

When We Depart

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Office of Lawyers Professional Responsibility
Protecting the Public · Strengthening the Profession

Office Statistics

- 2021 Complaints - 946; 2020 Complaints – 930
- Active lawyers in MN – 26,323 (30,396 licensed) (steady)
- 2021 Public Discipline— 28 lawyers
 - 4 Disbarred
 - 17 Suspended
 - 4 Publicly Reprimanded/Probation
 - 3 Reprimanded
 - Private Discipline:
 - 8 Private Probations (9 files)
 - 88 Admonitions (84 lawyers) - (up from 82 in 2020)
- 1 lawyers transferred to disability status in lieu of discipline



2021 DEC INVESTIGATIONS COMPLETED BY DEC AND RECOMMENDATION						
DEC #	DNW	AD	CHG	FURTHER INVESTIGATION	WITHDRAWN	TOTALS
1	12	4	0	2	2	20
2	12	4	5	1	1	23
3	5	1	0	0	1	7
4	57	14	5	5	7	88
5	4	1	0	0	0	5
6	1	0	1	0	0	2
7	12	4	1	0	1	18
8	3	0	0	0	2	5
9	2	0	0	0	0	2
10	1	1	1	0	0	3
11	2	1	0	0	1	4
12	1	0	0	0	0	1
13	1	0	0	0	0	1
14	1	0	0	0	0	1
15	4	0	0	2	5	11
16	0	0	0	0	0	0
17	0	0	0	0	0	0
18	4	1	0	0	2	7
19	2	7	2	0	2	13
20	1	0	0	0	0	1
21	8	1	0	0	0	9
Totals	133	39	15	10	24	221



DEC #	OLPR Liaison	Total Members	Attorney	Public	Percentage Public Members	Terms Expiring in 2022
1	Nicole Frank	9		7	2	4
2	Josh Brand	19		16	3	3
3	Binh Tuong	7		6	1	0
4	Karin Ciano/Jennifer Peterson	85		70	15	4
5	Susan Humiston	4		2	2	2
6	Krista Barrie	4		3	1	1
7	Susan Humiston	11		7	4	0
8	Joe Ambroson	7		5	2	1
9	Krista Barrie	4		3	1	1
10	Krista Barrie	5		4	1	0
11	Nicole Frank	5		5	0	0
12	Joe Ambroson	5		4	1	0
13	Deanna Natoli	8		6	2	1
14	Joe Ambroson	6		5	1	3
15	Deanna Natoli	4		4	0	1
16	Deanna Natoli	1		1	0	0
17	Jennifer Peterson	5		4	1	0
18	Tim Burke	7		5	2	2
19	Deanna Natoli	12		10	2	0
20	Nicole Frank	7		5	2	0
21	Tim Burke	15		10	5	0
Total:		228		182	48	



Overall DEC Statistics 2021

DEC Files Closed in 2021

Recommendation (Followed)	158						
Recommendation (Departed)	28						
Withdrawn from DEC	27						
		Final Determinations					Departures
Recommendation Made by DEC	Totals	DNW	Admonition	Probation	Public Discipline	Deceased	
Admonitions	46	7	36	1	2		10
Charges	10	1	3		3	3	7
DNW	122	110	10		1	1	12
Further Investigation	8	4	3		1		0
Withdrawn from DEC	27	22	3		2		0
Totals	213	144	55	1	9	4	29
% Departures	15%						



Departures

- Very low departure rate
- 2021 — 15%
- 2020 — 20%
- 2019 — 19%
- Board review of departures — whether appealed or not



OLPR Process

- DEC Recommendation: DNW
 - A senior attorney reviews and if agrees, signs off and issues determination using DEC memo if possible.
 - A senior attorney disagrees or believes further analysis or investigation needed, case assigned to an OLPR attorney.
- DEC Recommendation: ADM or Charges
 - Case is assigned to an OLPR attorney to review and determine next steps.



Departure Examples

Flat Fees

- Recommendation: DNW
- Result: ADM
- Complaint involved a bankruptcy petition that had never been filed. The client believed the attorney took the fee but did not complete the work.
- DEC reviewed Rules 1.1, 1.3, and 1.5, MRPC when they decided the attorney had acted competently and diligently and that his fees were not unreasonable.



Departure Examples: Flat Fees

- OLPR agreed with the DEC re: the analysis of Rules 1.1, 1.3, and the reasonable fees portion of 1.5, MRPC.
- However, the flat fee agreement did not comply with all provisions of Rule 1.5(b)(1)(i)-(v).
- If flat fee agreement did not comply with all provisions, the attorney was required to deposit the advance fees into trust.



Departures Examples

Flat Fees

- The failure to deposit unearned advance fee payment into trust absent a compliant fee agreement, violated Rule 1.15(a) and (c)(5), MRPC.



Departures Examples

Knowing False Statements

- Recommendation: ADM
- Result: DNW
- Complaint involved a client unhappy with the representation during divorce.
- The DEC investigator reviewed the facts for violations of Rule 1.1, 1.4, 1.5(a)(reasonable fees), 1.16(g), MRPC.
- The investigator also reviewed Rule 3.3 and 3.4, MRPC for a potential false statement made to opposing counsel.



Departures Examples

Knowing False Statement

- The DEC Committee discussed Rule 4.1 and 8.4, MRPC as it relates to the alleged false statements.
- The DEC Committee found violations of Rules 4.1, 8.4(c) and 1.16(g), MRPC and recommended an admonition.



Departures Examples

Knowing False Statements

- Rule 4.1: Truthfulness In Statements to Others:

“In the course of representing a client, a lawyer shall not knowingly make a false statement of fact or law.

