

Timothy B. Strauch
c/o Office of Disciplinary Counsel
P.O. Box 1099
Helena, MT 59624-1099
Tel: (406) 442-1648
Fax: (406) 442-2685

Special Counsel for the Office of Disciplinary Counsel

IN THE SUPREME COURT OF THE STATE OF MONTANA

PR 23-0496

IN THE MATTER OF AUSTIN
MILES KNUDSEN,

An Attorney at Law,

Respondent.

**ODC'S OPPOSITION TO MOTION
FOR LEAVE TO FILE *AMICUS*
BRIEF IN SUPPORT OF
RESPONDENT AUSTIN MILES
KNUDSEN**

Mark D. Parker
Parker, Heitz & Cosgrove, PLLC
401 N. 31st Street, Suite 1600
P.O. Box 7212
Billings, MT 59103-7212
PH: (406) 245-9991
markdparker@parker-law.com

Christian B. Corrigan
Solicitor General
Office of the Attorney General
215 N. Sanders
PH: (406) 444-2797
Christian.Corrigan@mt.gov

Attorneys for Respondent

Tyler Green
Consovoy McCarthy PLLC
222 S. Main Street, 5th Floor
Salt Lake City, UT 84101
PH: (703) 243-9423
tyler@consovoymccarthy.com

Shane P. Coleman
Billstein Monson & Small PLLC
1555 Campus Way, Suite 201
Billings, MT 59102
PH: (406) 656-6551
shane@bmslawmt.com

INTRODUCTION

An unidentified “multistate coalition led by Iowa and Texas” (“Movants”)¹ moved to file an *amicus* brief in support of Respondent. Movants do not identify what states comprise the so-called “multistate coalition,” only that they are “led by Iowa and Texas.” Movants assert that any discipline of Attorney General Knudsen would violate separation-of-powers principles.

Because the Montana Rules for Lawyer Disciplinary Enforcement (“MRLDE”) do not provide for *amicus* briefs, the Motion is untimely in that it seeks leave to file a brief after briefing closed and just two weeks before oral argument, and Movants’ stated interest in the prosecutorial discretion of attorneys general is not at issue in this matter, ODC respectfully asks this Court to deny the Motion.

ARGUMENT

1. The MRLDE do not provide for *amicus* briefs.

In August 2024, the grievant Montana lawyer in this matter filed an *amicus* motion. Respondent resisted her request (Dkt. 30,² attached as **Exhibit 1**) stating, “The [MRLDE] do not provide for *amicus* briefs.” *Id.* at 5. The COP denied that motion. (Dkt. 32.) As to that point to which both parties here agree, a decision

¹ Excluding Mr. Schowengerdt, the Motion lists as “Amici Counsel” non-Montana-licensed lawyers who have not applied to appear *pro hac vice* in this matter. See Mont. Code Ann. § 37-61-201.

² “Dkt.” refers to the COP docket.

granting the current motion would effectively extend a nationwide invitation to politicize lawyer discipline -- a subject that is, and ought to remain, free of politics.

Further, in the one lawyer disciplinary matter cited in prior briefing by Respondent where an *amicus* brief was permitted, *see Goldstein v. Comm'n on Prac. of Supreme Ct.*, 2000 MT 8, ¶¶ 7–8, 297 Mont. 493, 995 P.2d 923, it was to address policy concerns present in that case as to due process and the division of the prosecution and adjudicative functions. No such policy concerns exist here.

This matter is solely about Respondent's ethical misconduct during his representation of a client in legal proceedings before this Court. It has nothing to do with Movant's expressed interest in avoiding judicial interference with any attorney general's prosecutorial discretion. Under the Movants' theory, an attorney general is not answerable to the courts for any conduct short of perhaps criminal misconduct, as long as it fits their definition of "official." That is not the law in Montana, nor should it be.

Respondent has argued he was charged because he represented the Montana Legislature against the Judiciary. Movants apparently hope to echo that argument. However, this case is about the *means by which Attorney General Knudsen chose to advocate his client's interests*, which were outside the boundaries of the MRPC (i.e., through disrespectful, insulting, and insubordinate conduct toward this Court). This case is *not* about who Respondent's client was, or the position he advocated. *All*

officers of the Court are subject to ethical boundaries—private and governmental, even the Attorney General—and are all required to adhere to the MPRC. No violation here arose out of the “dispatch” of “official” or “constitutional duties” of Attorney General Knudsen.

2. The Motion is untimely.

Allowing an *amicus* brief to be filed after briefing is closed and only two weeks prior to oral argument would not allow ODC to respond to the Movants’ “aligned but differentiated” arguments or adequate time to prepare and address them at oral argument.

This matter has been pending since September 2023. Respondent raised the separation-of-powers issue in his initial Answer (Dkt. 8 at 3). The COP decided the matter last November. If a “multistate coalition” truly had meaningful interest in this case, then why wait until a month from oral argument and after all briefing concluded to seek leave to participate? It seems clear Movants waited until oral argument approached before filing. For this reason, if for no other reason, their Motion should be denied.

