant may appear in person or by counsel and shall produce the witnesses and evidence at the hearing to sustain the claim.

Id.

Section 2.8 states that “[u]pon receipt of the claim, the Committee shall notify the attorney complained of. The Committee shall advise the attorney that the attorney may provide the Committee with information about the circumstances of the claim prior to submission of the Committee’s recommendation to the Board of Governors.” *Id.*

Furthermore, Section 3.2 provides:

As a condition of payment by the Board on account of any claim, the Board in its sole and absolute discretion may elect to cause The Missouri Bar to be subrogated for the benefit of the Fund, to the rights of the claimant against the attorney or the attorney’s estate; or to cause an assignment to be made by the claimant to The Missouri Bar or the

Committee's designee of an appropriate interest in any recovery by the claimant against said attorney or the attorney's estate or any other person or entity, or out of any property or liens thereon, arising out of such fraudulent or dishonest act; or to require the claimant to sue or to join in any suit looking to the effectuation of any of the objects herein described; and no such payment shall be made until the claimant shall have executed and delivered to the Committee or its designee such agreements, assignments, receipts or other instruments as the Committee may require in furtherance of the objects hereof.

Id.

The CSF process is not part of a Missouri Supreme Court Rule regarding attorney licensure or reinstatement. Neither Rule 5.28 regarding attorney reinstatement, nor any other Supreme Court Rule addresses the CSF process. Plaintiff alleges that when he received notice of the first such complaints and discovered that claimants could only receive payments from the CSF upon a finding of 'dishonest or fraudulent' conduct, he informed the CSF that he believed each of the complaints against him appeared to be in the nature of fee disputes and that he intended to vigorously defend himself against any such claim. Plaintiff also 'insisted' upon hearings on such complaints at that time. (Doc. 108 at 13). Plaintiff allegedly received a reply to that email stating that he was not able to participate in any hearing before the Fund members and that he would be notified if the Board of Governors made 'a determination on payment or denial' of any claim. Plaintiff alleges that he complained about the

CSF procedures on numerous occasions, and neither Plaintiff nor his attorney were permitted to participate in the process. The CSF awarded Plaintiff's former clients sums, which were paid by the funds maintained by the Bar to reimburse clients harmed by actions of attorneys.

The six-member CSF Committee operates under rules established by the Board of Governors of the Missouri Bar. The committee may recommend payment of a claim made by a client or former client, in full or in part, or may recommend denial of a claim made to the CSF. All payments recommended by the committee are subject to review by the Board of Governors. The Board retains full discretion regarding payment of any claim.

The Regulations and Rules of Procedure of the CSF are not to be used for fee disputes which instead are mediated under alternative procedures established by the Bar. Plaintiff claims he was not notified when suspended that reimbursement would be a condition of reinstatement.

Plaintiff alleges he is aware that members of the Bar, the Client Security Fund Committee and other attorneys with knowledge of the proceedings before the Fund continue to allege that Plaintiff stole money from his clients and have stated he will never receive his license to practice law in the State of Missouri. Plaintiff claims that "label is the direct result of the Fund paying out money to former clients, given that the Fund may only pay claims to clients that allege that Plaintiff stole money from them. Plaintiff, without defense, has been labeled a thief and a dishonest, fraudulent actor by Sam Phillips (who solicited and encouraged complainants), the Missouri Bar Board of

Governors (who made a ‘determination’ that Plaintiff should be so labeled without contest), and the Missouri Bar Client Security Fund, (who ‘recommended’ that he be so labeled after having one-sided ‘hearings’ on claims solicited for that purpose).” (Doc. 108 at 19).

Missouri Supreme Court Rule 5.28 does not specifically require any attorney applying for reinstatement to reimburse any amount paid out to a former client by the CSF. Rule 5.28(i)(9) does, however, provide that restitution is a factor to be considered by the Missouri Supreme Court as part of its reinstatement consideration. “Plaintiff has no idea what any claimant said about him to make their claims successful, nor is he aware of what specific fraudulent or dishonest conduct he allegedly committed with respect to any such claimant, as he was not allowed to participate in the claim process, nor was he permitted to cross-examine any claimant, nor was he allowed to be represented during the process.” (Doc. 108 at 20).

Before the CSF proceedings were concluded, Plaintiff applied for the reinstatement of his license before the Missouri Supreme Court. While the case was pending, the Missouri Supreme Court rewrote Rule 5.28 which governs attorney reinstatement. The revised Rule 5.28(i) provides:

- (i) The person must establish, by clear and convincing evidence, that the person is of good moral character, is fit to practice law, and the best interest of the public will be served by reinstatement of the person’s license to practice law. Factors to consider in determining whether the person has met this burden include the following:

- (1) The person's acceptance of responsibility for wrongdoing with sincerity and honesty and a lack of malice toward those who brought evidence against the person;
- (2) The extent of the person's rehabilitation, as demonstrated by good current reputation for character and moral standing in the community;
- (3) The nature and severity of the misconduct leading to discipline;
- (4) The person's conduct since discipline, including strict compliance with the specific conditions of any disciplinary, judicial, administrative, or other order, where applicable;
- (5) The time elapsed since discipline;
- (6) Other instances of dishonesty, criminal behavior, professional discipline, unauthorized practice of law, academic and employment misconduct, financial irresponsibility, or involvement in or neglect of legal and professional matters;
- (7) The cumulative effect of all misconduct;
- (8) The person's current competency and qualifications to practice law;
- (9) Restitution;
- (10) Candor in the discipline and reinstatement processes; and
- (11) Positive social contributions since the misconduct.

This June 27, 2017, version of Rule 5.28 does not include any provision mentioning the CSF, nor did the prior version of the Rule. The current Rule specifically lists factors to be considered to determine whether the applicant “is of good moral character, is fit to practice law, and the best interest of the public will be served by reinstatement of the [applicant’s] license to practice law.” The prior version provided no such criteria. Plaintiff complains the revision of Rule 5.28 “remov[ed] protections for reinstatement applicants and chang[ed] the standard from satisfactory proof for admission to the standard of clear and convincing evidence, and [does not require] the [OCDC] to refer particular cases to the Board of Legal Examiners for the organization to complete a Character and Fitness Report.” (Doc. 66 at 7).