- Rule 8.4(c): Misconduct:

“It is professional misconduct for a lawyer to:
...engage in conduct involving dishonesty, fraud, deceit, or misrepresentation...”



Departures Examples

Knowing False Statement

- Rule 1.0(g): Terminology
“‘Knowingly,’ ‘known,’ or ‘knows’ denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.”



Departures Examples

Knowing False Statement

- Rule 4.1 requires a “knowing” false statement. Knowledge may be inferred from the circumstances.
- Attorney admits she had constructive knowledge of the home purchase, but she made the mistaken statement that she did not know about it on a certain date.
- The OLPR found she was credible when she explained her thinking and purpose when she made her misstatement.



Departures Examples

Knowing False Statement

- Based on the totality of the facts, there was not clear and convincing evidence of a violation of Rule 4.1 or 8.4(c), MRPC.
- But –making knowing false statements is generally public discipline (as hard to say nonserious).
- So, if had been the case on a material point, likely would not have been an admonition



Departures Examples Conflicts

- Recommendation: ADM
- Result: DNW
- Complaint involved a claim of conflict of interest, Rule 1.10(a), MRPC.
 - Two lawyers in a firm represented at different times two opposing parties.
- The DEC reviewed Rule 1.9, and 1.10, MRPC.



Departures Examples Conflicts

- An attorney in the firm represented the male spouse of a couple on a criminal charge.
- Later, the complainant consulted with another attorney in the firm about representation on an order for protection against the spouse.
 - She paid for the consultation and advice but did not retain the attorney.



Departures Examples

Conflicts

- The consultation created an attorney-client relationship between the complainant and the attorney.
- Her now ex-spouse retained his previous attorney in the firm to represent him in a custody dispute against the complainant.



Departures Examples

Conflicts

- She complained after the custody order issued
 - That respondent should not have represented her ex-spouse because there as a conflict and;
 - That respondent may have had access to confidential information from the consultation that could have been used improperly in the child custody matter.



Departures Examples

Conflicts

- Rule 1.9: Duties to Former Clients:
 - “(a) A lawyer who has formally represented a client shall not thereafter represent another person in the same or substantially related matter in which the person’s interests are materially adverse to the interests of the former client unless the former client gives informed consent.”
- Analysis: Were the matters substantially related? Yes.
- Since matters were substantially related, turn to Rule 1.10(a)...



Departures Examples

Conflicts

- Rule 1.10(a): Imputation of Conflicts of Interest:

“While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited by doing so by Rule 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.”



Departures Examples Conflicts

- Rule 1.10 Analysis: Imputation of conflict?
 - Yes, but was not a “knowing” violation.
 - Insufficient clear and convincing evidence that respondent knew about the consultation and took on representation anyway.
 - Evidence showed respondent was completely unaware of the other attorney’s consultation with the complainant.



Departures Examples

Conflicts

- Rule 1.9(c): Duties to Former Clients:

“A lawyer who has formerly represented a client in a matter or whose present or former firm has formally represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these rules would permit or require with respect to a client, or when the knowledge has become generally known; or

(2) reveal information relating to the representation except as these rules would permit or require with respect to a client.”



Departures Examples Conflicts

- Rule 1.9(c) Analysis:
- No specific confidential information was claimed to have been used;
- Respondent was not aware complainant had a consultation with the other attorney.
- The other attorney in the firm was not involved in representing the client in the subsequent child custody matter.



Departures Examples Conflicts

- No violation of Rule 1.9(c) or 1.10, MRPC but...
- Better Practice: Confirm that conflicts checks are being done in every case.
- Real issue is disqualification of firm due to the conflict and potential objections or disgorgement of fees



Departures Examples

Contacting Repped Parties

- Recommendation: DNW
- Result: ADM
- Complaint involved an attorney sending materials to both attorney and their client on more than one occasion.
- Communications were three separate cover letters with attached e-filed pleadings to both attorney and client.



Departures Examples

Contacting Repped Parties

- Rule 4.2: Communication with a Person Represented by Counsel:

“In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyers knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or court order.”



Departures Examples

Contacting Repped Parties

- DEC believed it was not a violation of Rule 4.2, MRPC violation because they deemed the communications weren't substantive, and it was possible Respondent didn't know client was represented.
- The OLPR found this was a violation of Rule 4.2, MRPC, because after the first letter, Respondent was informed client was represented, and she was not authorized to communicate with the client.



Departures Examples

Contacting Repped Parties

- The cover letters with attached pleadings were “about the representation” and therefore, should not have been sent to the client as well as the attorney.
 - Even if the respondent thought she was being helpful to the client.
 - Even if the contents of the communication is not controversial.



Departures Examples

Contacting Repped Parties

- Best practice if you're not sure: Confirm with attorney whether they represent a client.
- Good intentions do not obviate attorneys' obligation to comply with Rule 4.2, MRPC.



Departures Examples

Flat Fee Refund, etc.

- Recommendation: CHG
- Result: ADM
- Complaint involved several issues - diligence, communication, fees, and safekeeping, and failing to refund.
- DEC found clear and convincing evidence of violations and recommended the matter be referred to the LPRB for further review.



Departures Examples

Flat Fee Refund, etc.

- OLPR agrees there was clear and convincing evidence of all the violations and ordinarily would be public discipline.
- But...the Director noted that respondent's misconduct occurred around the same time as the misconduct that already resulted in a 60-day suspension.
 - This misconduct would likely not change that result.
 - The respondent will be on probation upon reinstatement and terms will address same issues.



Closing

- Questions?
- Thank you for your volunteer service!

