

2018 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. In 2018, 45 attorneys were publicly disciplined, up slightly from the 2017 number (40 attorneys) but commensurate with the 2016 number (44 attorneys). Two particular statistics jumped out at me when I was reviewing 2018 public discipline statistics: the number of disbarments, and the number of transfers to disability inactive status.

Disability inactive status is not discipline, and transfers to disability inactive status are not included within the numbers referenced above, but these transfers play an important role in public disciplinary proceedings. When a lawyer asserts a disability in defense or mitigation of a disciplinary proceeding—and is unable to participate in the defense of the proceeding because of this disability—the professional responsibility rules allow attorneys, upon court approval, to transfer to disability status and have disciplinary proceedings stayed.¹ In 2018, six attorneys were transferred to disability inactive status. Over the past 10 years, one or two attorneys have typically transferred to disability inactive status annually (though four attorneys transferred in 2010). I do not know what accounted for the sharp uptick in 2018. The reasons for transfers varied from mental health to substance use disorders to serious physical disabilities, or some combination of the foregoing; no one set of circumstances emerged as a pattern.² Hopefully this is a one-year spike, but I worry in light of the increasing evidence of serious well-being issues among lawyers.



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Disbarments

Eight attorneys were disbarred in 2018. This number is up from 2017 (when five attorneys were disbarred), and more than is typical. The attorneys disbarred were:

■ Joseph Capistrant, who was disbarred for misappropriating filing fees and costs, failing to place client funds in trust, failing to file an action as promised, abandoning a client file, and failing to cooperate in the disciplinary proceeding;

■ Roy Henlin, who was disbarred for misappropriating significant funds from a trust while acting as trustee, and other client misconduct. The beneficiaries of the trust were teenage children at the time the trust was formed, and the trust had been funded by the children's mother before her death. As of the writing of this column, Mr. Henlin is a defendant in a felony theft by swindle criminal case pending in Hennepin County;

■ George Hulstrand, who was disbarred for misappropriating \$685 in client funds, but also engaged in multiple acts of misconduct across multiple matters, and had prior similar public and private discipline involving incompetency and client neglect;

■ Ian Scot Laurie, who was disbarred following his conviction in federal court for distribution of child pornography;

■ Jeffrey Olson, who was disbarred for fraudulent use of his trust account during a suspension from the practice of law for similar misconduct. Mr. Olson also pleaded guilty to aiding and abetting felony mail fraud for some of the misconduct that had led to the prior suspension;

■ Amoun Sayaovong, who was disbarred for conduct in Wisconsin and Minnesota, including misappropriation of third-party funds he had garnished, and other misconduct across several files;

■ Barry VanSickle, who was disbarred as a matter of reciprocal discipline due to misconduct in California in four separate disciplinary proceedings; and

■ Richard Virnig, who was disbarred for misappropriating funds from two clients, and other client misconduct.

The common thread once again this year is misappropriation of funds—which, absent significant mitigating circumstances, generally leads to disbarment. Also notable this year is the incidence of felony-level misconduct by several attorneys.

Suspension

Twenty-three attorneys were suspended for periods of 30 days to four years. This figure continues the trend of rising suspension numbers. A few things struck me when reviewing suspensions as a whole for 2018. Misappropriations of client funds was a basis for discipline in five additional cases. But unlike the disbarment cases, the suspension cases contained evidence of mitigating circumstances such that the court imposed less than disbarment. Combined with the number of disbarment cases involving misappropriations of client or third-party funds, though, 2018 was a big year for misappropriations.

Two cases also involved significant misconduct through lies. One case, that of Mark Novak, involved a pervasive pattern of lies to clients in multiple matters, including falsifying documents. Mr. Novak was suspended for four years, and in fact, had previous misconduct for not telling a client the truth. The case of Bradley Mann also involved a pattern of lies to clients, opposing counsel, and the courts, as well as settling claims without client consent, including one claim for almost six figures.

Perhaps also notable is the fact that two lawyers this year were administratively suspended for failing to pay child support or maintenance. The professional rules contain an administrative suspension provision that allows the court to suspend attorneys who fail to remain current with payment plans.

There are procedural protections in the rule, and at first I thought it counterproductive to take away someone's ability to earn money because they are not paying money when due, but it really is a very effective way to get the attention of the most recalcitrant lawyer non-payers.

Public reprimands

Fourteen attorneys received public reprimands (six reprimands only, eight reprimands and probation), compared to nine reprimands last year. 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 that would warrant a private admonition) but not so serious that suspension is needed to protect the public and deter future misconduct.

The most common misconduct leading to a public reprimand was trust account errors that resulted in shortages and negligent misappropriation of client funds. Eight attorneys were reprimanded for trust account books and records misconduct. As I discussed in my October 2018 column, the State Law Library noted this trend and sponsored a free on-demand 1.5-hour trust account CLE entitled "Everything you need to know about trust accounts." You can access it from our website and the state law library's website, where it will be available for the next two years.

Also receiving public reprimands in 2018 were Pamela Larson, for prosecutorial misconduct that led to a new trial in a malicious punishment of a child case, and Joshua Williams, for physical contact with opposing counsel during a deposition.

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. I have now been in my position for almost three years, and I continue to be surprised by the serious misconduct of attorneys. I am glad to note, however, that the 45 attorneys disciplined in 2018 represent a *de minimus* portion of the 25,000 active lawyers practicing in Minnesota.

Notes

¹ Rule 28(c), Rules on Lawyers Professional Responsibility (RLPR).

² Please note that disability inactive status under Rule 28, RLPR, is different from Inactive Status—Permanent Disability, under Rule 2(C)(6), Rules of the Supreme Court on Lawyer Registration.