On August 22, 2017, over 18 months after the first application for reinstatement was filed, the Court entered its Order denying Plaintiff’s Application for Reinstatement. The Order denying Plaintiff’s Application was a one-word decision that recorded that the Plaintiff’s application was denied, with no reasoning as to why the Court came to its decision. The Court order identified no additional act of Plaintiff that might have subjected him to further discipline under the prior version of Rule 5.28(j) and provided no guidance as to what Plaintiff should do to be eligible for reinstatement under the new 11-factor version of Rule 5.28.

Plaintiff filed a second petition for reinstatement on September 26, 2017. Plaintiff alleges his petition was fully compliant with Rule 5.28 as it was in effect on September 26, 2017. On October 5, 2017, Defendant Phillips entered his appearance on behalf of the OCDC. More than twenty-one months passed before

Phillips filed further pleadings in the case. Defendant Phillips ultimately provided a Report and Recommendation to the Supreme Court, which allegedly "contained no information different than the Report and Recommendation that he filed three years previously during the proceedings relative to Plaintiff's first request for reinstatement. No mention was made by Phillips of any newly discovered wrong-doing and no mention of defrauded clients was provided." (Doc. 108 at 17). Briefing by Plaintiff noted and discussed the actions of the CSF. Plaintiff raised his concerns regarding the procedures utilized by the CSF in his briefings to the Missouri Supreme Court.

The Missouri Supreme Court denied Plaintiff's second motion for reinstatement. The order stated:

PETITION FOR REINSTATEMENT AFTER
DISCIPLINE DENIED. REINSTATEMENT
WILL NOT BE CONSIDERED UNTIL THE
MISSOURI BAR CLIENT SECURITY FUND
HAS BEEN REIMBURSED. ORDER LETTER
ATTACHED TO THIS ENTRY AVAILABLE
TO COUNSEL FOR INFORMANT VIA
SECURE CASE.NET. ORDER LETTER
SENT TO PETITIONER VIA REGULAR MAIL
AT TWO ADDRESSES ON THIS DATE.

Plaintiff alleges this is the first time in any Rule or otherwise that the Missouri Supreme Court has conditioned consideration of any future application for reinstatement upon payment of funds to the CSF. Plaintiff asserts that even if he does pay the Fund the amount it wrongfully paid to former clients, the Court would then "come up with other reasons to deny Plaintiff licensure." (Doc. 108 at 21).

Plaintiff pursues five claims in his Complaint. Count I is an action for declaratory relief that Defendants have violated the procedural and substantive due process rights and failed to provide equal protection to Plaintiff and other reinstatement applicants in the license reinstatement process which resulted in the Missouri Supreme Court denying Plaintiff's reinstatement application. Count II is an action for damages against the Defendants for violation of Plaintiff's rights under the United States Constitution pursuant to 42 U.S.C. § 1983.

Count III is a claim for damages against the Defendants (except the State of Missouri) based on defamation (libel and slander) under the laws and statutes of Missouri. Count IV is a claim for damages based on the negligence of Defendants (except the State of Missouri) under Missouri law. Count V is a claim for damages against all of the Defendants (except the State of Missouri) based on a civil conspiracy theory.

STANDARD

A motion to dismiss filed pursuant to Federal Rule of Civil Procedure 12(b)(1) is a challenge to the court's subject matter jurisdiction. "Federal courts are courts of limited jurisdiction," and it is "presumed that a cause lies outside this limited jurisdiction." *Kokkonen v. Guardian Life Ins. of Am.*, 511 U.S. 375, 377 (1994). The party attempting to invoke the federal court's limited jurisdiction has the burden of establishing that the court has the requisite subject matter jurisdiction to grant the relief requested. *Id.*

DISCUSSION

A. Plaintiff's Action Is Barred by the *Rooker-Feldman* doctrine

"The *Rooker-Feldman* doctrine provides that, 'with the exception of habeas corpus petitions, lower federal courts lack subject matter jurisdiction over challenges to state court judgments.'" *Mosby v. Ligon*, 418 F.3d 927, 931 (8th Cir. 2005) (quoting *Ballinger v. Culotta*, 322 F.3d 546, 548 (8th Cir. 2003)). "The [*Rooker-Feldman*] doctrine bars federal courts from hearing cases brought by the losing parties in state court proceedings alleging 'injury caused by the state-court judgment and seeking review and rejection of that judgment.'" *Id.* (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 292 (2005)).

The Court in *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), held that state court decisions concerning attorney licensing requirements are "a judicial inquiry in which the court was called upon to investigate, declare, and enforce liabilities as they stood on present or past facts and under laws supposed already to exist." *Id.* at 479 (internal quotations and brackets omitted). As such, while further review can be sought by applying to the United States Supreme Court for a writ of certiorari; it cannot be had by filing a new suit in a lower federal court.

For a plaintiff's claims to overcome *Rooker-Feldman*, the claim must be "prospective and directed toward the rules and procedures for considering future petitions for reinstatement, rather than toward the decision of the state supreme court[.]" *Centifanti v. Nix*, 865 F.2d 1422, 1429 (3d Cir. 1989) (internal quotations omitted) (holding that plaintiff's petition

overcame *Rooker-Feldman* because it “challenge[d] the constitutionality of the Pennsylvania rules as they exist, rather than the state court’s application of them to deny his petition”).

