

By SUSAN HUMISTON

Who gets disciplined?

The Annual Report of the Lawyers Professional Responsibility Board (LPRB) and Office of Lawyers Professional Responsibility (OLPR) was filed with the Minnesota Supreme Court on July 3, 2017.

The report, which is posted on the LPRB website at www.lprb.mncourts.gov, covers operations of the LPRB/OLPR for the Court's fiscal year, July 1, 2016 – June 30, 2017, and details calendar year 2016 disciplinary actions. I have previously reported information regarding 2016 public and private disciplinary matters, so I won't repeat that information here.¹ What I would like to focus on this month is a bit more detail around who gets disciplined.

Risk by years of practice

Conventional wisdom seems to posit that new attorneys are at greater risk for discipline than more experienced attorneys. I have spoken with many individuals who worry about new attorneys who go into solo practice right out of law school, perhaps because they cannot find other jobs. These attorneys do not have the practical knowledge necessary to practice and may run into ethics issues—or so the argument goes. Many individuals worry about the impact of declining bar scores and crushing student loan debt, which in their view place newer attorneys in situations where they may make ill-advised choices that could in turn lead to ethics issues.

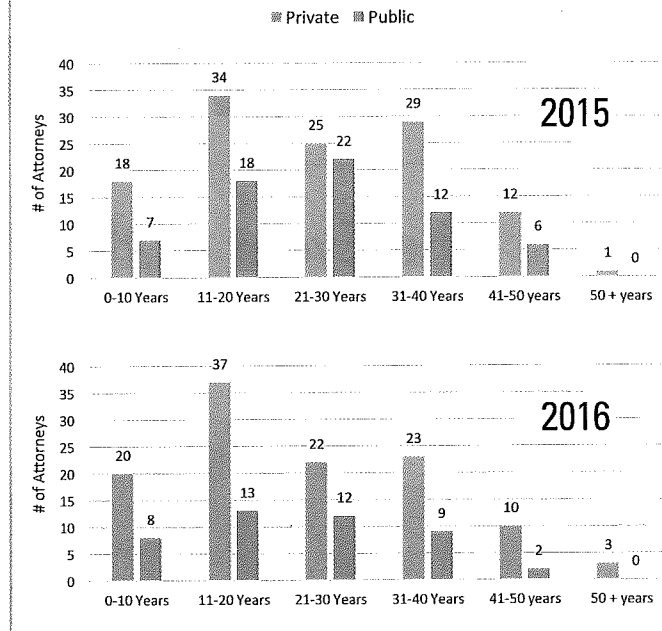
Earlier this year, a law professor from the East Coast wrote attorney regulation counsel throughout the United States asking for disciplinary information sorted by date of birth. Her premise was that millennials suffer from psychological disorders in higher numbers than the general population and she wanted to see if that translated to higher bar disciplinary rates. In Minnesota, we do not collect birth dates with annual registration data, so no such data is available. I have no idea whether the psychological disorder reference is accurate, but this request did prompt a lot of discussion among regulation counsel. Who generally gets disciplined?

To look into this for Minnesota, we graphed public and private discipline for 2015 and 2016 by years of practice and gender, the only demographic information available to us. Each year, generally speaking, 150-180 attorneys receive some form of discipline. (This is an extremely small percentage of the 29,000 attorneys—25,000 active—who hold Minnesota licenses.) What we found (see charts) is that attorneys with less than 10 years of practice receive fewer discipline decisions than any other 10-year practice cohort except those who have practiced more than 40 years. The attorneys at most risk? Those who have practiced between 11-20 years.



SUSAN HUMISTON is the director of the Office of Lawyers Professional Responsibility and Client Securities Board. She has more than 20 years of litigation experience, as well as a strong ethics and compliance background. Prior to her appointment, Susan worked in-house at a publicly traded company, and in private practice as a litigation attorney.

Average Years of Practice for Attorneys Disciplined



As the 2016 demographic data recently reported by the Supreme Court shows, there are more attorneys within 0-10 years of practice than in any other 10-year cohort.² Thirty-two percent of all licensed lawyers have 0-10 years of experience, but they accounted for only 17 percent and 14 percent of discipline cases in 2016 and 2015, respectively. Some 24 percent of licensed attorneys are in the 11-20 years of practice cohort, but they accounted for 31 percent of discipline cases in 2016, and 28 percent in 2015. The next most at risk decade is 21-30 years of practice (my own cohort). This group, which represents 21 percent of licensed attorneys, accounted for 21 percent of discipline cases in 2016, and 26 percent in 2015. This is roughly equivalent to the percentage of the overall population. Discipline incidents jump again in the 31-40 years of practice cohort. This group constitutes 16 percent of the licensed population but accounted for 20 percent of discipline cases in 2016, and 22 percent in 2015.

No explanations, but a lesson

Why is this? I have no idea, and neither did any of my fellow regulation counsel, but anecdotal reports suggested that many other jurisdictions thought senior attorneys accounted for more discipline than newer attorneys. Lots of theories abound. Perhaps attorneys with more than 11 years of experience have more work and thus more chances to encounter issues? Perhaps newer attorneys get more supervision than senior attorneys, such that many ethical issues are caught and addressed without complaint? Perhaps newer attorneys remember professional responsibility better than those more distant in time from law school? Or maybe more senior attorneys lose focus on some of the fundamentals?

Professional Responsibility

Whatever the answer may be, this is a good reminder that ethics refreshers should be an important part of every year of practice. Just because you have been doing this a while does not mean you can afford to rest on your laurels; in fact, the data says the opposite. When was the last time you read the Minnesota Rules of Professional Conduct? Even with comments, the Minnesota rules are only 86 pages long. It is one thing to have a general idea of what the rules say; it's quite another thing to sit down, read them and think about them in the context of your everyday practice. While ethics CLEs are good opportunities to refresh your understanding of legal ethics, there is really no substitute for just reading the texts of the rules and thinking about your practice.

Gender imbalance

One other data point may be of interest: Each year, significantly more men than women are disciplined for ethics violations. In 2015, 157 men received discipline compared to 27 women. Men were the ones disciplined in 85 percent of cases, that is, though they make up approximately 55 percent of the attorney population. Women, conversely, received just 15 percent of the disciplinary actions, even as they constituted 38 percent of the attorney population. (Seven percent of the population did not respond to the gender question.) Nor is this a one-year anomaly. In 2016, 134 men were disciplined in a total pool of 159—84 percent of discipline cases. I'm not sure that women are more ethical than men, but the numbers are certainly disproportionate.

As always, remember that every business day, an attorney at the OLPR is available to answer ethics questions for Minnesota attorneys. Just call (651) 296-3952 or visit our website (www.lprb.mncourts.gov) to send a message. If you are at our website, check out the 2016 Annual Report for detailed information on the operation of Minnesota's lawyer ethics system. ▲

Notes

¹ Susan M. Humiston, "2016 Year in Review: Public Discipline," *Bench & Bar of Minnesota* 01/2017; Susan M. Humiston, "Private Discipline in 2016," *Bench & Bar of Minnesota* 02/2017.

² 2016 Minnesota Judicial Branch Report to the Community available at www.mncourts.gov/mncourtsgov/media/assets/documents/reports/2016JudicialBranchAnnualReport.

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