

PUBLIC DISCIPLINE *in 2021*

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Public discipline plays an important role in lawyer regulation. Its purpose is not to punish the involved attorney. The goal of public discipline is to protect the public, the legal profession, and the judicial system, and to deter further misconduct by the disciplined attorney and other attorneys. An attorney's public discipline record—including all cases cited in this article—is available by searching the attorney's name on our website (www.lprb.mncourts.gov) using the "Lawyer Search" button.

Each year I take this opportunity to provide an overview of public discipline imposed by the Minnesota Supreme Court in the prior year. Like many of you, I find it hard to credit that an entire year has passed since I last wrote a similar article. So much has happened, and yet time has lost so much meaning in the pandemic. While 2021 continued to cause havoc in our lives, the discipline system—like many of you—soldiered on, resulting in 28 individuals receiving public discipline.

Disbarments

The most serious discipline—disbarment—is reserved for the most serious misconduct. Four attorneys were disbarred in 2021, compared to three disbarments in 2020.

Barry Blomquist, Jr., Howard Kleyman, Nicholas Schutz, and William Sutor were disbarred in 2021. Like last year, these disbarments were notable primarily because the conduct in each went beyond the "normal" intentional misappropriation of client funds that typically leads to disbarment.

Mr. Blomquist (admitted to practice in 1980) was disbarred for misappropriating and converting trust assets for his personal use in violation of his fiduciary duties as trustee (he loaned himself \$800,000 from the trust of which he was a trustee to allegedly invest in five start-up companies he claimed to have formed), refusing to comply with court orders, and failing to cooperate with the Director's investigation. Interestingly, while Mr. Blomquist was found to have failed to cooperate with the Director's investigation, he did vigorously dispute the claims asserted against him throughout the disciplinary process. Mr. Blomquist also argued that the discipline proceedings were moot because he wanted to resign his license. The Court rejected this argument because lawyers may not

resign their licenses while discipline proceedings are pending. Finally, Mr. Blomquist's case is notable because when asked at oral argument by the Court if he acknowledged *any* misconduct, he replied, "None whatsoever."

Howard Kleyman was admitted to practice law in Minnesota in 1971. Fifty years later, almost to the month, he was disbarred for serious misconduct that included misappropriating client funds, knowingly misusing his client trust account to further fraudulent schemes, knowingly making false statements to the Director, and failing to cooperate during the disciplinary investigation. The scheme involved in Mr. Kleyman's case was his use of his trust account as an escrow account, taking in what were ultimately determined to be fraudulent checks, and disbursing the funds to the payee before they cleared the originating bank. This is a common scheme that lawyers have unwittingly gotten involved in by failing to conduct appropriate diligence on client transactions. Mr. Kleyman, however, was a willing participant because he continued to engage in the same conduct with the same fraudulent principals despite being advised of the scheme and long criminal history background of certain principals of the payor, and because he lied to the Director about whether he had stopped the misconduct. While the Director's Office was investigating the fraudulent scheme, we uncovered "normal" misappropriation in Mr. Kleyman's bankruptcy practice, where he routinely misappropriated filing fees from clients to pay other business expenses. One of the most interesting aspects of this case is that the complainant was a Japanese citizen who was defrauded, figured out how to complain to us, and originally thought the scheme was legitimate because his funds would be in an American lawyer's trust account. After Mr. Kleyman was disbarred, the Securities and Exchange Commission filed a civil complaint against Mr. Kleyman for his role in acting as a "paymaster" in lending schemes to defraud investors, the same transactions involved in his disbarment.

Nicholas Schutz, admitted to practice in 2005, was disbarred for practicing law while on a disciplinary suspension and engaging in dishonest conduct. This misconduct is unfortunately not particularly notable. But the background leading to the disbarment is. Mr. Schutz was originally suspended in 2014 (less than 10 years after his admission)

SEVENTEEN LAWYERS WERE SUSPENDED IN 2021, AS COMPARED TO 24 SUSPENSIONS IN 2020. MOST OF THE SUSPENSIONS IN 2021 WERE LENGTHY, AND MOST ALSO INCLUDED A REQUIREMENT THAT THE ATTORNEY GO THROUGH A RENEWED FITNESS INVESTIGATION CALLED A REINSTATEMENT HEARING.

for failing to maintain books and records for his trust account. This is not that unusual. What was unusual was that because he would not provide or recreate the required books and records (and we could only see a portion of the activity in the account from the bank statements we subpoenaed), he stipulated to a 90-day suspension, where his reinstatement was conditioned on a reinstatement hearing and provision of the books and records that would allow the Director to perform an audit that could not be performed in 2014.

