

## DUE DILIGENCE ON LAWYERS

by

Susan M. Humiston

*Susan.Humiston@courts.state.mn.us*

Office of Lawyers Professional Responsibility

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Each year the Office of Lawyers Professional Responsibility files with the Minnesota Supreme Court an annual report covering the operations of the discipline system. This year's report, filed on July 1, 2022, can be found on our website, along with all annual reports going back to 1999.[Ftn 1](#) One notable aspect of the report is that it provides information about regulation-related activities undertaken by the OLPR other than investigating ethics complaints and prosecuting ethics violations. The topic of this column is one of those activities: disclosures.

### Disclosures

“Disclosures” is the term we use to refer to disclosure of an attorney's disciplinary history. Obviously, all public discipline is public and is available to be viewed on our website. Using the Lawyer Search quick link on the home page of the website, you can look up a lawyer and see if they have any public discipline. Notably, our website is the only place you can find public disciplinary history (aside from whatever might pop up in a web search). When you search the Minnesota Attorney Registration System (MARS), only *current* discipline status is disclosed. Accordingly, if the lawyer has completed any public discipline, the line for “current discipline status” in MARS will show “none,” notwithstanding the history of public discipline. Just below that line, however, MARS also refers the individual to our website for further information. If you are looking for a complete list of a lawyer's prior public discipline, the place to search is our website.

But what about private disciplinary history? Minnesota has a category of discipline described as private, which is reserved for ethics violations that are considered isolated and nonserious. Many states do not have private discipline, preferring to disclose even admonitions, but Minnesota does, and we issue far more private discipline each year than we do public discipline. How can someone see if a lawyer has private discipline?

Private discipline, which includes admonitions and private probations, can be disclosed by our Office upon a signed authorization of the lawyer. Each year, our Office responds in writing to hundreds of disclosure requests. The most frequent requests come from individual lawyers seeking disciplinary history as part of their application to the bar of another state. Certifying organizations also regularly seek disciplinary history, as do certain nonprofits vetting volunteer lawyers. The Governor’s Office vets the disciplinary history of judicial candidate finalists. One area from which we do not receive regular requests, however, is hiring organizations. This chart lists the inquiring entities/individuals.

	<u>No. of Requests</u>	<u>No. of Attorneys</u>	<u>Discipline Disclosed</u>	<u>Open Files</u>
A. National Conference of Bar Examiners	239	239	14	3
B. Individual Attorneys	442	442	19	5
C. Local Referral Services				
1. RCBA	1	1	0	0
2. Hennepin County	0	0	0	0
D. Governor’s Office	27	67	2	3
E. Other State Discipline Counsels/State Bars or Federal Jurisdiction	115	115	1	0
F. F.B.I.	35	36	1	0
G. MSBA: Specialist Certification Program	13	128	6	5
H. Miscellaneous Requests	17	28	2	0
<b>TOTAL</b>	<b>889</b>	<b>1056</b>	<b>45</b>	<b>16</b>
(2020 totals for comparison)	646	868	36	3

I’ve always found this information interesting. Private discipline is not in and of itself disqualifying because of its nature: it was issued for a rule violation that was isolated and nonserious. Further, private discipline is for most lawyers an isolated incident—most never have any contact with the discipline system again. It always seemed to me, however, that the vetting organization should be in the position to make that determination for itself.

## **What is not disclosed**

Another interesting aspect of Minnesota's attorney discipline system is the fact that we never disclose to third parties complaints that result in a determination that discipline is not warranted. We frequently advise other jurisdictions requesting complaint history that we cannot disclose this information or even verify if what a lawyer disclosed as their complaint history is accurate. Pursuant to our rules, we can disclose to an affected lawyer their own disciplinary history, including dismissed complaints, so they can respond to inquiries accurately, but to no one else.

Further, in Minnesota, we also expunge completely any record of dismissals after three years. This is often welcome news to lawyers who receive a complaint they view as frivolous and are glad that there is no permanent record of the complaint. One tip you may wish to consider, however, is to keep a copy of any dismissal you receive. Once three years has passed, we will no longer have a record of that dismissal, and disgruntled complainants have been known to resurface again.

## **A cautionary tale**

A recent disciplinary case prompted the idea for this column. Lawyers are expected to be trustworthy, and it should not be necessary to corroborate information provided to you by a lawyer. Unfortunately, sometimes corroboration pays off. A local law firm has part of its hiring process receipt of law school transcripts. Lawyers are asked to provide copies of their law school transcripts as part of the application process. If the interview process continues to the point of an offer, candidates are then required to provide authorizations to verify the information provided as part of a hiring background check.

Much to the surprise of the hiring department, the law firm learned during this process that a candidate they were considering had made material changes to their transcript that included altering class rank and their GPA. The transcript submitted with the application reported a class rank of 39 out of 192 and a cumulative GPA of 3.71. In truth, the candidate's class rank was 129 out of 192 and her GPA was 3.08. A subsequent investigation by our Office disclosed the lawyer had made false statements in the process of applying to and being hired at other law firms that had gone undetected.[Ftn 2](#) While this is not a case about disciplinary history, the moral of the story remains the same: Vetting basic information about a lawyer's background through the hiring process is worth one's time. I recommend including a lawyer's disciplinary history in that process. It is a very quick process, as disciplinary history is provided within a few days of request and often can be provided the next day.

## Conclusion

When someone hires a lawyer, basic vetting is a good idea, whether it is an employer or a client doing the hiring. Please encourage everyone you know who hires lawyers to use our website to confirm whether someone has public disciplinary history; if you are an organization, you may wish to include private discipline in that process. I have spoken to numerous individuals complaining about their lawyer whom I wish had looked that lawyer up on our website before hiring them. One high priority for our Office is updating our website to continue to make it more user-friendly; at present, it is not very mobile-friendly. If you have questions about our disclosure process or suggestions for our website, please contact our office or send me an email. The purpose of discipline is not to punish the lawyer but to protect the public and the profession, and to deter future misconduct by the lawyer and others, and one way those purposes are satisfied is through disclosure of disciplinary history.

## Notes:

1. *www.lprb.mncourts.gov/aboutus/annualreports.*
2. *In re Ballard*, A22-0698 (Order dated 6/30/2022), and Petition for Disciplinary Action found at *lprb.mncourts.gov* under Ballard, Lillian.