

## SUMMARY OF PUBLIC DISCIPLINE

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Reprinted from *Bench & Bar of Minnesota* (February 2014)

Last year, this column for the first time featured a summary of the previous year's public discipline decisions,<sup>Ftn 1</sup> in addition to the annual summary of private disciplinary dispositions. It proved to be a successful endeavor, generating several favorable comments over the year. Public discipline summaries are regular features in many state's bar publications, either monthly throughout the year or summarized annually. This no doubt recognizes that, even though public discipline decisions can be obtained from various sources<sup>Ftn 2</sup> (especially on the internet), nevertheless, many busy lawyers simply are unable 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.

So, this month I will again supplement next month's summary of private discipline imposed with a summary of public discipline. The court has frequently stated that the purpose of lawyer public discipline is not to punish the lawyer, but rather to protect the public and the judicial system, and to deter future misconduct by the disciplined lawyer and by other lawyers.<sup>Ftn 3</sup> Differences between public and private discipline, of course, include that the misconduct is more serious as is the disciplinary sanction imposed; oftentimes, public discipline matters involve multiple counts and 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 have "worked their way up the disciplinary ladder step by step."

In calendar year 2013, 47 Minnesota attorneys were publicly disciplined by the supreme court, which, although not quite a record number,<sup>Ftn 4</sup> is on the very high end of the average number of instances of public discipline annually. Only two years (1990 and 2006) have resulted in more public discipline decisions.

## Disbarments

Eleven Minnesota-licensed attorneys were disbarred in 2013. This too represents a significantly high number: the third highest ever for one year in Minnesota. Although this could be seen to indicate that the number of incidents of serious misconduct is rising, review of the cases individually reveals that there was nothing “unusual” about these cases, and so it is just as likely that the number of disbarments will return to more historic averages (six or seven per year) again. Indeed, three of the disbarments in 2013 were reciprocal proceedings for lawyers initially disbarred in another state, so that the actual number of lawyers practicing in Minnesota who were disbarred was eight, closer to the normal average.

Conduct for which disbarment is imposed obviously is considered the most serious, and felony convictions (especially if resulting in actual prison time) lead the list. Brian Pitera was convicted of first-degree assault, in addition to committing less serious client-related misconduct; William Morris Jr. was convicted on multiple counts of engaging in a fraudulent internet education scheme; and Terri Hauge was convicted of felony theft by swindle. All were disbarred.

Dishonesty, especially misappropriation of client funds, is another recurring cause for disbarment, and was the major element in the 2013 disbarments of Harvey Jones, Tucker Hummel, and Barry Voss. Each committed other misconduct as well, including tax misconduct and noncooperation. Lawrence Ulanowski and Hugh Jaeger were both already suspended for prior misconduct, then engaged in unauthorized practice while suspended and failed to cooperate. Finally, the three lawyers who were issued reciprocal<sup>Ftn 5</sup> disbarments were Alan McDonagh (disbarred in North Dakota principally for misappropriation), Terry Fitzpatrick Walcott (disbarred in Florida for misappropriation), and Allan Hawkins III (disbarred in Texas and elsewhere principally for false statements to a tribunal).

## Suspensions

In most years, suspension is the level of public discipline most frequently imposed by the supreme court. This was true again in 2013. Suspensions can be divided into two main groups: those of 90 days or fewer, from which reinstatement is by affidavit of compliance, and those longer than 90 days (which can include indefinite suspension even if the minimum period is less than 90 days), for which a reinstatement petition and hearing are required. Twenty-three Minnesota lawyers received suspensions in 2012, varying in length from 30 days to indefinite suspension for a minimum of two years before the attorney becomes eligible to apply for reinstatement. Occasionally, cases resulting in a period of suspension are of greater interest to the

public, or of greater educational value to other lawyers, than many disbarment matters which, as shown above, may have already resulted in criminal proceedings, or arise from prior discipline or from other jurisdictions. While some suspensions follow other proceedings, just as often a suspension order is the public's first notice of a particular attorney's situation.

Listing all the misconduct committed by these 23 attorneys would be tedious, and many of the matters included (but certainly were not limited to) similar instances of neglect, noncommunication, and noncooperation. But there were also some unique acts of misconduct committed by these attorneys. These included: engaging in a sexual relationship with a vulnerable client (and billing the client for meetings in which they engaged in sexual activity) which warranted a suspension of at least 15 months; engaging in a pattern of bad faith litigation including false and harassing statements about several judges, which warranted at least a nine-month suspension; directing a scheme to alter bail bond applications to misrepresent compliance with insurance regulations, which earned the attorney a six-month suspension; submitting falsified documents as part of the disciplinary investigation, which warranted 90 days; and referring potential clients to a lawyer outside the firm and not remitting referral fees to the lawyer's firm, which cost the lawyer 30 days.

### **Reprimands and Probations**

Thirteen lawyers were publicly reprimanded by the supreme court in 2013. Eight of these also received a period of probation for various acts of misconduct considered sufficiently serious to warrant public discipline and thus public notice, but yet not so serious as to require a period of actual suspension from the practice of law. In 2013, the conduct for which reprimands were imposed included: making a false statement to a tribunal in the lawyer's own adoption proceeding; failing to comply with terms of a conditional admission consent agreement with the Board of Law Examiners; failing to maintain trust account books and records resulting in negligent misappropriation of client funds; posing as a former client of opposing counsel in a pending case and posting a negative review of the opposing counsel on a website; failing to supervise a suspended lawyer employed by the reprimanded attorney; and having a conflict of interest in one criminal matter and conditioning a settlement offer on the payment of fees in another case.

### **Conclusion**

While some may find the comparatively large number of instances of public discipline in 2013 to be a poor reflection on the profession, we believe that the purposes of lawyer discipline have been well-served this past year. The public was put on notice

and protected from several bad attorneys, either by removing the attorney's license or monitoring their practice. As this is written, 27 discipline matters are at various stages of the litigation process leading to public discipline, from the issuing of charges until the matter is completely under advisement by the supreme court, either on stipulation or following a contested referee hearing, briefing, and oral argument. Three public decisions have been issued so far in 2014 (one resulting in disbarment) as of January 15. Thus, there is reason to believe that 2014 will be another busy year for the OLPR and the court in the area of lawyer discipline.

### Notes

1 Public discipline can be 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.

2 Here in Minnesota the decisions can be obtained from the LPRB website or the Minnesota Supreme Court website or from subscription services of the MSBA or *Minnesota Lawyer*.

3 See, Cole, "To Protect and Deter," *Bench & Bar of Minnesota*, September 2010.

4 The highest number of public discipline decisions in one year was 55 decisions in 1990.

5 Reciprocal discipline is an expedited process by which identical discipline is imposed in Minnesota against an attorney already publicly disciplined in some other jurisdiction. See, Rule 12(d), Rules on Lawyers Professional Responsibility.