

A year of public discipline

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As we settle into 2025, it is appropriate to review 2024. Each year a summary of the prior year’s public discipline appears in this column. The purpose of this summary is largely a cautionary tale for lawyers; one of the reasons for public discipline is to deter misconduct by other lawyers. Public discipline also demonstrates to the public that the profession takes ethical misconduct seriously.

Views on the adequacy of the discipline imposed vary widely. Oftentimes the discipline imposed is the discipline recommended by this Office; sometimes the Court imposes a different level of discipline. Determining the appropriate level of discipline is often more challenging than one might guess. In all matters there are lessons to be learned.

The numbers

The Court issued 42 decisions in public matters in 2024. Five lawyers were disbarred, 14 were suspended, two were reprimanded and placed on probation, and six received public reprimands. (One lawyer received two.) Additionally, three lawyers were placed on disability inactive status in lieu of discipline, one reinstatement petition was denied, and 10 lawyers were reinstated to the practice of law, most from short suspensions.

The 2024 numbers are generally in line with the prior year’s numbers; however, a couple of numbers stand out. First is the number of reciprocal discipline matters. More lawyers than ever before received public discipline in other jurisdictions, necessitating reciprocal consideration in Minnesota. I have no insight into the uptick in this number. For decades, Minnesota lawyers have maintained practices outside of Minnesota, and we generally see one or two reciprocal discipline matters a year. In 2024, nine of the court’s decisions (including two disbarments) involved public discipline from other states, and there are several more reciprocal matters in process.

Reciprocal discipline might seem more straightforward than original discipline matters—but they rarely are, given the variability in how other jurisdictions handle discipline. Also, Rule 12(d), Rules on Lawyers Professional Responsibility—the procedural rule that governs reciprocal discipline—could use a refresh.

Another number that caught my eye was the return to a more even distribution among the types of public discipline imposed. In 2023, 24 lawyers were suspended and only one lawyer received a public reprimand. In 2024, 14 lawyers were suspended, and nine public reprimands were issued, a more typical distribution. Still serious overall, but more in line with historical averages.

Disbarment

Five lawyers were disbarred in 2024, compared to three in 2023. These lawyers were James V. Bradley, R. James Jensen, Jr., Fong Lee, Madsen Marcellus, and Michael Padden. The most common reason for disbarment generally is misappropriation of client funds. Three lawyers were disbarred in 2024 for conduct that included misappropriation of client funds—Mr. Bradley, Mr. Lee, and Mr. Padden.

Mr. Bradley was a family law attorney who misappropriated approximately \$8,500 in funds he was holding for the benefit of his client. Although he originally placed those funds in trust, he did not disburse those funds to his client but instead used the money for other matters. Mr. Bradley also engaged in misconduct in his own divorce, by making false statements relating to a judgment and decree and defying court orders. Mr. Lee was a general litigation attorney who misappropriated more than \$18,000 from three clients, among other misconduct. Mr. Padden, who was primarily a criminal defense lawyer but also engaged in civil litigation, was found to have misappropriated \$25,000 from a client, among other serious misconduct.

Notably, and somewhat unusually, three of the lawyers disbarred in 2024 were disbarred in whole or in part due to misconduct in their own divorce proceedings. As noted, Mr. Bradley made false statements and disobeyed court orders in his divorce. The trial court handling Mr. Bradley’s divorce concluded that he committed fraud on the court regarding planned IRA transfers. He also sold property he had been ordered not to sell, and never paid court-ordered sanctions or distributed the required funds to his ex-wife. Mr. Jensen was disbarred in 2018 in Washington due to his disobedience of court orders as well as for making frivolous claims and misrepresentations

to the court in his Washington state divorce. Mr. Jensen also had extensive discipline in Minnesota while he practiced here. Mr. Jensen did not advise this Office of his disbarment in 2018, but rather his disbarment came to light in late 2022 when he attempted to get his license reinstated in Minnesota, where he had been on inactive status since 2003.

Madsen Marcellus was disbarred in Florida as the result of two separate discipline proceedings that cumulatively involved participating in a fraudulent mortgage application, willfully violating numerous court orders in his divorce, failing to pay court-ordered fees, taking steps to avoid service of process, and failing to pay court-ordered child support for several years. Mr. Marcellus was first suspended in Florida for 18 months in 2018. He then returned to Minnesota, and reinstated his Minnesota license in October 2020, which license had been administratively suspended since 2009. A second proceeding in Florida commenced in 2021 and he was disbarred in late 2022 for misconduct also related to his divorce and child support obligations. Mr. Marcellus did not advise this Office of either of the discipline proceedings in Florida; rather, we learned of the disbarment from Florida discipline counsel.