The *Rooker-Feldman* doctrine applies even if a plaintiff attempts to frame the federal challenge broadly, so long as the challenge is essentially directed at a specific licensing decision. *See, e.g., McKenna v. Curtin*, 869 F.3d 44, 48 (1st Cir. 2017) (§ 1983 claims challenging state system for attorney discipline were barred because they “concern the constitutionality of the rules as applied to [plaintiff]”); *Stern v. Nix*, 840 F.2d 208, 212-13 (3rd Cir. 1988) (challenge to rule allowing court to disregard recommendations of hearing panel barred as an attempt to reverse plaintiff’s disciplinary decision); *Engel v. Client Security Fund Commission of the California State Bar*, No. 2:21-CV-0624 DB PS, 2021 WL 4751275, at *1 (E.D. Cal. Oct. 12, 2021) (holding *Rooker-Feldman* barred plaintiff’s challenge of the constitutionality of the actions of the state bar in relation to attorney licensing).

Furthermore, if constitutional claims presented to a federal district court are “inextricably intertwined” with the state court’s denial in the judicial proceeding of a particular plaintiff’s application for admission to the state bar, the district court is in essence being called upon the review the state court decision; this is barred by *Rooker-Feldman*. *Feldman*, 460 U.S. at 486-87. *See also, Behr v. Campbell*, 8 F.4th 1206, 1212 (11th Cir. 2021) (“[C]onsidering whether a claim is ‘inextricably intertwined’ with a state court judgment . . . [is] merely a way of ensuring that courts do not exercise jurisdiction over the appeal of a state court

judgment simply because the claimant does not call it an appeal of a state court judgment.”).

Plaintiff relies heavily on *Behr*, a case involving the rights of parents in child custody cases, to suggest that his claims fall outside of the *Rooker-Feldman* doctrine. Specifically, Plaintiff emphasizes that the 11th Circuit described *Rooker-Feldman* as “narrow” and that it “does not block claims that ‘require some reconsideration of a decision of a state court[.]’” *Behr*, 8 F.4th at 1212 (quoting *Exxon Mobil*, 544 U.S. at 293, 125 S. Ct. 1517). However, *Behr* is neither controlling nor particularly persuasive in this case. Nothing in *Behr* alters the principles of the *Rooker-Feldman* doctrine, and the 11th Circuit’s discussion as to how broad it interprets that doctrine to be does not change its applicability to Plaintiff’s action. Plaintiff further argues that the “Eighth Circuit follows this narrow interpretation of *Rooker-Feldman*.” (Doc. 91 at 8) (citing *Carter v. Ludwick*, Case No. 20-3042 (8th Cir. July 21, 2021)). However, *Carter* does not support Plaintiff’s assertion. It involved allegedly unconstitutional procedures of the discovery process in a civil action, and there is little to no reasoning in the opinion as to how the 8th Circuit concluded that *Rooker-Feldman* did not apply in that case.

Here, Plaintiff brought nearly identical arguments to those at issue in the instant case before the Missouri Supreme Court during both reinstatement proceedings. (See Docs. 50-3, 50-4). For example, in his briefing before the Supreme Court as part of the court’s consideration of his first reinstatement application, Plaintiff argued:

[The CSF’s procedures are] inherently unfair, particularly if used as a method to prevent

former attorney from being reinstated, or forcing him to reimburse funds expended to third parties in this process that for all intents and purposes adjudges the ex-attorney as fraudulent or dishonest, with no right to defend himself during such adjudication. As correctly noted by the [OCDC], Applicant has railed against this procedure from the very first indication that it was to be used to grant 'refunds' to clients, former clients and even third party non-clients; refunds that Applicant might eventually be forced to repay to the third-party organization 'determining' that he was dishonest or acted in a fraudulent manner.

(Doc. 50-3 at 13-14). In his response to the OCDC's Report and Recommendation to the Supreme Court as part of the court's consideration of Plaintiff's second application for reinstatement, Plaintiff wrote, for example:

The [OCDC] continues to poke fun at the Applicant for holding the belief that the Fund process is constitutionally flawed if an Application for Reinstatement is predicated upon an Applicant covering such awards. But Applicant's argument that his interests were not protected during the [CSF] proceedings against him does have merit. Rule 5.28 does not require an applicant for reinstatement to reimburse the [CSF] . . .

(Doc. 50-4 at 3).

It is also clear from Plaintiff's arguments, both in the current matter and his previous arguments before

the Missouri Supreme Court, that despite the fact Plaintiff uses blanket language that the rules and procedures used by the CSF and the Missouri Supreme Court are unconstitutional, he alleges that those rules and procedures are unconstitutional as applied to Plaintiff himself. Plaintiff's arguments in this case center around the application of the allegedly unconstitutional procedures to his own reinstatement application. As such, there is no doubt that Plaintiff's arguments in the current matter are inextricably intertwined with the Missouri Supreme Court's decisions to deny his reinstatement. Accordingly, Plaintiff's action is barred by the *Rooker-Feldman* doctrine.

1. Defendants State of Missouri and Chief Justice Paul Wilson

Plaintiff first argues that the fact that the attorney profession is the only Missouri profession requiring licensure that is not subject to the provisions of the Division of Professional Registration violates constitutional rights due process¹ and equal protection. (Doc. 108). "The Missouri Supreme Court sets the rules for licensure of attorneys, absent regulations established by the legislative branch of government and absent

¹ The law is clear that there is no protectable property interest in a law license or the right to practice law. *In re Downs*, 363 S.W.2d 679, 691 (Mo. 1963) (en banc); *see also In re Wilson*, 391 S.W.2d 914, 919 (Mo. 1965) (en banc) (no right to "continuance in the practice of law"); *State ex rel. McKittrick v. C. S. Dudley & Co.*, 102 S.W.2d 895, 902 (Mo. 1937) ("[t]he right to practice law is a privilege or franchise not open to every person, but only to those who are qualified and licensed by this court"). The Court is not aware of any case law that would suggest that there is any protectable property interest in the reinstatement of a suspended law license.

executive branch authority of any kind." *Id.* The Missouri Constitution vests within the Missouri Supreme Court the authority and power to admit, discipline, disbar, and readmit members of the legal profession authorized to practice before Missouri Courts. The people of Missouri are well within their rights to constitutionally empower their Supreme Court to regulate the practice of law and empower the judicial branch of the Missouri state government alone to regulate the attorney profession. MO. CONST. ART. 5, § 5. The fact that other professions are regulated by the executive branch of the Missouri state government is of no constitutional concern.