In 2018 Mr. Schutz petitioned for reinstatement, providing the previously requested trust account books and records, and unsurprisingly, the Director discovered intentional misappropriation of client funds. At the time, I was most troubled by the fact that Mr. Schutz only acknowledged the misappropriation when directly confronted with his misconduct. At that point, I considered disbarment due to the lack of candor upon initial petitioning for reinstatement (he had to know what we were going to find, right?), but did not believe the Court's case law (absent express dishonesty) supported such a position, particularly in light of the fact that Mr. Schutz had been out of practice for five years at this point. Mr. Schutz stipulated to an additional three-year suspension and the Court approved that disposition. Proving the axiom that you should trust your initial instincts, we soon saw Mr. Schutz again when we received a complaint regarding the immigration work he was doing. Non-lawyers can do a lot of immigration-adjacent work; they just need to be clear they are not acting as attorneys and should not cross the line into practicing law. Mr. Schutz failed to respect that line, and he ultimately stipulated to disbarment after we made it clear that no other option was on the table for him.

Finally, William Sutor (admitted to practice in 2010) was disbarred following his indictment and guilty plea to felony conspiracy to commit health care fraud. Mr. Sutor's conviction related to his personal injury practice and involved the use of "runners" to direct patients to chiropractors and clients to the firm by paying referral fees to those runners disguised as legitimate expenses. As a felony, this was undisputedly a serious crime. Mr. Sutor did not agree that disbarment was the appropriate disposition, however. Mr. Sutor argued that because he was remorseful, no individual client was harmed, and he fully cooperated with law enforcement and the Director's Office, a suspension would be more appropriate than disbarment. The referee disagreed, finding that Mr. Sutor lied to both law enforcement and the Director's Office, and continued to minimize his unlawful activity at the referee hearing—in part by providing false testimony at the hearing. Mr. Sutor stipulated to disbarment following the referee's recommendation for disbarment.

Suspensions

Seventeen lawyers were suspended in 2021, as compared to 24 suspensions in 2020. Most of the suspensions in 2021 were lengthy, and most also included a requirement that the attorney go through a renewed fitness investigation called a reinstatement hearing, which also requires court approval before the attorney may be reinstated to the practice of law. This too is unusual; in a typical year we will have more cases with suspensions of less than 90 days. (Suspensions of more than 90 days trigger the reinstatement hearing requirement unless it's waived by the Court.) In 2021, the Court also imposed its first 10-day suspension (usually the minimum suspension is 30 days) on condition that the lawyer permanently resign his license following the suspension. In combination, and under the unique facts presented, the Court agreed with the referee that the unusual arrangement adequately served the purposes of discipline.

Public reprimands

Seven attorneys received public reprimands in 2021 (three reprimands-only, four reprimands and probation), up from six in 2020. 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. However, once again, 2021 proved to be unusual in that only one of the seven attorneys received a reprimand for books and records violations resulting in negligent misappropriation of client funds. The remaining attorneys received public discipline for client neglect, failure of communication, and, in one case, lack of diligence and competence that allowed a statute of limitations to run.

Finally, one attorney received a public reprimand for engaging in the practice of law while on restricted status for several years. This is of course a cautionary tale for us all—timely pay your annual registration fee and make sure you timely report your CLE compliance. The Minnesota Lawyer Registration Office and the CLE Board do a lot to remind lawyers of their non-compliance, but at the end of the day, it is the responsibility of each of us to ensure pro-active compliance, and that starts with always having your updated mailing and email addresses on file with the Lawyer Registration Office! As a gift to yourself in the new year, please double check that your information with the Lawyer Registration Office (www.lro.mn.gov) is current and that you understand any upcoming CLE reporting deadlines and have an up-to-date email address in OASIS (www.cle.mn.gov).

Conclusion

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. 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 they also motivate you to take care of yourself, so that you are in the best possible position to handle our very challenging jobs. Call if you need assistance—651-296-3952. ▲