

Public discipline summary for 2020

Each year I take this opportunity to provide an overview of public discipline. While the year was certainly an unusual one due to the pandemic and the havoc it wrought, public discipline in 2020 was very similar to 2019, with 33 attorneys receiving public discipline as compared to 35 the year prior.

Discipline in 2020

Public discipline is imposed not to punish the attorney, but to protect the public, the profession, and the judicial system, and to deter further misconduct by the attorney and others. Besides the 33 attorneys who received discipline in 2020, the year was also remarkable for the number of transfers to disability status in lieu of public discipline proceedings. Five attorneys had discipline files placed on administrative hold due to disability. Many disability transfers are due to lawyers practicing longer than their mental or physical health suggests they should—primarily due to financial reasons. As the profession continues to age and the economy struggles, I worry that we will see this trend continue.

Three attorneys were disbarred in 2020: Paul Hansmeier, Daniel Lieber, and Thomas Pertler. Each disbarment is notable in its own way but they are striking collectively because none involved the intentional misappropriation of client funds, which remains the most common cause of disbarment. Mr. Hansmeier was disbarred for committing bankruptcy fraud, following a lengthy prior suspension for engaging in sanctionable litigation misconduct that included lying to the courts. Mr.

Pertler was disbarred for prosecutorial misconduct, discussed at length in my November 2020 column. Tragically, Mr. Pertler died on November 16, 2020, at the age of 56. His obituary reports he fell ill last autumn while looking for a retirement home in Alabama.

Daniel Lieber's permanent disbarment was a first in Minnesota. Mr. Lieber was originally disbarred in July 2005. Disbarment, however, is not generally permanent. A disbarred lawyer, after a minimum of five years, may retake the bar exam and petition for reinstatement. They have a heavy burden to prove fitness, but can be reinstated. The Court determined that Mr. Lieber met that burden in 2013, and reinstated him to the practice of law, placing him on probation.

Mr. Lieber then engaged in additional misconduct similar to his prior misconduct, namely failure to properly maintain his trust account books and records, which was found to be willful.

In an interesting decision in early 2020, the Court issued the unusual discipline of a “stayed disbarment,” as opposed to the lengthy 18-month suspension recommended by the referee, and the three-year suspension recommended by the Director.¹ In its decision, the Court took into consideration the significant mitigation that Mr. Lieber offered, including the serious illness of his daughter. The Court noted it hoped to never see Mr. Lieber again. Alas, Mr. Lieber had engaged in additional misconduct, and ultimately stipulated to permanent disbarment in September 2020. As he did following his prior disbarment. Mr. Lieber continues to work in the legal field as nonlawyer staff at his former law firm.

Suspensions

Twenty-four attorneys were suspended in 2020, a number very similar to 2019 (22 attorneys). The 24 cases reflect no particularly noteworthy trend but include several interesting ones. Kent Strunk was suspended for five years for his five felony convictions for possession of child pornography. Felony criminal convictions will always lead to public discipline but do not always lead to disbarment if the convictions are for conduct outside the practice of law. In Mr. Strunk's case, the referee recommended to the Court a three-year suspension with credit of one year for voluntarily stopping the practice of law upon his arrest, and with the suspension to terminate upon successful completion of Mr. Strunk's criminal conviction. The Director challenged this recommended disposition on the grounds that a five-year suspension was more consistent with the Court's prior case law and the seriousness of the crimes committed. The Supreme Court agreed, but reiterated that disbarment is the presumptive discipline for a felony conviction and that the disposition in such cases is “fact intensive, and considers numerous factors, including the nature of the criminal conduct, whether the felony was directly related to the practice of law, and whether the crime would seriously diminish public confidence in the profession.”²

Duane Kennedy received a lengthy suspension for sexually harassing his young client, attempting to have a sexual relationship with his client, making false statements to police and the Director about his misconduct, and failing to provide accurate trust account books and records as part of his probation.³ Mr. Kennedy was taped soliciting sex from a client in a criminal matter who was 22 years old and approximately 50 years his junior. The client reported the attempt to law enforcement. The county attorney ultimately declined to prosecute Mr. Kennedy for bartering for sex, but referred the matter to the Director.

Mr. Kennedy denied the misconduct, claiming the audio reflected consensual sexual banter and that any unprofessionalism warranted at most a 30-day suspension. The Court rejected his arguments, concluding that sexual harassment of a client is serious misconduct. Mr. Kennedy's lewd comments were persistent and pervasive and took advantage of a trust relationship. In light of respondent's disciplinary history (which included



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admonitions, a public reprimand, and several short suspensions) and the seriousness of the misconduct (sexual harassment and lies), the Court imposed a suspension of two years.

The Court also suspended attorney Ignatius Udeani for misconduct across multiple client matters.⁴ Mr. Udeani was an immigration attorney and his conduct involved violations of almost every rule of ethics—including a pattern of incompetent representation, neglect, failure to communicate with clients, and failure to return unearned fees; failing to properly supervise a nonlawyer assistant and failing to take reasonable steps to prevent the known misconduct of the nonlawyer assistant, which resulted in the theft of client funds; failing to safeguard client funds and maintain all trust-account-related records; representing a client with a conflict of interest; and failing to cooperate in multiple disciplinary investigations. Mr. Udeani was suspended for three years, but two justices thought Mr. Udeani should be disbarred due to the vulnerable nature of his immigrant clients and the persistent nature of his misconduct, much of which occurred while on probation for prior misconduct and while being supervised by an experienced probation supervisor who was trying to help Mr. Udeani with his practice.

Public reprimands

Six attorneys received public reprimands in 2020 (one reprimand-only, five reprimands and probation). A public reprimand is the least severe public sanction the Court generally imposes. One of the most common reasons for public reprimands is failure to maintain trust account books and records, leading to negligent misappropriation of client funds. Four of

the six reprimands related in some manner to trust account issues. As always, ensuring that you accurately maintain your trust account records and are very careful with client funds is a fundamental ethical obligation of lawyers. We have a lot of resources on our website to assist with this important duty, and are always available to answer questions if you are uncertain.

Conclusion

The OLPR maintains on its website ([lprb.mncourts.gov](http://prb.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. Fortunately, very few of the more than 25,000 active lawyers in Minnesota have disciplinary records.

As they say, “there but for the grace of God go I.” May these public discipline cases remind you of the importance of maintaining an ethical practice, and may these cases also motivate you to take care of yourself, so that you are in the best position possible to handle our very challenging jobs. Call if you need us—651-296-3952. Please also note that we have moved to a new location in St. Paul after 20 years at our old office: Our new address is 445 Minnesota Street, Ste. 2400, St. Paul, MN 55101. Emails, fax, and telephone numbers remain the same. ▲

Notes

¹ *In re Lieber*, 939 N.W.2d 284 (Minn. 2020).

² *In re Strunk*, 945 N.W.2d 379 (Minn. 2020).

³ *In re Kennedy*, 946 N.W.2d 568 (Minn. 2020).

⁴ *In re Udeani*, 945 N.W.2d 389 (Minn. 2020).