

BY MARTIN COLE

## Summary of Public Discipline

Again this year, this column will feature a summary of the previous year's public discipline decisions<sup>1</sup> in addition to a summary of private disciplinary dispositions, which will follow next month. Even though public discipline decisions can be obtained from various sources (especially on the internet), such as from the LPRB website or the Minnesota Supreme Court website or from subscription services or the MSBA or *Minnesota Lawyer*, nevertheless, many busy lawyers simply find it difficult to keep abreast of public discipline cases and thus may miss some important pronouncements of the court or analysis about a particular Minnesota Rule of Professional Conduct (MRPC). And as I've experienced when speaking at Continuing Legal Education seminars around the state, it's human nature to be curious about other people's failings.

There are differences between public and private discipline, of course, which include that the misconduct that results in public discipline usually is more serious, as is the disciplinary sanction imposed. Oftentimes, public discipline matters involve multiple counts and multiple violations, and frequently include noncooperation with the disciplinary process and/or a prior disciplinary history. While certain major acts of misconduct, such as misappropriation

of client funds or felony criminal convictions, will generate public discipline standing alone, many lawyers who are publicly disciplined instead have "worked their way up the disciplinary ladder step by step."

Calendar year 2014 was uniquely "average" for public discipline, if any year can be so called. Thirty-five Minnesota attorneys were publicly disci-

plined by the supreme court. Although that is fewer than the near-record number of public discipline decisions issued last year,<sup>2</sup> it is almost exactly the average number of instances in which public discipline was imposed annually over the past 25 years.

### Disbarments

Six Minnesota-licensed attorneys were disbarred in 2014. This too precisely matches the historical average (186 disbarments in the past 31 years). As is usually the case, serious dishonesty such as misappropriation of client funds or conviction of a felony (especially if resulting in actual prison time) accounts for almost all lawyer disbarments. Five of this past year's six disbarments fit this model. The one exception is an attorney whose prior disciplinary history was one of the longest in the history of the state. Attorneys disbarred were:

■ Thomas Harrigan, who misappropriated client funds, made misrepresentations to his clients and to the Director's Office during the disciplinary investigation, and otherwise failed to cooperate with the investigation;

■ Paul Moe, who also misappropriated client funds, disobeyed court orders, made false statements to a tribunal, and engaged in a conflict of interest;

■ Rebecca Lawler, who was disciplined reciprocally in light of her discipline from North Dakota,<sup>3</sup> where she misappropriated client funds, misused funds from her father's estate, and engaged in neglect and a lack of communication with a client;

■ Linda Brost, who was convicted of felony theft and identity theft, involving misappropriation of client funds, and failed to cooperate;

■ David Holt, who was federally convicted of wire fraud and failed to cooperate with the disciplinary investigation;

■ Alan Albrecht, who engaged in sexual relations with a client, practiced law while suspended, failed to cooperate, and made false statements during the disciplinary

proceeding. His disciplinary history was extensive.

### Suspensions

Suspensions of varying length are the most frequent type of public discipline imposed by the supreme court. This was true in 2014, in which 19 attorneys received suspensions of various lengths. Suspensions can be issued for 90 days or less, from which reinstatement is by an affidavit of compliance, or be longer than 90 days (including indefinite suspension even if the minimum period is less than 90 days), for which a reinstatement petition and a hearing before a panel of the Lawyers Professional Responsibility Board are required. This obviously is an attempt to reflect the differing degree of seriousness that is involved in the misconduct in each matter. Minnesota lawyers received suspensions in 2014 varying in length from 30 days to indefinitely for a minimum of five years, after which the attorney will be eligible to apply for reinstatement.

Conduct for which a suspension of more than one year was imposed included misappropriation where substantial mitigation existed sufficient to not require disbarment; a gross misdemeanor conviction involving forgery and identity theft; and a felony conviction for failing to pay income taxes plus noncriminal failure to file tax returns. Even though tax convictions are a felony, the court has historically considered such convictions not to be conduct directly related to the practice of law, such that discipline less than disbarment is common.

Suspensions of either months (less than 12) or days (30-60-90) were imposed for conduct including unintentional misappropriation of client funds due to a failure to maintain or properly reconcile trust account books and records; a failure to deposit unearned fees into a trust account combined with false statements; noncriminal failure to file income tax returns and failure to file or pay employer withholding taxes; a conflict in a business transaction with a client along with misrepresentations; and for a total failure to cooperate with the disciplinary process. Several of these attorneys were later reinstated during the year.



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## Professional Responsibility

### Reprimands & Probations

Ten lawyers were publicly reprimanded by the supreme court in 2014, of whom five also received a period of probation, for various acts of misconduct considered sufficiently serious to warrant public discipline and thus require public notice, but yet not so serious as to require a period of actual suspension from the practice of law. Probations most often are for a period of two years, and usually are monitored by a volunteer supervisor.

In 2014, the conduct for which reprimands were imposed included: failure to supervise a suspended attorney working as a paralegal;<sup>1</sup> an instance of neglect of a client matter when the attorney had been privately disciplined four times previously; a conflict of interest and filing a false affidavit with the court; making a misleading statement in an appellate brief and a false statement concerning it; and two other instances of an attorney making a false statement to a tribunal.

Historically, false statements by an attorney to a court warranted a short period of suspension. In recent years, however, several instances have

been prosecuted in which either the misstatement was not very material or the attorney promptly admitted the misconduct and tried to make amends, and thus little harm ensued from the attorney's dishonesty. Public reprimands thus were imposed more often than suspensions for such conduct this past year. Each case still needs to be assessed on its unique facts, but at least it can be said that suspension is no longer automatic for such conduct.

### Conclusion

As this is written, four public decisions have been issued already in 2015 (one resulting in disbarment) as of January 21. Forty-two more discipline matters are at various stages of the litigation process leading to public discipline, from the issuance of charges through having the matter completed and under advisement by the supreme court, either on stipulation or following a contested referee hearing, briefing, and oral argument. Thus, there is reason to suspect that 2015 will be another busy year for the OLPR and the court in the area of lawyer discipline. ▲

### Notes

<sup>1</sup> Public discipline can be either a public reprimand, a reprimand with probation, suspension (of varying length) or disbarment. Transfers to disability inactive status and reinstatements also generate a public decision from the court, but those have not been included for the purposes of this column.

<sup>2</sup> The number of public discipline decisions in 2013 was 47.

<sup>3</sup> Reciprocal discipline is a somewhat expedited process whereby the supreme court may impose identical discipline in Minnesota against an attorney publicly disciplined in another jurisdiction. See, Rule 12(d), Rules on Lawyers Professional Responsibility. Because a relatively higher percentage of North Dakota lawyers are also licensed in Minnesota, it is the most common source for reciprocal discipline matters.

<sup>4</sup> Suspended or disbarred lawyers are permitted to work as paralegals in Minnesota, if properly supervised by a practicing attorney. Rule 5.8, MRPC. In Wisconsin, suspended or disbarred attorneys are not so permitted.



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