



PROFESSIONAL RESPONSIBILITY

MORE THAN JUST LAWYER DISCIPLINE

BY KENNETH L. JORGENSEN

Most lawyers identify the Office of Lawyers Professional Responsibility (OLPR) with ethics complaints and the prosecution of lawyers. In fact, the majority of OLPR resources are used to investigate and prosecute approximately 1,200 complaints, 50 public discipline cases (e.g., reprimand, suspension and disbarment) and 120 private discipline cases (e.g., private admonition) each year. Although it may constitute the primary task, investigating and disciplining lawyers is only one of many functions fulfilled by the OLPR in serving the bar and the public. What follows is a peek inside the OLPR at some of the lesser-known functions of the Minnesota lawyer discipline office.

ADVISORY OPINIONS. Minnesota is one of only several states that use their lawyer discipline prosecutors (i.e., the OLPR) to issue advisory opinions on questions of legal ethics to members of the bar. Last year nearly 1,800 opinions were issued to lawyers and judges on issues of professional responsibility.

Advisory opinions are available to all licensed Minnesota lawyers and judges who are current in the annual attorney license fee. Opinions are confidential and are limited to the inquiring lawyer's prospective compliance with the Rules of Professional Conduct. Opinions about past conduct or the propriety of another lawyer's conduct are not available. Advisory opinions can be obtained by calling (651) 296-3952.

LEGAL ETHICS EDUCATION. Increasingly over the past decade, more disciplinary resources have been expended in the area of legal ethics education. Each year the Lawyers Board and OLPR sponsor a continuing legal education (CLE) seminar devoted solely to the subject of professional responsibility. Lawyers Board members and OLPR attorneys are frequent lecturers on the CLE circuit. These presentations are not limited to programs devoted entirely to professional responsibility but also include CLE on other substantive areas of the law in which legal ethics has been incorporated into the program. Last year alone attorneys in the OLPR participated in over 50 CLE seminars.

WEB SITE. The Web site can be accessed at www.courts.state.mn.us/lprb and contains resources for lawyers and the public. Resources for lawyers include a searchable archive of past *Bench & Bar* and *Minnesota Lawyer* articles on professional responsibility, a legal ethics subject matter index with links to past professional responsibility articles, the current Rules of Professional Conduct, Rules on Lawyers Professional Responsibility and Lawyers Board Formal Opinions, as well as information on lawyer trust accounts and professional firm filing requirements.

Resources for legal consumers include a downloadable complaint form, instructions on how to file an ethics complaint, information about the complaint filing and investigation process, and a list of Minnesota lawyers who are currently suspended or disbarred from law practice.

TRUST ACCOUNTS. Publications to assist lawyers with the operation and proper maintenance of lawyer trust accounts are available from the OLPR. Lawyers Board Opinion No. 9 identifies the various types of required trust account records. In addition, two instructional brochures have been created to assist lawyers with trust account record-keeping requirements. *Other People's Money: Operating Lawyer Trust Accounts* provides instruction and assistance in maintaining manual trust account records. *Maintaining Trust Accounts with Quicken Basic 2002* exists to assist lawyers who desire to maintain lawyer trust accounts electronically. Both of these trust account manuals are available on the Web site.¹

PROFESSIONAL FIRM REPORT FILING. Minnesota Statutes Chapter 319B — the Minnesota Professional Firms Act — requires every law firm organized as a professional corporation, limited liability company or limited liability partnership to register upon formation and thereafter file annual reports with the OLPR.² The act sets forth a number of provisions regarding ownership and control of professional firms and requires filings with the professional licensing agency (i.e., OLPR) in addition to the regularly required filings with the secretary of state. Each year the OLPR obtains and verifies the professional firm reporting requirements for

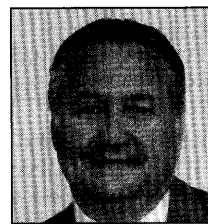
over 1,500 Minnesota law firms. While some lawyers may view professional firm registration and reporting as an administrative headache, the failure to comply with reporting requirements can have drastic consequences.

Under the act failure to report is grounds for involuntary dissolution or rescission of the professional firm's status. A far more serious consequence is the potential loss of the law firm's corporate protections from creditors. Noncompliance with statutory reporting requirements enables creditors to pierce the corporate veil of the law firm's professional firm status and seek payment of firm financial obligations directly from the individual lawyer members. See e.g., *John E. Miles v. Law Offices of James H. Cohen, P.C. and James H. Cohen*, 99 WL 451336 (Minn. App. 07/06/99), where the appellate court upheld a trial court determination piercing the law firm's corporate veil and added the sole shareholder lawyer as a judgment debtor in a judgment previously obtained against his law office professional corporation. In piercing the corporate veil, the trial court noted that the lawyer had not filed his articles of incorporation with the OLPR, nor had he made the mandatory annual report filings. Further information about firm filing requirements is available at www.courts.state.mn.us/lprb/profcorp.html.

