



## DECONSTRUCTING DISBARMENTS

BY EDWARD J. CLEARY

*“the fastest way  
to lose your license is  
to misappropriate  
client funds.”*

*Resolve to be honest at all events.  
And, if in your own judgment you  
cannot be an honest lawyer, resolve to  
be honest without being a lawyer.  
Choose some other occupation  
— ABRAHAM LINCOLN.*

**R**ule 15(a), Rules on Lawyers Professional Responsibility, reads as follows: (a) **Disposition.** Upon conclusion of the proceedings, this Court may: (1) Disbar the lawyer; . . .

Those outside the legal profession can never completely understand the chill felt by an attorney when the word “disbar” is spoken. It is the ultimate disposition for those charged with violating the Minnesota Rules of Professional Conduct; it is, essentially, capital punishment, professionally. All the years of education, expense, struggle, and achievement are negated in one stroke of the pen. It is not a result sought lightly by this office or decided upon without due deliberation by the members of the Supreme Court. One would think that our fellow practitioners would conduct themselves in a manner that kept them far from the precipice of disbarment. Yet recent evidence indicates otherwise.

During the 12-year period from 1985 through 1996, the number of disbarments ranged from four to eight a year; the average number of disbarments over this period was six annually. That was then; this is now.

In 1997, the Minnesota Supreme Court disbarred ten attorneys, a new record. In 1998, by disbarring the 11th and 12th attorneys of the year, the Court broke the previous annual record on July 30, with five months remaining. This is a total of 22 disbarments in 19 months, more than double, and approaching triple, the rate of the previous 12 years. To put it another way, it took four years (1993, 1994, 1995, and 1996) to register 23 disbarments while there were almost as many in just 1997 and the first half of 1998. Further, two other attorneys were suspended for five years in 1998.<sup>1</sup> Such a suspension is considered by the American Bar Association as being tantamount to disbarment. These numbers would appear to indicate that egregious misconduct within the legal pro-

fession in Minnesota is rising at a rapid rate.

On the other hand, the number of complaints filed annually with the Office of Lawyers Professional Responsibility has remained relatively stable over the same time period, despite a substantial rise in the number of attorneys entering the profession in Minnesota since 1985. This would seem to suggest that the average lawyer is doing a good job of avoiding problems with clients, where most complaints originate.

So why the increase in the type of misconduct that leads to the most serious option available to our office and the Court? I have been asked this question frequently in recent times, and, as I’m sure you already know, there are no easy answers.

One way to attempt to comprehend what leads to the forcible taking of a license to practice law is to review recent disbarments. From July of 1997, when I was appointed by the Court, to July of 1998, a 12-month period, the Minnesota Supreme Court disbarred 16 lawyers, 12 men and four women, again almost triple the normal rate. (It should be noted that most of these investigations were underway by the time I began as director.) What follows is a look at these former lawyers.<sup>2</sup>

### SIXTEEN LESSONS

The primary purpose of attorney discipline is protection of the public. In considering appropriate sanctions for misconduct, this court weighs the following factors: (1) the nature of the misconduct, (2) the cumulative weight of the disciplinary violations, (3) the harm to the public,

