



PROFESSIONAL RESPONSIBILITY

THE LAWYER DISCIPLINE SYSTEM: WHAT'S THAT?

BY TIMOTHY M. BURKE

What is the Office of Lawyers Professional Responsibility (OLPR)? What is the lawyer discipline system? Why does the system exist? What does it do? This article gives a brief, perhaps simplistic, overview of the OLPR and the lawyer discipline process.

Many, if not most, attorneys have never dealt, and will never deal, with the OLPR. They read discipline decisions in *Finance & Commerce*, but really have no idea of how those cases became Minnesota Supreme Court decisions. Many lawyers have little or no knowledge of the lawyer discipline system, even though \$110 of each lawyer's annual registration fee funds the OLPR. On some level, these are good things. After all, no knowledge of the system probably means no complaints against a lawyer. However, the system regulates all of us in our unique capacity as officers of the Court. No other profession is self-regulating like ours. For these reasons alone, some familiarity with the system should be part of a lawyer's body of knowledge. On a more personal level, if a complaint is filed against you, shouldn't you have at least some knowledge of the system you are entering?

WHY LAWYER DISCIPLINE?

Preliminarily, why do the OLPR and the lawyer discipline system exist? According to the Supreme Court, the principal purpose of lawyer discipline is to "guard the administration of justice and to protect the courts, the legal profession and the public."¹ To this end, determining the appropriate disciplinary sanction when a lawyer violates the Rules of Professional Conduct requires weighing the type of misconduct, the "cumulative weight of the disciplinary rule violations, and the potential harm to the public, to the legal profession, and to the administration of justice."² The other purpose served by lawyer discipline proceedings is deterrence of similar misconduct by the respondent lawyer and other members of the bar.³

The OLPR and the discipline system are established and regulated by the Rules on Lawyers Professional Responsibility (RLPR). These Rules are published in *West's Minnesota Rules of Court*. (This year they begin on page 937.)

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MANY ROLES

The OLPR performs many roles in the system, including investigation, prosecution, probation, trustee, advisor, and education.

INVESTIGATION. Investigator and prosecutor are the roles with which most attorneys are familiar. The Supreme Court's public discipline decisions are the result of the director's investigation and prosecution of complaints.

In recent years the OLPR has received approximately 1,200 to 1,400 complaints per year. Approximately 40 percent are dismissed without investigation. Generally, these complaints even if true would not state potential violations of the Minnesota Rules of Professional Conduct (MRPC), involve claims of malpractice or disputed fees, or involve pending litigation. Investigation of the remaining complaints is done by the OLPR staff or, more often, by the district ethics committee (DEC) of a local bar association.

Each DEC comprises lawyers and non-lawyers. One of the DEC members will investigate a complaint, prepare a report, and recommend a disposition. After the committee concurs, the matter is returned to the OLPR.

After the investigation, the OLPR decides on the disposition of the complaint. On approximately two-thirds (2/3) of investigated complaints, a determination is made that discipline is not warrant-

ed. The investigated facts may not constitute a violation of the MRPC, or there may not be clear and convincing evidence of a violation.

PROSECUTION. Only about 20 percent of the complaints the OLPR receives result in discipline. Whenever the lawyer contests the discipline that the OLPR seeks, the OLPR's role changes from neutral investigator to adversary of the lawyer.

There are two basic levels of discipline, public and private. "Private" means that the OLPR, the complainant, and the respondent receive a copy of the decision, but that the OLPR may disclose the decision only in very limited circumstances. "Public" means that the discipline is imposed by the Supreme Court, is generally published in *Finance & Commerce* and *Northwest Reports*, and may be disclosed to any person.

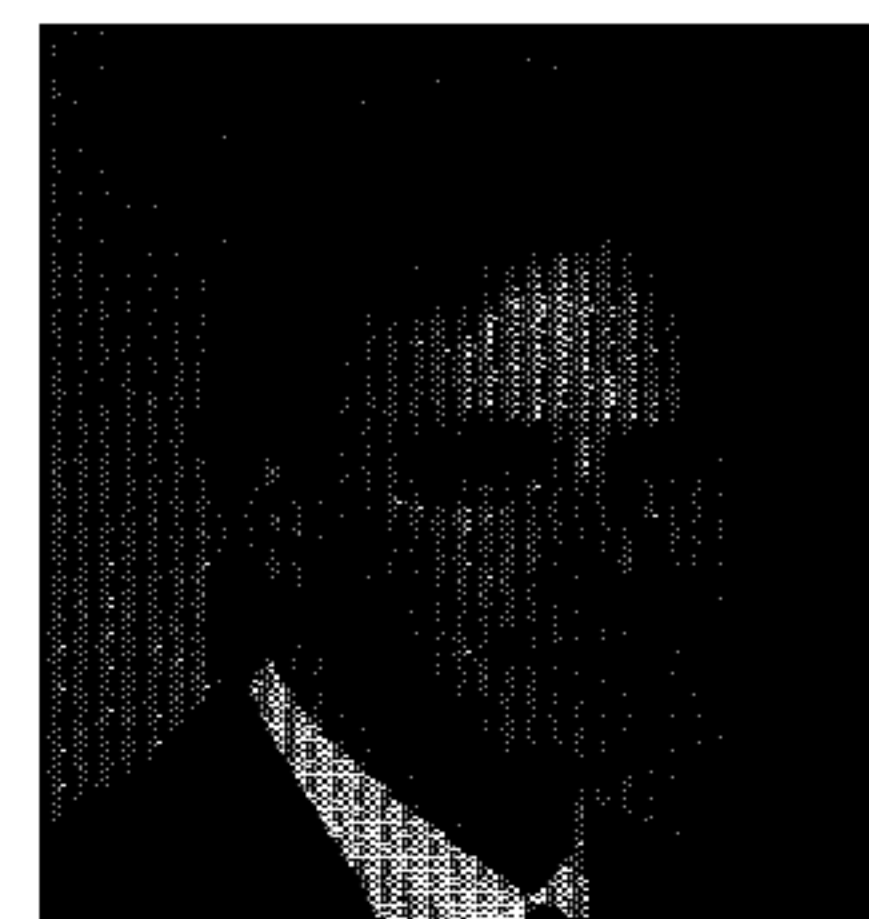
There are two types of private discipline:

