

2016 year in review: Public discipline

Public discipline in professional responsibility cases is imposed not to punish the attorney, but to protect the public, the profession and the judicial system, and to deter future misconduct by the attorney and others. As of December 15, 2016, 42 attorneys were publicly disciplined in 2016, with discipline ranging from a reprimand to disbarment. This number is on the high end of an “average” year for public discipline, as compared to 2015’s record year, where 65 attorneys were publicly disciplined.

Disbarments

Six attorneys were disbarred through December 15, 2016. In a typical year, a handful of attorneys are disbarred, with the high being 15 in 1998. The attorneys disbarred were:

■ Paul Jody Edlund, who misappropriated \$175,000 from a client, failed to communicate with the client, and failed to cooperate with the Director’s investigation;

■ Pamela L. Green, who pleaded guilty and was sentenced in federal court to one year and a day, for felony mail fraud relating to her misappropriation of funds from a vulnerable client, and also engaging in the additional misconduct of entering into an improper and unfair business transaction with the same vulnerable client;

■ Dale Allen Hansen, who misappropriated \$10,000 in client funds, made false statements to his client and opposing counsel to conceal the misappropriation, made a false statement to the court through an associate and

failed to correct that false statement, failed to communicate with a client and knowingly issued trust account checks on insufficient funds, in addition to other misconduct;

■ Timothy J. Oliver, who pleaded guilty and was sentenced to 41 months in prison for felony wire fraud relating to his scheme to defraud a company, and his theft from that company, of \$500,000;

■ Paul Roland Rambow, who violated over the course of 19 matters most of the professional conduct rules, including misappropriation of approximately \$1,400 in client funds, forgery of client settlement checks and medical reimbursement checks, failure to maintain required books and records, false statements to the Director and an ethics investigator, failure to cooperate with the investigation, violation of multiple court orders, improperly billing clients, multiple failures of communication and diligence on client matters, taking unauthorized actions on behalf of clients after termination, release of confidential client information, engaging in a conflict of interest, and engaging in the unauthorized practice of law; and

■ Ronald Resnik, who violated numerous rules over the course of 13 matters, including forging signatures on settlement checks, converting client funds, stipulating to settlement without client consent, falsely notarizing a client’s signature, making false statements to clients, opposing counsel and the court, failing to provide competent representation, failing to act diligently and to communicate with clients, failing to return unearned fees, failing to account for fees, and failing to cooperate in the Director’s investigation.

The common thread, obviously, is misappropriation of client funds. Abusing your trust account responsibilities by converting client funds to your own use will always lead to serious discipline whether or not you have paid the client back.

Suspension

Through December 15, 2016, 28 attorneys were suspended for periods spanning 30 days to five years. This number ties with three other years as the second most suspensions behind

2015’s 47 suspensions. Paul Hansmeier was suspended for four years for bringing frivolous lawsuits relating to copyright infringement, lying to the courts, and failing to comply with court orders. On December 14, 2016, Mr. Hansmeier was indicated in federal court in Minnesota for wire fraud, conspiracy to commit money laundering, and conspiracy to commit and suborn perjury. The criminal charges arise out of copyright infringement cases and include conduct that was part of the lawyer disciplinary matter, as well as alleged additional conduct.

Michael John Riehm was suspended for five years following his felony first-degree assault conviction for stabbing another with a steak knife while out to dinner, and engaging in an improper fee-splitting arrangement. The *Riehm* case is notable for the court’s affirmation that respondents in a disciplinary action cannot condition their admission of facts in the petition on the court’s imposition of a specific discipline. Oftentimes, respondent and the Director’s Office will stipulate to recommend to the court a particular level of discipline. In those cases, the Director’s Office requires the respondent to withdraw his answer and unconditionally admit all allegations in the petition. Because the court has plenary authority over lawyer licensure, the court retains ultimate authority to impose whatever disposition it believes is appropriate in light of the admitted facts, notwithstanding the recommendation of the parties.

Almost every year an attorney will be suspended for failure to file personal income tax returns. 2016 was no different: Kevin O’Connor Green was suspended for 30 days for failing to timely file 10 years of tax returns. Another case of potential interest is the matter of Duane A. Kennedy from Rochester. Mr. Kennedy received a public reprimand in 2013 for engaging in a conflict of interest and failing to communicate a settlement offer in a criminal case until a client resolved his outstanding attorney fee balance. Mr. Kennedy was suspended in 2015 for 30 days for suggesting that his client might not testify against a criminal defendant in exchange for a monetary settlement of a related civil action.



SUSAN HUMISTON is the director of the Office of Lawyers Professional Responsibility and Client Securities Board. She has more than 20 years of litigation experience, as well as a strong ethics and compliance background. Prior to her appointment, Susan worked in-house at a publicly traded company, and in private practice as a litigation attorney.

In 2016, Mr. Kennedy was suspended again for 30 days for practicing law while suspended, holding himself out as authorized to practice while suspended, and failing to follow court rules regarding notification to clients and the courts regarding his suspension. While unusual, the Director's Office does see attorneys on serial public matters.

Public reprimands

Through December 15, 2016, eight attorneys have received public reprimands (five reprimands only, three reprimands and probation). A public reprimand is the least severe public sanction the court generally imposes. Reprimands are appropriate for rule violations that are more than "isolated and non-serious" (conduct which would warrant a private admonition) but not so serious that suspension is needed to protect the public and deter future misconduct. Two notable reprimands come to mind from 2016.

Debra Elise Altschuler was employed

as in-house counsel at a local company pursuant to an in-house counsel license, as she was admitted to practice in New York and Connecticut, but not Minnesota. In May 2014, she left in-house employment for employment at a local law firm, at which time her in-house counsel license terminated. Ms. Altschuler thereafter engaged in the unauthorized practice of law in Minnesota for the period of May 2014-June 2015 because she was not licensed in Minnesota. She received a reprimand for her unauthorized practice of law.

Robert Stoneburner received a public reprimand based upon his gross misdemeanor conviction for interference with a 911 call during a domestic dispute, which was evidence that Mr. Stoneburner had engaged in conduct prejudicial to the administration of justice, in violation of Rule 8.4(d), MRPC. Conversely, although Mr. Stoneburner was also convicted of the gross misdemeanor crime of domestic assault-fear, the court held that the referee did not clearly err

when he determined the Director had not proven, by clear and convincing evidence, that Stoneburner's conviction for that offense involved a "criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects," in violation of Rule 8.4(b), MRPC.

The OLPR maintains on its website (lprb.mncourts.gov) a list of disbarred and currently suspended attorneys. You can also check the public disciplinary history of any Minnesota attorney by using the "Lawyer Search" function on the first page of the OLPR website. While it is always disheartening to see the number of attorneys that engage in serious professional misconduct, it is important to keep these numbers in context. Currently, Minnesota has approximately 28,000 licensed attorneys, with approximately 25,000 attorneys engaged in active practice. Thank you to the thousands of Minnesota lawyers who uphold the integrity of the legal profession every day, and Happy New Year. ▲