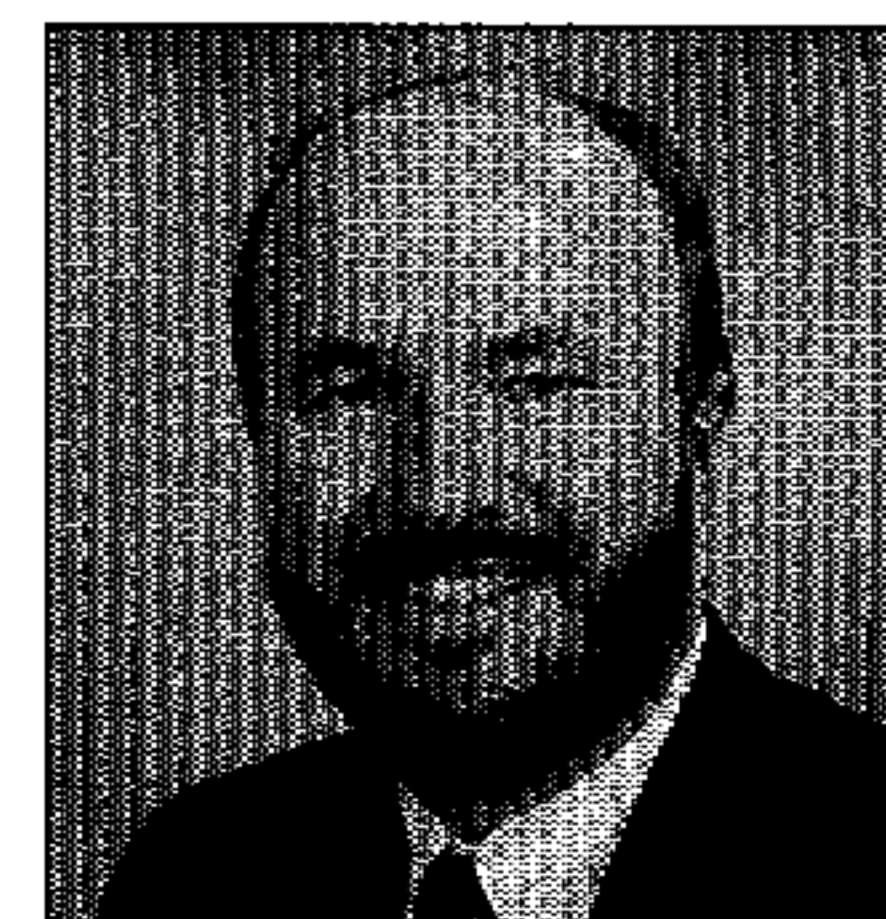
and (4) the harm to the legal profession. Sanctions are imposed according to the unique facts of each case, but earlier cases are useful for drawing analogies. *In re Walker*, 461 N.W.2d 219, 222 (Minn. 1990) (citations omitted).

■ **YEARS OF PRACTICE.** When I was at the MSBA Convention in Duluth this past summer, a representative from the New Lawyers Section asked me if our office separated out statistics on young lawyers, suggesting that those relatively new to the practice are unfairly maligned when discussions arise concerning professional discipline. An examination of this group of disbarred lawyers is somewhat inconclusive in addressing that argument.

The range of years of practice was from five years to 42 years; three attorneys had five or fewer years of experience, while six had 20 years or more. Overall, these 16 attorneys had an average of 18 years of legal experience.

■ **PRIOR DISCIPLINARY HISTORY.** Many observers would probably predict that attorneys who lose their license to practice law do so after a lengthy disciplinary history. Indeed, ten of the 16 attorneys disbarred had various disciplinary histories and their loss of license was a culmination of a professional slide. However, it should also be noted that six of these attorneys had no prior disciplinary history. In other words, these six went from zero to 100 without a past pattern of misconduct. What happened in their personal or professional lives to lead them from a clean record to, more often than not, the loss of their license to practice followed by incarceration? Perhaps friends and family

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know, perhaps the seeds of destruction were sown many years ago and only now have come to light. In any case, two of the six were prosecuted in the federal system, Andrew Druck<sup>3</sup> and Harold (Skip) Finn,<sup>4</sup> and two were prosecuted by state authorities, Sharon Ramirez<sup>5</sup> and Jeanne Chacon.<sup>6</sup> A fifth, Peter Orlins, left a trusteeship in his wake that will result in the Client Security Board facing numerous and sizable claims for reimbursement.

■ **AREA OF LAW PRACTICE.** It might surprise a number of observers to know that the most common area of practice for this group of disbarred attorneys was probate (four attorneys). The combination of estate funds and often older clients apparently proved irresistible to several former attorneys. The other areas of law were spread out. Two attorneys were employed by insurance companies; two were involved in personal injury work; two practiced family law primarily; and three were involved in some form of commercial litigation. Finally, there was one representative each in the areas of collection work, real estate, and workers compensation.