Plaintiff generally argues that his action is not barred by the *Rooker-Feldman* doctrine because he is not requesting that this Court grant his reinstatement or directly overturn the Missouri Supreme Court's decisions to deny his reinstatement. Rather, Plaintiff suggests that he seeks an order from this Court declaring the procedures set forth in the rules adopted by the Supreme Court pertaining to the readmission process after attorney license suspension to be in violation of his Constitutional rights. In addition to his concerns regarding the CSF process, Plaintiff complains about the absence of time limits relating to the amount of time the Missouri Supreme Court takes to rule on an application for readmission; he complains that the ruling on the application requires no, and provided him with no, reason or explanation for denial; and he complains the procedures provide inadequate due process by not allowing him to contest issues surrounding repayment of sums paid out by the CSF.

The Court understands Plaintiff's frustrations. However, the Court finds that the process used by the

Missouri Supreme Court is “inextricably intertwined” with the merits of its decisions concerning who should or should not be permitted to practice law in the State of Missouri. *See, Feldman*, 460 U.S. at 486-87. *Rooker-Feldman* provides that this Court may not instruct the Missouri Supreme Court how to exercise its constitutional responsibilities in regulating the Bar or attorney licensing in any particular matter. As to Plaintiff’s concerns noted above, the length of time it to consider a readmission application is intertwined with the ultimate actions of the Supreme Court, including the time needed for investigation and resolution of issues deemed relevant to the ultimate decision on any particular reinstatement application. It would be inappropriate for this Court to impose any time limit on the Missouri Supreme Court’s decision-making process. The decision of the Supreme Court to order denials without a detailed explanation of its reasoning is a decision of that court intertwined with its ultimate order and authority to issue such order. There is no constitutional right to an explanation.

Issues concerning the reimbursement of the CSF were briefed by Plaintiff while his readmission was under consideration by the Missouri Supreme Court. A ruling by this Court that Plaintiff should have been able to further advance his position on the issue or be granted a further right to be heard would be the equivalent of ruling the court did not fairly consider his briefing on the issue. The members of the Missouri Supreme Court clearly had notice of Plaintiff’s position regarding CSF practices and procedures when it denied his application for reinstatement. This Court cannot second guess the Missouri Supreme Court and order it to rule for Plaintiff on the issue. The Court

has no basis to require the Missouri Supreme Court to give further consideration to Plaintiff's position. To do so would impermissibly interject this Court into the Supreme Court's legitimate constitutionally authorized power.

Plaintiff emphasizes that the CSF should not have paid out funds under its own rules absent fraud and dishonesty, which he denies. However, Missouri Supreme Court Rule 5.28(9) specifically allows the Supreme Court to consider whether restitution has been paid. It is not, by its own terms, limited to requiring restitution in instances of fraud and dishonesty only. The Supreme Court could legally find and reasonably conclude restitution appropriate absent fraud or dishonesty.

2. Missouri Bar Defendants

Plaintiff's actions against the Bar arise from the actions of the CSF, which presumably resulted in the Missouri Supreme Court's note in its most recent order that it would not reconsider a future application for readmission by Plaintiff unless Plaintiff reimburses the CSF for funds it paid to Plaintiff's former clients. Plaintiff, as noted, maintains that none of these clients should have been entitled to payment under the CSF's own rules and that the actions of the CSF occurred outside of any constitutionally permissible procedures. It is not entirely clear the extent to which Plaintiff had input or opportunity to be involved in the proceedings of the CSF. He claims he submitted some written opposition to at least some client reimbursement requests but was not alerted to other cases before the payments were made. Plaintiff furthermore complains

that he was not allowed a hearing in front of the CSF on any of the claims.

However, the funds paid by the CSF to Plaintiff's former clients were not Plaintiff's funds, but rather funds of the Bar reserved for the very purpose of reimbursing clients it determines suffered financial consequence due to the wrongful acts of attorneys that represented them. While the Bar may have requested that the Missouri Supreme Court require reimbursement as a condition of Plaintiff's reinstatement, the Missouri Supreme Court ultimately makes that determination. Any damage to Plaintiff's effort for readmission arises as a result of the decision of the Missouri Supreme Court to require restitution not from the decision of the CSF or Bar. The Supreme Court alone makes the ultimate determination as to whether any reimbursements are required in order for the court to reconsider reinstatement. Mo. Supreme Court Rule 5.28(9). The court was not required to accede to the request for reimbursement—the Missouri Supreme Court chose to request restitution as a prerequisite for reinstatement. There is no reason to believe that the Supreme Court blindly accepted the CSF's request. Plaintiff's concerns were briefed to the court, and there is no reason to believe they were not considered.

3. Defendant Sam Phillips

Plaintiff also brings actions against Sam Phillips of the OCDC, arguing that Defendant Phillips violated Plaintiff's constitutional rights by soliciting Plaintiff's former clients to make claims to the CSF and causing delays in the processing of Plaintiff's reinstatement application. Plaintiff alleges that Defendant Phillips has a personal vendetta against Plaintiff arising out

of some past encounter and that as a result, the OCDC recommendations to the Supreme Court were purposefully delayed and otherwise unfair to Plaintiff. Plaintiff claims Phillips solicited new complaints against him and referred former clients to the CSF. The Court cannot say that Defendant Phillips' actions in any of the reports were outside the ordinary scope of the duties of the OCDC. This Court concludes that Plaintiff's federal claims against Defendant Phillips are inextricably intertwined with the Missouri Supreme Court's denial of Plaintiff's application for reinstatement and thus the Court does not have subject matter jurisdiction over these claims under *Rooker-Feldman*. It is for the Missouri Supreme Court to identify, address, and remedy any alleged abuse of power or process it may identity in the actions of Defendant Phillips or the OCDC.