SUPERVISION OF PROBATIONARY LAWYERS. Occasionally the monitoring or supervision of a lawyer's practice becomes necessary to adequately protect the public. Lawyers who commit nonserious violations, which cannot be characterized as "isolated," are oftentimes subjected to private probationary conditions designed to

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address the behavior causing the violations. Likewise, the Supreme Court sometimes uses probationary conditions in its public discipline of lawyers to ensure the public's protection. Both of these types of probation most often require monitoring by either the OLPR or a volunteer lawyer assisting the OLPR as a probation supervisor. Probationary conditions range from monitoring a lawyer's office procedures and file inventories, retainer agreements and fee practices, trust account records and procedures, income tax return filings, and compliance with treatment programs for chemical dependency and psychological disorders. Lawyers with more serious chemical issues may be required to submit to random drug testing programs with results reported to the OLPR.

DISCLOSURE OR VERIFICATION OF LAWYER DISCIPLINE HISTORY. The OLPR receives requests daily for disclosure or verification of lawyer discipline history. The bulk of these requests come from lawyers who are applying for admission to another jurisdiction, seeking employment with a governmental agency, applying for a judicial appointment, and obtaining or maintaining a specialization certification. Other requests come from law firms in lateral hire situations, corporations when hiring lawyers, malpractice insurers when renewing or issuing coverage, and lawyer referral organizations who have obtained authorization from the lawyer(s) to have disciplinary information released. Most of these requests seek disclosure of public and private discipline imposed as well as the existence of any pending complaints against the lawyer. The OLPR typically responds to about 1,000 requests of this nature each year.

Any lawyer in need of a disciplinary history verification should either mail or fax a signed request to the OLPR, including your Minnesota attorney registration number and the organization seeking the verification. Email requests will not be honored. There is no charge for professional discipline record verification.

Increasingly, legal consumers contact the OLPR to obtain a lawyer's discipline history. Public discipline sanctions and pending public disciplinary proceedings are disclosed to the public without the affected lawyer's authorization. Information about private discipline or pending complaint investigations cannot be disclosed without written authorization from the lawyer.⁴ Nevertheless, sophisticated clients will occasionally condition retention of the lawyer upon the lawyer's authorization for release of his or her discipline history to

the client. The OLPR receives as many as 20 telephone calls per day from legal consumers attempting to determine whether a lawyer has been publicly disciplined.

TRUSTEESHIPS. A lesser-known function of the OLPR involves acting as trustee for the files of law practices that are unexpectedly interrupted due to death, disability, or disbarment of a lawyer.⁵ The trustee role served by the OLPR involves obtaining Supreme Court authority to take possession of the client files and provide for their return to clients. Trusteeships are reserved for those situations in which there is no one else available to pick up the pieces of an unexpectedly interrupted practice. Some trusteeships entail only a handful of files, while others, such as the one involving disbarred lawyer Mark Sampson, implicate thousands of files.

Solo practitioners are encouraged to prepare a plan for unexpected practice interruption. Beyond the need for access to client files, other client prejudice issues associated with practice interruption include legal deadlines and the inability to access client trust account funds.⁶ A subcommittee of the MSBA Rules of Professional Conduct Committee is currently working on a model practice interruption plan for solo practitioners and intends to have its final draft completed this fall.

Complaint investigation and prosecution still consumes much of an average day in Minnesota's lawyer discipline system. At same time, many of these lesser-known responsibilities are equally important in protecting the public and maintaining its confidence in the legal profession. □

NOTES

1. Other People's Money: Operating Lawyer Trust Accounts is available at [www.courts.state.mn.us/lprb/OtherPeoples\\$.htm](http://www.courts.state.mn.us/lprb/OtherPeoples$.htm) and Maintaining Trust Accounts with Quicken Basic 2002 at www.courts.state.mn.us/lprb/Quicken%20Basic%202002%20color.htm.

2. See Minn. Stat. §319B.11, subd. (4).

3. Violations of the Rules of Professional Conduct that are "isolated" and non-serious typically result in private admonitions. See Rule 8(d)(2), Rules on Lawyers Professional Responsibility.

4. Rule 20, Rules on Lawyers Professional Responsibility.

5. See Rule 27, Rules on Lawyers Professional Responsibility.

6. See e.g., ABA Formal Opinion 92-369 entitled "Disposition of Deceased Sole Practitioner's Client Files and Property" (December 7, 1992).

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