■ **TYPE OF MISCONDUCT.** "Misappropriation occurs whenever client funds are not kept in trust and are used for a purpose other than the one specified by the client. Misappropriation of client funds . . . usually merits disbarment." *In re Olson*, CO-95-2044 (Minn. 4/9/98).

It should come as no great surprise to those familiar with the professional disciplinary system that the fastest way to lose your license to practice law is to misappropriate client funds. It is hard to have sympathy for any attorney who engages in misappropriation, almost always followed by cover-up and non-cooperation. He or she is then disbarred leaving the other members of the profession to pick up the tab through the Client Security Fund. *In re Orlins* is a prime example as are *In re Dovolis* and *In re Moe*. The majority of the 16 cases involved some form of misappropriation or theft, along with other misconduct.

Other disbarments resulted from patterns of dishonesty involving forgery and often fraud. Finally, many cases had elements of very serious neglect of law practices, often followed by non-cooperation.

### CONCLUSION

To keep matters in perspective, it should be noted that these 16 disbarments constituted approximately one-tenth of one percent of the practicing bar during this period in the state of Minnesota. However, it should be troubling to the

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*“Those outside the legal profession can never completely understand the chill felt by an attorney when the word “disbar” is spoken.”*

members of our profession that the number of disbarments is rising so rapidly in recent times. Contrary to some observers' perceptions, the members of this office do not look upon a disbarment as a “victory.” Indeed it is a “defeat” for all lawyers. On the other hand, there will always be outlaws in our profession and it is in part the job of this office to detect and prosecute serious misconduct as quickly and efficiently as possible. We will not neglect our stated objective of offering preventive and rehabilitative help to members of the legal profession, but neither will we shy away from seeking out and removing those unworthy of holding a license to practice law. Let us hope that recent statistics are an aberration. □

### NOTES

1. In re Crosby, C6-97-2246 (Minn. 4/8/98); In re Otis, C4-96-1604 (Minn. 8/13/98).
2. The sixteen attorneys disbarred: John E. Grzybek (7/31/97); Norman K. Gurstel (11/6/97); Carlton E. Moe (11/13/97); Sharon D. Ramirez (11/17/97); Helen A. Dovolis (1/15/98); Peter I. Orlins (2/24/98); Andrew Druck (3/31/98); Harold R. Finn, Jr. (4/2/98); Rodney J. Olson (4/9/98); Donald A. Wheat (4/23/98); Gerald McNabb (5/7/98); Rebecca H. Frederick (6/5/98); Robert Goldstein (7/14/98); Douglas E. Roff (7/2/98); Jeanne Chacon (7/30/98); David G. Moeller (7/30/98). For a complete listing of all disbarred and currently suspended attorneys since 1985, see our Web site at [www.courts.state.mn.us/lprb/lprb.html](http://www.courts.state.mn.us/lprb/lprb.html).
3. In re Druck, C7-98-449 (Minn.).
4. In re Finn, CX-96-1042 (Minn.).
5. In re Ramirez, C8-97-1003 (Minn.).
6. In re Chacon, C0-96-1261 (Minn.).

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Ward points out that although most lawyers get the bulk of their business through referrals, not one in 100 has a referral system, which, he maintains, can increase referrals by as much as 1000%. “Without a system, referrals are unpredictable. You may get new business this month, you may not,” he says.

A referral system, by contrast, can bring in a steady stream of new clients, month after month, year after year. “It feels great to come to the office every day knowing the phone is going to ring and new business will be on the line,” Ward says.

Ward, who has taught his referral system to lawyers throughout the U.S., says that most lawyers' marketing is “somewhere between atrocious and non-existent.” As a result, he says, the lawyer who learns even a few simple marketing techniques can stand out from the competition. “When that happens, getting clients is easy.”

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