■ **Admonition.** An admonition is imposed by the director of the OLPR. The equivalent of a reprimand, it is the lowest form of discipline. It is issued for isolated and non-serious misconduct. Both the complainant and the respondent have the right to appeal the issuance of an admonition.

■ **Private Probation.** Private probation may be used only upon agreement of the director of the OLPR, the respondent, and the chair or vice chair of the Lawyers Professional Responsibility Board.

There are several basic types of public discipline:

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■ Reprimand.

■ **Probation.** Probation allows the lawyer to practice with certain restrictions, conditions, or obligations on her practice. Most often probation is used in connection with matters such as repeated problems with diligence, client communication, trust account record keeping, or tax return filing.

■ **Suspension.** Suspension is the loss for a period of time of the privilege to practice law.

■ **Disbarment.** Disbarment is the presumptively permanent loss of the privilege to practice law.

The OLPR begins the process of seeking public discipline by filing charges of unprofessional conduct. A hearing on the charges is conducted before a Panel of the LPRB. This proceeding is not public. The Panel determines whether probable cause exists to believe that public discipline is warranted on any or all of the charges against the lawyer.

If a Panel finds probable cause exists, then the OLPR files with the Supreme Court a petition for disciplinary action. The petition and all subsequent proceedings are public. The Supreme Court assigns the matter to a referee. Disciplinary referees are district court judges from throughout the state. The referee conducts a trial, and after the trial issues written findings of fact, conclusions of law, and a recommendation for discipline. Either the OLPR or the lawyer may challenge the referee's findings, conclusions, and/or recommendation. The OLPR and the lawyer file briefs and conduct oral argument before the Supreme Court. The Court then issues a written opinion with its decision.

PROBATION. When a lawyer is on disciplinary probation, the OLPR acts in two ways. On the one hand, the office acts to assist the lawyer with the problems that resulted in the lawyer being placed on probation so that those problems do not recur. Often a lawyer on probation has a "supervisor," another lawyer who volunteers her time and skill to monitor and help the lawyer. If chemical, psychological or similar problems caused the original misconduct, the director helps ensure that appropriate treatment is obtained and followed to remove this cause of problems. On the other hand, if violations continue or other violations occur, the OLPR may seek to have the probation revoked and additional discipline imposed.

TRUSTEE. In rare instances, a lawyer who has been disciplined will abandon his client files. When this happens, the Supreme Court may appoint the OLPR to act as trustee to ensure the prompt and proper distribution of client files and property.

ADVISOR. The OLPR issues more than 1,500 telephone advisory opinions to Minnesota lawyers each year. These opinions allow lawyers to obtain the personal advice of an OLPR attorney on a situation involving the prospective conduct of the caller facing a professional responsibility question or dilemma.

EDUCATION. OLPR attorneys speak at numerous continuing legal education programs on a variety of professional responsibility topics. The goal is to educate lawyers on these topics, to help lawyers avoid complaints and discipline.

STRIKING A BALANCE

Sometimes the roles of the OLPR in the discipline system overlap. Sometimes the roles appear to conflict. For example, when a complaint is filed, the OLPR acts as investigator to ascertain whether any disciplinary violations may have occurred. To a large extent, this role is one of neutral gatherer, assessor, and analyst of the relevant facts and law. However, once the OLPR seeks to have discipline imposed on a lawyer who will not consent, then the OLPR's role changes to adversary of the lawyer. When the OLPR is monitoring a lawyer's probation, the OLPR is attempting to assist the lawyer correct problems while simultaneously watching out for disciplinary violations. If a complaint is filed against a lawyer who is on probation, then the OLPR may be acting as investigator of that lawyer, as well.

While wearing these several different hats, the OLPR attempts to protect the public and to keep in mind the interests of persons who file complaints, lawyers against whom complaints are filed, the public as a whole, and the bar as a whole. It is a difficult and delicate balance to achieve, but a balance the OLPR strives to achieve and maintain every day. □

NOTES

1. In re Serstock, 316 N.W.2d 569, 561 (Minn. 1982); see also, In re Getty, 452 N.W.2d 694, 698 (Minn. 1990).
2. In re Getty, 452 N.W.2d at 698, quoting In re Pyles, 421 N.W.2d 321, 325 (Minn. 1988).
3. In re Daffer, 344 N.W.2d 382, 386 (Minn. 1984).