3. Movants do not have the requisite “strong interest.”

Movants state they “have an interest in ensuring that State Attorneys General may exercise their discretionary authority conferred by their respective State

Constitutions without improper interference or distractions.” That is not a “strong interest” as required by Mont. R. App. P. 2 or, frankly, any valid interest here.

This matter has nothing to do with the Attorney General Knudsen’s “discretionary authority” under the Montana Constitution, and certainly nothing to do with the discretionary authority of some other state attorney general conferred by their respective state constitution. Not one violation determined by the COP relates to Respondent’s prosecutorial discretion. The recommended discipline is for his disrespectful and insubordinate misconduct in the *Brown* and *McLaughlin* matters. As foreigners, it is perhaps understandable that Movants also miss the substance of this disciplinary proceeding. But the fact they misapprehend the true issues here to this extent dispels any promise that they can bring meaningful perspective and insight to this Court’s deliberations.

ODC disagrees that attorneys general from other states have a “nationwide perspective” that needs to be heard here. First, by definition, the perspective of any state attorney general is relegated to his or her own state; there is no one national disciplinary authority, and each state has its own disciplinary laws and rules, with each case confined to its own unique facts and circumstances. This is not to say that other attorneys general do not have some national perspective, only that it does not constitute a “strong interest” here. Other disciplinary authorities no doubt have a national perspective on disciplinary cases relating to attorneys general, but the

Respondent would likely argue that it does not create a “strong interest” for them to participate in this Montana disciplinary case.

The best insight on any separation-of-powers issue in this matter comes from the arm of this Court whose job it was to provide that insight: the COP – not from foreigners who cannot be impacted by this proceeding. The COP twice found Respondent’s separation-of-powers arguments unconnected to this case:

... the Commission is unconvinced that these proceedings are based on Respondent discharging his official duties as opposed to how he performed those duties consistent with the MRPC. It certainly is not an official duty of the Attorney General to commit the actions alleged in the Complaint.

9/13/24 Order, Dkt. 37 at 8-9.

The context of the conduct is largely irrelevant; this is not about the political or other intent of the Respondent’s client, nor the separation of powers dispute underlying the current Complaint.

FOFCOL at 27.

The briefing in the record is extensive and thorough. Just the briefing related to Respondent’s objections alone amasses 802 pages (Respondent’s Objections, 155 pgs.; Respondent’s Exhibits, 455 pgs.; ODC’s Response, 98 pgs.; Respondent’s Reply, 91 pgs.). Permitting outsiders who wish to argue a national perspective on peripheral issues already submitted by the parties in this distinctly Montanan case will not provide insightful perspective.

The duties and responsibilities of attorneys general of other states are not infringed upon or affected by this disciplinary matter. Pursuant to its jurisdiction under Mont. Const. Art. VII, § 2(3) and Mont. Code Ann. Ch. 61, T. 37, this Court has disciplinary authority only over Montana lawyers and non-Montana lawyers appearing before it. It cannot reach into the conduct of any other lawyer, and it cannot interfere with or distract from the discretionary authority of another state's attorney general.

CONCLUSION

For the foregoing reasons, ODC respectfully asks this Court to deny the Motion.

DATED this 10th day of March 2025.

OFFICE OF DISCIPLINARY COUNSEL

/s/ Timothy B. Strauch

Timothy B. Strauch, Special Counsel

Office of Disciplinary Counsel

CERTIFICATE OF COMPLIANCE

I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 1,225 words, excluding the cover page and this Certificate.

/s/ Timothy B. Strauch

EXHIBIT 1

CERTIFICATE OF SERVICE

I, Timothy B. Strauch, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Other to the following on 03-10-2025:

Mark D. Parker (Attorney)
401 N. 31st St., Ste. 1600
P.O. Box 7212
BILLINGS MT 59101
Representing: Austin Miles Knudsen
Service Method: eService

Christian Brian Corrigan (Govt Attorney)
215 North Sanders
Helena MT 59601
Representing: Austin Miles Knudsen
Service Method: eService

Dale Schowengerdt (Attorney)
7 West 6th Avenue, Suite 518
Helena MT 59601
Representing: State of Iowa, State of Texas
Service Method: eService

Shelly Smith (Court Reporter)
Office Administrator
Commission on Practice
PO Box 203005
Helena MT 59620-3005
Service Method: E-mail Delivery

Tyler R Green (Attorney)
222 S Main Street, 5th Floor
Salt Lake City UT 84101
Representing: Austin Miles Knudsen
Service Method: E-mail Delivery

Shane P. Coleman (Attorney)
1555 Campus Way
Suite 201
Billings MT 59102

Service Method: eService
E-mail Address: shane@bmslawmt.com

Electronically signed by Sheena M. Broadwater on behalf of Timothy B. Strauch
Dated: 03-10-2025