In any event, this Court finds that Defendant Phillips would be entitled to immunity in his role at the OCDC. Missouri Supreme Court Rule 5.315(c) states that the "advisory committee, chief disciplinary counsel, regional disciplinary committees, disciplinary hearing panels, trustees appointed pursuant to Rule 5.26, their staffs and representatives are immune from suit for any conduct in the course of their official duties." (emphasis added).

Defendant Philips is also entitled to absolute prosecutorial immunity. When government officials "functionally serve in capacities comparable to judges, prosecutors and jurors" they are entitled to absolute immunity. *Buser v. Raymond*, 476 F.3d 565, 568 (8th Cir. 2007). "In determining whether particular actions of government officials fit within a common-law tradition of absolute immunity" the United States Supreme

Court has established a “functional approach,” which examines “the nature of the function performed, not the identity of the actor who performed it.” *Buckley v. Fitzsimmons*, 509 U.S. 259, 269 (1993) (quoting *Forrester v. White*, 484 U.S. 219, 229 (1988)).

Absolute immunity has been afforded to government attorneys who exercise prosecutorial functions. See *Butz v. Economou*, 438 U.S. 478, 516-17 (1988); *Dunham v. Wadley*, 195 F.3d 1007, 1011 (8th Cir. 1999) (“While some of the [Arkansas Veterinary Medical Examining Board’s] functions, such as bringing an enforcement proceeding in Arkansas state court, might have been prosecutorial in nature, we note that courts have also granted absolute immunity to actors who perform such prosecutorial functions.”).

Defendant Phillips, as an Assistant to the Chief Disciplinary Counsel, is governed by Missouri Supreme Court Rule 5 and acts in the same capacity as a prosecutor in attorney discipline proceedings. Defendant Phillips serves “as counsel for the bar in all disciplinary proceedings” and conducts investigations as required by Missouri Supreme Court Rule 5. Mo. Sup. Ct. R. 5.06; Mo. Sup. Ct. R. 5.08(a). Assistants to the Chief Disciplinary Counsel like Defendant Phillips may conduct investigations to enforce Missouri Supreme Court Rules 4, 5, and 6. Mo. Sup. Ct. R. 5.07(a). Defendant Phillips also has the authority to “prosecute any information, complaint or proceeding instituted or pending before any committee or court.” Mo. Sup. Ct. R. 5.07(a). Included in Defendant Phillips’s authority is the power to issue subpoenas and to prepare information upon finding probable cause to believe an attorney violated Missouri’s ethics rules. Mo. Sup. Ct. R. 5.09; Mo. Sup. Ct. R. 5.11.

B. State Law Claims

Plaintiff's remaining claims arise under Missouri state law. As such, these claims do not satisfy 28 U.S.C. § 1331, which provides this Court with jurisdiction to hear actions "arising under the Constitution, laws, or treaties of the United States." Although diversity jurisdiction, found in 28 U.S.C. § 1332, provides another potential source of jurisdiction, the complete diversity of citizenship required is not present here because Plaintiff is a citizen of Missouri, as are most of the defendants. Therefore, Plaintiff's state law claims are dismissed without prejudice for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) and 12(h)(3).

CONCLUSION

In sum, this Court lacks subject matter jurisdiction over Plaintiff's federal claims under the *Rooker-Feldman* doctrine pursuant to Fed. R. Civ. P. 12(b)(1). Some of his other claims are barred by prosecutorial immunity and other immunities. If the Missouri Supreme Court again denies Plaintiff's application for reinstatement or declines to consider such an application—and Plaintiff believes such action violates his constitutional rights—Plaintiff may then seek further review of Constitutional issue by applying to the United States Supreme Court for a writ of certiorari. *See Feldman*, 460 U.S. at 475; *Charchenko v. City of Stillwater*, 47 F.3d 981, 984 (8th Cir. 1995).

Defendants' Motions to Dismiss (Docs. 70, 73, and 75) are GRANTED. The Motion to Dismiss Defendant Wilson (Doc. 111) is GRANTED. Counts I and II, which seek declaratory relief and damages under 42 U.S.C. § 1983, are dismissed with prejudice as to all Defendants for lack of subject matter jurisdiction

under the *Rooker-Feldman* doctrine. The claims for defamation, negligence, and civil conspiracy under the laws and statutes of the State of Missouri contained in Counts III, IV, and V are dismissed without prejudice as to Defendants the Missouri Bar, John Gunn, John Grimm, Lauren McCubbin, Thomas Bender, Mischa Epps, Julia Lasater, Christa Moss, Jason Paulsmeyer, the Missouri Bar Client Security Fund, and all “John Does”² for lack of subject matter jurisdiction under 28 U.S.C. § 1331. The state law claims in Counts III, IV, and V are dismissed with prejudice as to Defendant Sam Phillips in both his official and individual capacity based on Defendant Phillips’ absolute prosecutorial immunity and immunity under Missouri Supreme Court Rule 5.315(c). The Court finds the Motion to Strike (Doc. 98) to be moot. Each party shall be responsible for their own costs and attorney fees.

IT IS SO ORDERED.

/s/ Douglas Harpool
United States District Judge

Dated: November 18, 2021

² Plaintiff’s Complaint asserts claims against “John Doe Members of the Missouri Bar Client Security Fund Committee” and “John Doe Members of the Board of Governors of the Missouri Bar.”

**ORDER OF THE
SUPREME COURT OF MISSOURI
SUSPENDING ATTORNEY
(OCTOBER 14, 2014)**

**SUPREME COURT OF MISSOURI
EN BANC**

IN RE: SAMUEL E. TRAPP,

Respondent.

**No. SC94172
MBE No. 52617**

Before: Mary R. RUSSELL, Chief Justice.

