

Private conduct and lawyer discipline

BY SUSAN M. HUMISTON ✉ susan.humiston@courts.state.mn.us



SUSAN HUMISTON is the director of the Office of Lawyers Professional Responsibility and Client Security Board. Prior to her appointment, Susan worked in-house at a publicly traded company, and in private practice as a litigation attorney.

This month's column explores what happens when private conduct raises attorney license issues. Most of the misconduct that is reported to this Office involves a lawyer's legal practice. But we also see conduct outside the practice of law that results in discipline, both public and private. Below is a non-exhaustive list of private conduct that has led to professional discipline.

Taxes

April 15 will be here before you know it. Since 1972, the Minnesota Supreme Court has held that failure to file individual income taxes is professional misconduct. And repeated non-filing of individual tax returns warrants presumptively public discipline. The Court is less concerned about failure to pay your individual taxes as long as tax returns are filed. In a 1992 case, the Court stated "[w]e note again it is for failure to file tax returns that lawyers are subjected to disciplinary sanctions, not for failure to pay taxes owed. As we said in *In re Disciplinary Action against Chrysler*, 434 N.W.2d 668, 669 (Minn.1989), the lawyer disciplinary system is not, nor should it be, a tax collection auxiliary for the government."¹

You must also ensure that employee withholding returns are filed, and that those withheld funds are promptly paid to taxing authorities. The Court treats it as serious misconduct if you fail to pay withholding taxes.²

Child support or maintenance arrearage

You can also be administratively suspended if you are in arrears on maintenance or child support and fail to enter into a payment plan or to comply with that plan. In 1996, the Court adopted Rule 30, Rules on Lawyers Professional Responsibility (RLPR), which provides for an administrative suspension from practice for just this situation. Further, to the extent that you may be knowingly disobeying a court order, discipline may be warranted under Rule 3.4(c), Minnesota Rules of Professional Conduct (MRPC).

Criminal conduct

Rule 8.4(b), MRPC, provides it is professional misconduct for a lawyer to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other

respects." Comment [2] provides some guidance as to which criminal conduct is particularly troubling for lawyers:

"Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to the practice of law. Offenses involving violence, dishonesty, or breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even if ones of minor significance when considered separately, can indicate indifference to legal obligations."

Some specific cases illustrate the types of criminal conduct that can lead to discipline, including misdemeanor conviction for interference with a 911 call,³ felony driving while impaired,⁴ misdemeanor convictions involving dishonesty such as theft by swindle,⁵ crimes of violence,⁶ and basically all felony level crimes. I'm sure this surprises no one. Minnesota ethics requirements depart from some other jurisdictions by not pursuing misdemeanor offenses for first-offense driving while impaired—though judges, in contrast, do receive professional discipline for misdemeanor driving while impaired convictions.

Dishonest conduct

Rule 8.4(c), MRPC, makes it professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." Dishonest conduct in one's personal life has led to discipline. Some examples include lying during *voir dire* as a potential juror,⁷ lying during your own divorce,⁸ lying to law enforcement,⁹ dishonestly converting funds of a family member,¹⁰ misleading statements in a lawyer's own bankruptcy,¹¹ and lying on your resume and forging transcript documents.¹² These are only a few examples, but I believe you get the point. Dishonest conduct by lawyers can lead and has led to serious professional consequences, even if the lies do not involve a client representation.

Duty to report

There is no duty to self-report your own misconduct either within the practice of law or outside the practice of law, with limited exceptions. Rule 12, RLPR, requires lawyers who have been publicly disciplined in another jurisdiction or who are facing public discipline charges in another jurisdiction to notify this Office of those facts.

Others likely will have a duty to report your misconduct, if it is serious, whether it relates to the practice of law or not. Rule 17(a), RLPR, requires court administration to report to this Office whenever a lawyer is criminally convicted of a felony. Rule 8.3(a), MRPC, requires lawyers who know that another lawyer has committed a rule violation that raises a “substantial question as to that lawyer’s honesty, trustworthiness, or fitness” to report that information to this Office. One of the most frequently asked questions we receive on the attorney ethics hotline is whether particular facts give rise to a duty to report.

Conclusion

Most lawyers not only ensure their professional conduct is compliant with the ethics rules, but also ensure their personal conduct is compatible with the expectations the Court has

established for lawyers. When lawyers are admitted to the bar, we must demonstrate good character. It is that good character that helps to protect the public and to safeguard the judicial system. Once we are licensed, good character remains relevant, and many actions contrary to good character can have professional consequences, even if no client conduct is involved. ▲

NOTES

¹ *In re Tyler*, 495 N.W.2d 184, 187 n1 (Minn. 1992).

² *In re Moulton*, 721 N.W.2d 900 (Minn. 2006).

³ *In re Stoneburner*, 882 N.W.2d 200, 206 (Minn. 2016).

⁴ *In re Ask*, 991 N.W.2d 266 (Minn. 2023).

⁵ *In re Glasser*, 831 N.W.2d 644 (Minn. 2013).

⁶ *In re Thompson*, 953 N.W.2d 522 (Minn. 2021).

⁷ *In re Warpeha*, 802 N.W.2d 361 (Minn. 2011).

⁸ *In re Marcellus*, 13 N.W.3d 679 (Minn. 2024).

⁹ *In re Wesley Scott*, 8 N.W.3d 236 (Minn. 2024).

¹⁰ *In re Trombley*, 916 N.W.2d 362 (Minn. 2018).

¹¹ *In re Crabtree*, 916 N.W.2d 869 (Minn. 2018).

¹² *In re Ballard*, 976 N.W.2d 720 (Minn. 2022).