

The unseen work of the OLPR

Investigating and prosecuting unprofessional conduct takes up most of the time of personnel in the Office of Lawyers Professional Responsibility (OLPR), and is the primary responsibility of the OLPR pursuant to court rule.¹ However, the OLPR performs a number of other important functions that might be of interest to attorneys in Minnesota.

Advisory Opinions

Every day, an attorney in the OLPR is assigned to provide advisory opinions to Minnesota lawyers and judges who call the OLPR seeking guidance. Although many states do not provide this service, Minnesota has long offered this free service to members of the bar. Guidance is limited to prospective conduct. Questions relating to past conduct, conduct of third parties, or questions of substantive law are not answered. The service is confidential and, while not binding on the Minnesota Supreme Court, if the facts provided by the lawyer requesting the opinion are accurate and complete, compliance with an opinion would likely constitute a good faith attempt to comply with the Minnesota Rules of Professional Conduct (MRPC). In 2015, the OLPR provided more than 2,000 advisory opinions. You may request an opinion by calling (651) 296-3952, and asking for the A/O attorney, or by submitting a written request through the website at www.lprb.mncourts.gov.



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.

Ethics Presentations

Legal ethics education is an important function provided by the OLPR. During the last fiscal year, attorneys in the OLPR presented at least 50 CLEs throughout the state. In addition, the OLPR hosted an annual Professional Responsibility CLE in September, which is always free for district ethics committee volunteers. The primary challenge for the OLPR at this time is ensuring that case prosecution is timely, while also carving out time to fulfill the ethics education role.

Overdraft Notification Program

Banks holding lawyer trust accounts are obligated to report all overdrafts to the Director's Office pursuant to Rule 1.15, MRPC. When the director receives notice of an overdraft, the OLPR will obtain and review the lawyer's trust account books and records to ensure compliance with the rules. In 2015, the Director's Office received 75 overdraft notifications. The most frequent causes of overdrafts were checks written in error on the trust account (as compared to the business operation account) or bank

error. Many overdraft files are closed with recommendations for improvements to the lawyer's trust account books or practices; however, sometimes, the Director's Office converts overdraft inquiries into disciplinary investigations when errors or shortages are found. In 2015, 18 files that began as overdraft inquiries were closed with discipline. Because trust accounts impose serious obligations on lawyers, the OLPR has devoted resources to helping lawyers understand their obligations. The OLPR has a frequently asked questions section on its website about trust accounts, and has two detailed brochures, *Other People's Money: Operating Lawyer Trust Accounts* (September 2015), and *Maintaining Lawyer Trust Accounts with Quicken Basic* (2006), available on the website. Trust account violations are always treated seriously by the OLPR. Please take the time to ensure you understand your obligations.

Professional Firms

Minnesota has a professional firm act, Minn. Stat. §319B.01 to 319B.12, which requires firms engaged in the practice of law to file annual reports with the OLPR, in addition to any required secretary of state filings. The statute covers corporations, limited liability corporations, and limited liability partnerships wherever those entities may be organized, registered or incorporated, if providing legal services in Minnesota. More than 2,360 firms filed annual reports with the OLPR during the last fiscal year, but the Director's Office suspects that numerous entities required to do so do not make the required annual filings. Take a moment to ensure your firm is in compliance.

Probation Department

The probation department administers two types of attorney disciplinary probations: private and public. Private probations may be agreed to as part of the resolution of a complaint against an attorney where an attorney has committed a rule violation that is more than isolated and non-serious (thus beyond an admonition) but may not give rise to a need for public discipline. Public probations are imposed by the Minnesota Supreme Court.

In 2015, there were 30 new probations: 18 public and 12 private. More than half of the 2015 new probations involved an attorney's failure to properly maintain his or her trust account. Seven of the new probations in 2015 involved mental health issues. Substantial time is devoted to probation supervision. Two attorneys and two paralegals devote a total of approximately 40 hours per week to probation supervision, and an additional 27 volunteer supervisors also devote substantial time to supervision.

Trusteeships

Rule 27(a), RLPR, authorizes the Supreme Court to appoint the director of OLPR as trustee of an attorney's files or trust accounts when no one else is available to protect the clients of a deceased, disabled or otherwise unavailable lawyer. Recently, the director has been appointed trustee of the client files for four deceased attorneys, and trustee of

Professional Responsibility

the trust accounts of three deceased attorneys. Attorneys, particularly solo practitioners, should have succession plans in place to ensure that client interests are protected upon your death or disability. This is not just something for more senior lawyers. The most recent trustee appointment in the OLPR arose from the sudden death of a 47-year-old solo attorney.

Disclosure Department

Each year OLPR receives hundreds of requests for attorney disciplinary records. Public discipline is always disclosed. Private discipline is disclosed with an executed authorization from the affected attorney. In 2015, 840 requests involving 1,297 attorneys were received. Entities making the most requests included the National Conference of Bar Examiners, individual attorneys, and other states' disciplinary authorities. Legal consumers can also check the OLPR website for records of public discipline before retaining an attorney.

Website

The OLPR maintains a website, lprb.mncourts.gov, which contains a wealth of information. On the site, you can find the current rules (both the Minnesota Rules of Professional Conduct and the Rules on Lawyers Professional Responsibility), secondary sources such as historical *Bench & Bar* and *Minnesota Lawyer* articles (organized by rule and subject), a suspended and disbarred attorneys list, attorney search capabilities containing all public discipline, trust account information and resources, professional firm filing requirements, cross-border (multijurisdictional practice) information,

Lawyers Board Formal Opinions, annual reports, complaint forms, and information about the complaint process.

Conclusion

In 2015, 1,210 complaints were filed, 65 attorneys were publicly disciplined, an additional 112 private admonitions were issued, and 528 files remained open at the end of the year. During the first five months of 2016, 477 new complaints have been filed, 25 attorneys have been publicly disciplined, and an additional 39 matters are pending before the Minnesota Supreme Court. Given these numbers, the first priority of the Director's Office is the timely investigation and prosecution of unprofessional conduct. But the OLPR provides many additional services focused around educating attorneys and the public about professional ethics. More details about these services can be found in the office's Annual Report, now available on the website. One final note is appropriate. In July 2004, then-Director Ken Jorgensen wrote essentially this same article for *Bench & Bar*. It is amazing to see how little things have changed regarding the behind-the-scenes work of OLPR during the intervening 12 years. Notwithstanding that fact, or perhaps because of that fact, we are always interested to hear of additional ways in which the office can be of assistance to the bar and to legal consumers.

Notes

- 1 Rule 2, Rules on Lawyers Professional Responsibility (RLPR).
-