Now at this day, the Court being sufficiently advised of and concerning the premises, and the complete record of the Disciplinary Hearing Panel having been filed and this cause having been fully briefed and argued, the Court does find that Respondent is guilty of misconduct as a result of violations of Rules 4-1.4, 4-1.16(d), 4-1.15, 4-1.15(c), 4-1.15(j) and 4-8.1 of the Rules of Professional Conduct and should be disciplined;

Now, therefore, it is ordered that Respondent, Samuel E. Trapp, is hereby suspended indefinitely from the practice of law and that no petition for reinstatement will be entertained for a period of one year from the date of this order.

It is further ordered that Samuel E. Trapp, comply in all respects with Rule 5.27 – Procedure Following a Disbarment or Suspension Order.

Fee pursuant to Rule 5.19(h) in the amount of \$1,000.00 payable to the Clerk of this Court to the credit of the Advisory Committee Fund taxed to Respondent.

Costs taxed to Respondent.

Day - to - Day

/s/ Mary R. Russell
Chief Justice

**ORDER OF THE UNITED STATES COURT
OF APPEALS FOR THE EIGHTH CIRCUIT
DENYING PETITION FOR REHEARING
(OCTOBER 27, 2022)**

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

SAMUEL EDWARD TRAPP,

Appellant,

v.

JOHN GUNN, ET AL.,

Appellees.

No: 21-3726

**Appeal from U.S. District Court for the
Western District of Missouri – Jefferson City
(2:21-cv-04006-MDH)**

The petitions for rehearing en banc are denied.
The petitions for rehearing by the panel are also denied.

Order Entered in Accordance with Opinion:

/s/ Michael E. Gans
Clerk, U.S. Court of Appeals,
Eighth Circuit.

October 27, 2022

**MO. R. GOV. BAR JUD. 5.06–
CHIEF DISCIPLINARY COUNSEL**

This Court shall appoint a “Chief Disciplinary Counsel,” who shall serve at the pleasure of the Court.

The chief disciplinary counsel shall be a member of The Missouri Bar or become a member within 18 months of the date of appointment.

Before commencing duties as the chief disciplinary counsel, the counsel shall take an oath to support the constitution of the United States and this state and to fairly and impartially perform the counsel’s duties.

The counsel shall devote full time to the duties of office and shall not engage in the practice of law, except in the general fulfillment of the counsel’s duties.

The chief disciplinary counsel or the counsel’s designated assistants shall serve as counsel for the bar in all disciplinary proceedings and shall conduct necessary investigations as provided in this Rule 5.

The compensation of the chief disciplinary counsel shall be fixed by this Court.

**MO. R. GOV. BAR JUD. 5.08-
INVESTIGATIONS - AUTHORITY**

(a) The Chief Disciplinary Counsel is authorized, with or without complaint, to investigate professional misconduct alleged to have been committed in this jurisdiction or in another United States jurisdiction or in a foreign jurisdiction by a lawyer licensed to practice law in this jurisdiction. The Chief Disciplinary Counsel is authorized, with or without complaint, to investigate professional misconduct alleged to have been committed in this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. Each regional disciplinary committee or division thereof may investigate any such matter upon request of the Advisory Committee or the Chief Disciplinary Counsel.

(b) If a complaint alleges professional misconduct by the Chief Disciplinary Counsel, a staff counsel, or a special representative performing duties in accordance with Rule 5, or if the Chief Disciplinary Counsel is otherwise disqualified from acting in any matter, notice of this fact shall be given to the Advisory Committee. The Advisory Committee shall make a determination based on the complaint as to whether an investigation shall be initiated. If the Advisory Committee determines that an investigation shall be initiated, it shall assign the matter for investigation to any of the following entities, as long as that entity is not otherwise disqualified: the Chief Disciplinary Counsel, a regional disciplinary committee, or a division of a regional disciplinary committee.

(c) If a regional disciplinary committee or a division thereof is unable to undertake or complete an investigation for any reason, notice of this fact shall

be given to the Chief Disciplinary Counsel. The Chief Disciplinary Counsel shall refer the matter to a different division or committee or shall conduct the investigation.

(d) If more than one investigation of the same lawyer is being conducted simultaneously by the Chief Disciplinary Counsel, a regional disciplinary committee, or a division thereof, the Chief Disciplinary Counsel may assign all such matters for investigation to a single disciplinary entity. The Chief Disciplinary Counsel may relieve a regional disciplinary committee or division of any investigation and refer the matter to a different committee, division, or to the Chief Disciplinary Counsel for investigation.

**MO. SUP. CT. R. 5.28—REINSTATEMENT
(JULY 20, 2011)**

(a) Any person:

- (1) Who is disbarred;
- (2) Whose license to practice law is suspended, except a suspension for less than three years for either failure to pay the annual enrollment fee or failure to comply with Rule 15; or
- (3) Who voluntarily surrendered a license;

may seek reinstatement of the person's license upon application to this Court pursuant to this Rule 5.28.

(b) Any application for reinstatement shall include specific allegations showing that:

- (1) The cause for suspension, surrender, or disbarment has abated;
- (2) All persons injured as a result of the conduct that resulted in the loss of the right to practice law have received restitution, their claims have been discharged by operation of law, or the injured persons have been notified at least ten days but not more than 90 days in advance of the filing of the petition for reinstatement;
- (3) All special conditions for reinstatement required by this Court at the time the right to practice law was lost have been accomplished;
- (4) The person has taken within the two years immediately preceding the application the

multistate professional responsibility examination and scored a grade at least equal to that established by the board of law examiners as passing at the time the examination was taken;

- (5) If the person has not practiced law in any jurisdiction during the period of discipline and has been disciplined for:
 - (A) Less than three years, the person has completed at least 15 hours of continuing legal education credit within 12 months prior to the date the petition is filed; or
 - (B) At least three years, the person has completed at least 30 hours of continuing legal education credit, including at least three hours of ethics credit, within 24 months prior to the date the petition is filed.

