

Cooperation in Disciplinary Proceedings

by

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In all too many cases involving attorney discipline, attorneys fail or refuse to respond to requests for information during the course of the investigation, often to their detriment.

In the recent case of *In re Charges of Unprofessional Conduct Involving File No. 17139, a Minnesota Attorney, in Panel Case No. 20783*, the Minnesota Supreme Court discussed the type of information that lawyers must provide upon request during the course of a disciplinary investigation.

In that case, a lawyer has been charged with an alleged violation of Rule 8.2 of the Minnesota Rules of Professional Conduct (MRPC), which prohibits making statements about the qualifications or integrity of a judge that the lawyer knows to be false or with reckless disregard as to truth or falsity of the statement.

The lawyer, in his defense, asserts that he reasonably relied on information obtained from credible and reliable sources of information in making the statement at issue. The director of the Office of Lawyers Professional Responsibility, as part of the disciplinary investigation, asked the lawyer to disclose the identity of his sources. The lawyer refused to disclose. The matter eventually wound up before the Supreme Court for a determination as to whether the information sought by the director ought to be disclosed.

Obligation clarified

Attorneys are ethically obligated to cooperate with investigations of complaints made against them. Rule 8.1(b) of the MRPC provides that a lawyer in connection with a disciplinary matter shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority.

Rule 25 of the Rules on Lawyers Professional Responsibility (RLPR) states that it is the duty of any lawyer who is the subject of an investigation or proceeding under the RLPR to cooperate with the district committee, the director or the director's staff, the board, or a panel by complying with reasonable requests for information.

Rule 25(b) of the RLPR provides that "Violation of this Rule is unprofessional conduct and shall constitute a ground for discipline; provided, however, that a lawyer's challenge to the Director's requests shall not constitute lack of cooperation if the challenge is promptly made, is made in good faith and is asserted for a substantial purpose other than delay."

Failure to comply with reasonable requests for information in a disciplinary investigation can result in discipline, even if the underlying complaint does not itself merit discipline.

Prior to the adoption of Rule 25 of the RLPR, in *In re Cartwright*, 282 N.W.2d 548 (Minn. 1979), the court suspended an attorney's license for six months for failure to cooperate in disciplinary investigations. The court cited to cases going back as far as 1931 in support of its statement that "We have long recognized that it is incumbent upon an attorney to cooperate with disciplinary authorities in their investigation and resolution of complaints against him."

In *In re Engel*, 538 N.W.2d 906 (Minn. 1995), the court noted that failure to cooperate with the inquiry into the validity and seriousness of complaints greatly hampers the investigatory efforts and demonstrates a failure to acknowledge either the seriousness of the proceeding or a disregard for the lawyer's basic obligations as an attorney.

In *In re Stanbury*, 614 N.W.2d 209 (Minn. 2000), the court ordered a public reprimand and probation where the attorney failed to promptly respond to requests for information from a District Ethics Committee investigator. The court stated, "We have long recognized that it is imperative that an attorney cooperate in a disciplinary investigation, [citation omitted] and that failure to cooperate is grounds for public discipline, including suspension [citations omitted]. We have disciplined attorneys for failure to cooperate with an investigator as well as with the Director [citation omitted]. We have also sanctioned attorneys for noncooperation even where they eventually complied with some of the Director's requests."

The court had not, however, prior to *In re Charges of Unprofessional Conduct Involving File No. 17139*, had the opportunity to clarify what constitutes a reasonable request for information in a disciplinary proceeding. Rule 25 of the RLPR provides that requests for information "shall not be disproportionate to the gravity and complexity of the alleged ethical violation" but provides no further definition of what constitutes a reasonable request.

In *In re Charges of Unprofessional Conduct Involving File No. 17139*, the court held, "we interpret 'reasonable requests' [for purposes of Rule 25 of the RLPR] to mean requests that are rationally related to the disciplinary charges or to a defense raised by a lawyer undergoing investigation, so long as the requests are not unduly burdensome or unnecessarily cumulative."

In applying this standard to the facts before them, after consideration of the lawyer's assertion that the information sought was privileged, the majority of the court concluded that the director's request for the identity of the sources was a reasonable request.

It is important that lawyers understand and comply with their obligation to cooperate in disciplinary proceedings. While it may be difficult or time-consuming to deal with accusations of improper conduct, failure to do so can result in discipline over and above that which the underlying misconduct merits.