A few lessons jump to mind from these cases. First, misconduct outside the practice of law can lead to professional license consequences up to and including disbarment. While the most severe discipline is typically reserved for misconduct relating to a lawyer's legal practice, that is not always the case. Second, if you are publicly disciplined in another jurisdiction, you must disclose that to us. While there is no duty to self-report in the Minnesota Rules of Professional Conduct, the Court's procedural discipline rules—the Rules on Lawyers Professional Responsibility—include a duty to notify the Director if you are subject to public discipline charges or public discipline in another jurisdiction. Third, once you are admitted to practice in Minnesota, until you resign that license, you are subject to the discipline authority of the Minnesota Supreme Court, even if your license is administratively suspended. While you can let your license lapse, your license status (inactive or active) does not affect the Court's power to act on that license if warranted—unless you petition the Court to resign your license under Rule 11 of the Rules on Lawyers Professional Responsibility.

Suspension

Fourteen lawyers were suspended in 2024, down significantly from 2023. Also notable in 2024: Most suspensions were short in duration, including only three longer than 90 days and only one for a period exceeding one year. Usually there is a wider range in length of suspensions, which can range from 30 days to five years, the maximum suspension short of disbarment.

A couple lessons of note from these suspensions. Charles Gerlach and Garrett Slyva were disciplined for misconduct that is a variation on a theme we have been seeing more recently—poor boundary judgment. Mr. Gerlach is an experienced prosecutor whose background includes the prosecution of sex crimes, and who frequently served as a faculty member for new lawyer training. During a recent conference, Mr. Gerlach engaged in harassing conduct toward a female attendee, namely slapping the young woman's butt on a couple of occasions, sitting next to the same woman and pulling her chair physically close to his, and frequently touching her arms and brushing her legs with

his, conduct an observer described as “handsy.” This conduct was unwelcome by the woman and harassing. The woman reported her concerns to the training organizers, who took her concerns seriously, and eventually reported the misconduct to this Office. Mr. Gerlach stipulated to a 30-day suspension, which the Court approved.

While it is likely that far too many women continue to put up with similar conduct in professional settings without consequences, it is also true that sometimes there are appropriate consequences and those consequences continue to be more serious (a suspension, that is, versus a public reprimand). In a similar but different vein, Mr. Slyva engaged in conflicted representation by attempting to pursue personal relationships with two of his criminal defense clients, both of whom were incarcerated at the time. The North Dakota Supreme Court reprimanded Mr. Slyva, but through a stipulation approved by the Court, Mr. Slyva was suspended for 30 days. Sex with clients is unethical, but other boundary-crossing behavior can also lead to serious professional consequences.

Another lesson from the 2024 suspensions is a reminder to always tell the truth. Several of the suspensions and one of the public reprimands involved dishonest conduct, another trend we are seeing. For example, Paul Overson was suspended for knowingly making a misleading statement to a court and failing to correct that statement. Kevin Shoeberg was suspended for making several knowingly false and misleading statements to a client about the status of a matter, among other misconduct. Catherine McEnroe was suspended for making a false statement to the court and opposing counsel during a criminal trial and engaging in dishonest conduct to cover up the false statement. William Henney was suspended for, among other conduct, making knowingly false and misleading statements to the court, opposing counsel, and the Director. Daniel Gallatin was publicly reprimanded for filing a settlement document with a court containing the opposing parties' electronic signature without having confirmed consent or authorization to do so.

As noted above, Mr. Jensen and Mr. Marcellus lied in their divorce proceedings, which with other misconduct ultimately led to disbarment. We continue to receive and are investigating numerous other matters involving dishonesty. It is probably true that everyone lies, and it might be tempting to lie or dissemble in any given situation. I also understand that sometimes lying is a natural self-protection mechanism. But I hope the serious consequences to your license and reputation that can occur when you are caught lying will dissuade you from any such temptation.

Conclusion

There are more than 25,000 lawyers in Minnesota with active licenses. Out of those thousands, 28 received public discipline in 2024, the same as in 2023. Each year, more than 1000 complaints are filed with the Director's Office. Most do not result in discipline, because most lawyers take very seriously their ethical obligations. Thank you to all who do. The lawyers who receive public discipline are outliers in the profession—but, at the same time, could be any one of us. If you need assistance understanding your ethical obligations, please do not hesitate to call our Office. Every day a lawyer is available free of charge to answer your ethics questions. ▲