For purposes of this Rule 5.28(b)(5), a person shall be engaged in the full-time practice of law for at least twelve months immediately prior to the date of filing the petition for reinstatement to be deemed a lawyer who practiced law; and

- (6) The person is of good moral character and the best interest of the public will be served by reinstatement of the person's license to practice law.
 - (c) A person seeking reinstatement because he or she is disbarred is not required to include specific allegations contained in Rule 5.28(b)(5). Such person shall include specific allegations that within one year

of the date of filing the application for reinstatement the person has taken the bar examination prescribed by Rule 8.08 and has attained a passing score.

(d) The provisions of Rules 5.28(b)(4) and (5) do not apply to a person seeking reinstatement because the person's license was suspended for more than three years solely for failure to comply with Rule 15 or failure to pay the annual enrollment fee. The provisions of Rule 5.28(b)(4) do not apply to a person filing a petition for reinstatement within six months of a suspension under Rule 5.245 if the petition contains a statement that the cause of suspension under Rule 5.245 has been resolved and the department of revenue confirms that statement.

(e) Except for good cause shown, no application for reinstatement for a person who is:

- (1) Suspended, except a person suspended under Rule 5.245, shall be considered until after six months of the date discipline is imposed unless the Court provides by order for a longer time; or
- (2) Disbarred shall be considered until after five years of the date discipline is imposed; or
- (3) Notwithstanding Rule 5.28(e)(2), disbarred because the person has pleaded guilty or nolo contendere to or been found guilty of any felony of the United States, this state, any other state or any United States territory, whether sentence is imposed or not, shall be considered until the date of successful completion of any period of confinement, and any subsequent or alternate period of probation

or parole, as a result of the conviction, plea, or finding of guilt.

(f) In addition to the requirements of Rule 5.28(b), upon application by any person suspended under the provisions of Rule 5.23, this Court may direct such action as it deems necessary or proper, including the direction of an examination of the lawyer by such qualified medical expert as this Court shall designate. Rule 5.28(g) shall govern the cost incurred in processing such application.

At the time of filing such an application for reinstatement, the lawyer shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital by whom and at which the lawyer has been examined or treated during the disability or since the suspension and shall furnish to this Court written consent for each to divulge such information and records as ordered by this Court.

This Court may fix the compensation to be paid to any medical expert appointed by this Court, and such charges shall be a cost of investigation as that term is used in Rule 5.28(g).

(g) When a person who has surrendered a license to practice law or who has been disbarred or suspended makes application for reinstatement, except applications following suspensions for less than three years made as a matter of course under Rule 6.0109, Rule 15.06(f) and Rule 5.28(h)(2), the application shall be accompanied by a \$ 500 reinstatement fee. The amount paid shall be deposited to the credit of the advisory committee fund. No report or hearing shall be had on any application for reinstatement until the required fee is

paid. The reinstatement fee is in addition to any unpaid disciplinary costs assessed under Rule 5.19(h).

(h) All applications for reinstatement shall be referred to the chief disciplinary counsel for report and recommendation. The report shall be served by the chief disciplinary counsel on the applicant for reinstatement as provided in Rule 5.18. The applicant may file a written response to the report with the chief disciplinary counsel within 15 days of the date of the mailing of the report.

The report, recommendation, and response, if any, shall be filed by the chief disciplinary counsel with this Court upon receipt of the response or the expiration of the time for making a response. The Court shall make a determination whether to reinstate the license of the applicant on the basis of the report, recommendation and response.

If the applicant has been suspended:

- (1) Indefinitely with leave to reapply in a period of six months or less and is not on probation under Rule 5.225, or
- (2) Under Rule 5.245 for three years or less, the license shall be reinstated as a matter of course 30 days after the application for reinstatement is referred to the chief disciplinary counsel for report and recommendation. If within this 30-day period the chief disciplinary counsel files a motion to respond to the application for reinstatement, the license shall not issue and the matter shall proceed as otherwise provided in this Rule 5.28(h). Any lawyer automatically suspended under Rule 5.245 for three years or less who is reinstated under

this Rule 5.28(h) is retroactively reinstated if the lawyer is then in compliance with Rule 6.01 and Rule 15.

(i) In lieu of reinstating the applicant's license, the Court may direct the advisory committee to appoint a disciplinary hearing panel to conduct a hearing into any allegations of misconduct contained in the report to which the applicant objects. The hearing shall be conducted as provided in Rule 5.14.

The panel shall file a report. The report shall determine all matters in dispute and make a recommendation as to whether the applicant's license should be reinstated.

**MO. SUP. CT. R. 5.28-REINSTATEMENT
(JUNE 20, 2017)**

(a) A person:

- (1) Who is disbarred; or
- (2) Whose license to practice law is suspended, except a suspension for less than three years for either failure to pay the annual enrollment fee or failure to comply with Rule 15;

may seek reinstatement of the person's license upon the filing of a petition in this Court pursuant to this Rule 5.28. The Petition for Reinstatement to Practice Law shall be substantially in the form as set forth in Disciplinary Form A appended hereto.

(b) A petition for reinstatement shall include specific averments showing that:

- (1) The cause for suspension or disbarment has abated;
- (2) All persons injured as a result of the conduct that resulted in the loss of the privilege to practice law have received restitution, their claims have been discharged by operation of law, or the injured persons have been notified at least 10 days but not more than 90 days in advance of the filing of the application for reinstatement;
- (3) All special conditions for reinstatement required by this Court at the time the privilege to practice law was lost have been accomplished; and

- (4) The person has taken within the two years immediately preceding filing of the petition the multistate professional responsibility examination and scored a grade at least equal to that established by the board of law examiners as passing at the time the examination was taken.
- (c) A person whose license has been suspended less than three years as of the filing date of the petition for reinstatement shall include specific averments that within one year prior to the date of filing the petition for reinstatement the person has completed at least 15 hours of continuing legal education credit, including at least three hours of ethics credit. A person whose license has been suspended three years or more as of the filing date of the petition for reinstatement shall include specific averments that within two years prior to the date of filing the petition for reinstatement the person has completed at least 30 hours of continuing legal education credit, including at least six hours of ethics credit.
- (d) A person who has been disbarred and is seeking reinstatement shall include specific averments that within one year prior to the date of filing the petition for reinstatement the person has taken the bar examination prescribed by Rule 8.08 and has attained a passing score.
- (e) The provisions of Rules 5.28(b)(4) and 5.28(c) do not apply to a person filing a petition for reinstatement because the person's license was suspended for more than three years solely for failure to comply with Rule 15 or failure to pay the annual enrollment fee. The provisions of Rule 5.28(b)(4) do not apply to a person filing a petition for reinstatement within six

months of a suspension under Rule 5.245 if the petition contains a statement that the cause of suspension under Rule 5.245 has been resolved and the department of revenue confirms that statement.

