

55 Ways to Lose Your License

Periodically, people who work in the area of professional responsibility are asked whether there are any discernible patterns in the reasons why attorneys are disbarred or suspended from the practice of law. Presumably, those asking hope to find a method to predict and thereby prevent serious misconduct. Others, who believe that lawyers are not subject to discipline often enough, or harshly enough, ask sarcastically, "Just what does it take for an attorney to lose her license?"

We lawyers are a creative lot, and the methods of and reasons for egregious misconduct are myriad. So, with full apologies to Paul Simon,¹ we present a study of the last 51 Minnesota lawyers to be either disbarred or suspended.²

Some Statistics

The study covers the time frame from the beginning of June 2007 through the end of June 2009 (25 months). On average, approximately 40-45 lawyers are publicly disciplined in Minnesota each calendar year, which includes those given public reprimands and probation in addition to those disbarred and suspended. Of those public matters, again on average, 25-30 result in suspension or disbarment annually. So a study period slightly greater than two years was needed to approximately fulfill the requirements of the song lyrics.

Ten of the 55 discipline decisions in the study resulted in disbarment. Ten

more resulted in suspensions of at least one year. The remainder were suspensions of shorter duration (30-60-90 days), or indefinite suspensions either with no minimum length or with a minimum of less than one year (6-9 months). Sixteen occurred in the seven months of 2007 included in the study, 22 in 2008, and 17 in the first six

months of 2009, a fairly regular flow of dispositions. In fact, in only four of the 25 months were no lawyers suspended or disbarred by the supreme court.

It should come as no surprise that various forms of financial misconduct top the list of ways to lose your license. Twenty-three of the 55 decisions involve—exclusively or in combination with other misconduct—misappropriation of funds, commingling of personal funds in a fiduciary account (especially if intended to hide assets from personal creditors), and failure to maintain trust account records. Quite likely, such a finding would be consistent with the results from any period of lawyer disciplinary decisions chosen or from any other jurisdiction; our highest ethical obligation as lawyers is the proper handling of other people's money; any deviation from absolute fidelity should result in serious discipline.

Other serious acts of dishonesty form the next major category of misconduct that can lead to the loss of a license. Twenty decisions³ involve such forms of dishonesty as lying to courts, to clients or disciplinary authorities; fabricated, backdated or falsely notarized documents or other evidence; and acts of fraud. Three of the matters from these major categories resulted in felony convictions.

Cooperation and Other Factors

The other factor commonly found in suspensions and disbarments is the failure to cooperate with the disciplinary investigation, a factor in 17 decisions. On its face, lack of cooperation may not appear to be of the same magnitude as serious acts of dishonesty or criminal misconduct, but cooperation is taken very seriously by the supreme court. Without mandatory cooperation by an attorney during an investigation or proceeding the disciplinary system simply cannot work, for the refusal to respond or provide information in many instances may be masking exactly the type of dishonesty that would have resulted in suspension had the lawyer cooperated. Thus, the discipline imposed for noncooperation usually ought to be as serious as the misconduct that may be hidden.

Some other ways to be suspended or disbarred are for an attorney with a

lengthy disciplinary history to commit additional serious misconduct, especially while on probation or while suspended; to abandon a practice altogether and then not be found in the state for service of a petition for disciplinary action;⁴ or for an attorney to commit serious misconduct in another jurisdiction in which the attorney is licensed. In those situations, reciprocal discipline of the attorney in Minnesota by an abbreviated procedure is authorized.⁵ This prevents the possibility that a suspended or disbarred lawyer might set up a practice in a second state without notice to that state's public.

A somewhat novel way to be suspended occurred three times during this two-year study period: failure by a suspended lawyer to take and pass the multistate professional responsibility exam. Rule 18(e), RLPR, requires that lawyers who are suspended for 90 days or less, and therefore not required to apply for reinstatement and have a hearing before a Lawyers Board panel, must nevertheless take and pass the multistate PR exam within one year, thus usually after the person is reinstated. Failure to successfully do so within the year can result in the lawyer being indefinitely suspended anew until the test is taken and passed. Of the three lawyers who were so suspended pursuant to this rule during this period, two were suspended for simply not taking the exam and one for coming up one point short of a passing score. Only one of those three has subsequently been reinstated.

The final "category" is really no category at all—miscellaneous. As noted, the reasons for loss of license are myriad, and some appear only occasionally or once in a lifetime. During the period studied many lawyers neglected files, but this alone will rarely result in suspension (see cooperation above, or repeat offenders). Filing frivolous legal actions, however, especially after being warned, has led to serious discipline. Assisting suspended lawyers to engage in the unauthorized practice of law also resulted in suspension. Tax misconduct can result in suspension, most notably in the area of employer withholding taxes; this may be viewed as akin to violating one's fiduciary obligations in handling other people's funds generally. Finally in this particular



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period a lawyer's repeated failure to pay child support obligations resulted in a criminal prosecution and disbarment.

Keep in Mind

It remains important to note that the 51 lawyers responsible for these 55 ways represent but a minute percentage of the lawyers licensed in Minnesota. Of note too is that virtually all the ways discussed were entirely avoidable; lawyers basically "choose" to lose their licenses. The overwhelming majority of lawyers, however, never even approach the loss of their license due to misconduct; almost all are trustworthy, competent and diligent and may never be the subject of a lawyer discipline proceeding. ▲

Notes

¹ And obviously with apologies to Simon's popular hit song, "50 Ways to Leave Your Lover." Charles Kettlewell, a well-known former ethics expert from Ohio, published a poem entitled "50 Ways to Lose Your License" in 1996, mirroring Simon's lyrics and rhythm. It can be found by "googling" 50 Ways to Lose Your License. Thus it might have been considered a form of plagiarism to use the same title. Since this study involves 51 lawyers, I think I'm safe. See fn.2 below.

² The study includes 55 cases involving 51 lawyers over a period of 25 months; four lawyers in the study were disciplined twice during this time span, either first suspended and then disbarred, or suspended twice.

³ The breakdown of decisions into various categories of misconduct ultimately yields more than 55 ways, as cases often involve more than one form of misconduct.

⁴ Rule 12(c), Rules on Lawyers Professional Responsibility (RLPR), allows that if a properly approved petition cannot be served on the respondent the director may apply to the court for an order suspending the lawyer. The attorney then has one year to come forward before an order to show cause is issued and final discipline imposed.

⁵ Rule 12(d), RLPR.

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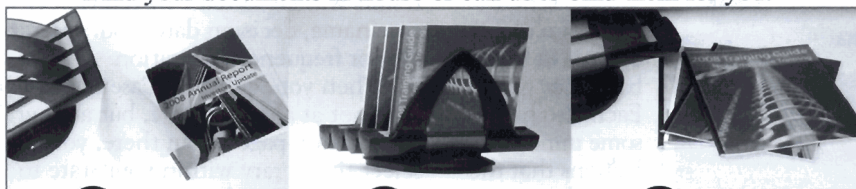
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