(f) Except for good cause shown, no petition for reinstatement shall be considered for a person who is:

- (1) Suspended, except a person suspended under Rule 5.245, until after six months of the date discipline is imposed unless the Court provides by order for a longer time;
- (2) Disbarred until after five years of the date discipline is imposed; or
- (3) Notwithstanding Rule 5.28(f)(2), disbarred because the person has pleaded guilty or nolo contendere to or been found guilty of any felony of the United States, this state, any other state or any United States territory, whether sentence is imposed or not, until the date of successful completion of any period of confinement, and any subsequent or alternate period of probation or parole, as a result of the conviction, plea, or finding of guilt.

(g) In addition to the requirements of Rule 5.28(b), upon petition for reinstatement by a person suspended under the provisions of Rule 5.23, this Court may direct such action as it deems necessary or proper, including the direction of an examination of the person by such qualified medical expert as this Court shall designate. Rule 5.28(h) shall govern the cost incurred in processing such petition.

At the time of filing such a petition for reinstatement, the person shall be required to disclose the name

of every psychiatrist, psychologist, physician and hospital by whom and at which the person has been examined or treated during the disability or since the suspension and shall furnish to this Court written consent for each to divulge such information and records as ordered by this Court. This Court may fix the compensation to be paid to any medical expert appointed by this Court, and such charges shall be a cost of investigation as that term is used in Rule 5.28(h).

(h) When a person who has been disbarred or suspended petitions for reinstatement, except petitions following suspensions for less than three years made as a matter of course under Rule 6.01(f), Rule 15.06(f), and Rule 5.28(k)(2), the petition shall be accompanied by a \$500 reinstatement fee. The amount paid shall be deposited to the credit of the advisory committee fund. No report or hearing shall be had on any petition for reinstatement until the required fee is paid. The reinstatement fee is in addition to any unpaid disciplinary costs assessed under Rule 5.19(h).

(i) The person must establish, by clear and convincing evidence, that the person is of good moral character, is fit to practice law, and the best interest of the public will be served by reinstatement of the person's license to practice law. Factors to consider in determining whether the person has met this burden include the following:

- (1) The person's acceptance of responsibility for wrongdoing with sincerity and honesty and a lack of malice toward those who brought evidence against the person;
- (2) The extent of the person's rehabilitation, as demonstrated by good current reputation for

character and moral standing in the community;

- (3) The nature and severity of the misconduct leading to discipline;
- (4) The person's conduct since discipline, including strict compliance with the specific conditions of any disciplinary, judicial, administrative, or other order, where applicable;
- (5) The time elapsed since discipline;
- (6) Other instances of dishonesty, criminal behavior, professional discipline, unauthorized practice of law, academic and employment misconduct, financial irresponsibility, or involvement in or neglect of legal and professional matters;
- (7) The cumulative effect of all misconduct;
- (8) The person's current competency and qualifications to practice law;
- (9) Restitution;
- (10) Candor in the discipline and reinstatement processes; and
- (11) Positive social contributions since the misconduct.

(j) Petitions for reinstatement shall be referred to the chief disciplinary counsel for a character and fitness investigation of the petitioner, and a report, and a recommendation. The chief disciplinary counsel may contract with the Board of Law Examiners for that agency to conduct a character and fitness investigation and to provide its investigative documentation and information generated to the chief disciplinary

counsel for its review in connection with the report and recommendation. The report shall be served by the chief disciplinary counsel on the petitioner for reinstatement as provided in Rule 5.18. The petitioner may file a written response to the report with the chief disciplinary counsel within 15 days of the date of the mailing of the report.

The report, recommendation, and response, if any, shall be filed by the chief disciplinary counsel with this Court upon receipt of the response or the expiration of the time for making a response. The Court shall make a determination whether to reinstate the license of the petitioner on the basis of the petition, report, recommendation, and response.

When the court denies a reinstatement petition, it may state a period of time before which another petition will be considered. It may also provide guidance to the petitioner as to particular concerns or conditions that the petitioner should address before submitting another petition for reinstatement.

(k) If the petitioner has been suspended:

- (1) Indefinitely with leave to reapply in a period of six months or less and is not on probation under Rule 5.225; or
- (2) Under Rule 5.245 for three years or less;

then license shall be reinstated as a matter of course 30 days after the petition for reinstatement is referred to the chief disciplinary counsel for report and recommendation. If within this 30-day period the chief disciplinary counsel files a motion to respond to the petition for reinstatement, the license shall not issue and the matter shall

App.53a

proceed as otherwise provided in this Rule 5.28(j). A person automatically suspended under Rule 5.245 for three years or less who is reinstated under this Rule 5.28(j) is retroactively reinstated if the person is then in compliance with Rule 6.01 and Rule 15.

(l) In lieu of reinstating the petitioner's license, the Court may direct the advisory committee to appoint a disciplinary hearing panel to conduct a hearing into any allegations of misconduct contained in the report to which the petitioner objects. The hearing shall be conducted as provided in Rule 5.14.

The panel shall file a report. The report shall determine all matters in dispute and make a recommendation as to whether the petitioner's license should be reinstated.

**Additional material
from this filing is
available in the
Clerk's Office.**