Immunity Protection in the Disciplinary System

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The Director's Office receives a complaint from an unhappy client against a local attorney. The complaint is opened for investigation. The respondent attorney strongly denies the allegations in a letter to the district ethics committee investigator. The investigation appears to establish that the attorney's version of the facts is accurate and that no misconduct occurred. The complaint is dismissed.

Shortly thereafter, the complainant contacts the Director's Office and provides a copy of a separate letter the lawyer had sent to the complainant after receiving the notice of investigation, demanding that the complainant retract and withdraw the complaint immediately, or the lawyer would sue the complainant for defamation and damage to the lawyer's reputation. The Director opens a new investigation file, and the attorney is disciplined for making a frivolous claim and for conduct prejudicial to the proper administration of justice in violation of Rules 3.1 and 8.4(d), Minnesota Rules of Professional Conduct, and for having violated Rule 21, Rules on Lawyers Professional Responsibility (RLPR), which provides immunity to complainants in the disciplinary process.

Rule 21 specifically provides that a complaint and all statements relating to the complaint are absolutely privileged and may not form the basis for any civil liability against the person making the complaint or statement.

Therefore, even threatening civil action against a complainant, as set out above, may itself warrant discipline as a frivolous claim, or as prejudicial to the administration of justice, since it may intimidate an unsophisticated complainant or have a chilling effect on the bringing of complaints, which are of public importance. *See, e.g., In re Terrazas,* 581 N.W.2d 841, 843 (Minn. 1998).

However aggrieved an innocent respondent may feel, complaints and the nuisance of an investigation are a necessary part of the privilege to practice law. Since an invalid complaint presumably will be dismissed, and since a dismissed complaint is confidential and then is expunged after three years, no reputation damage should occur directly from the disciplinary process. Consistent with this idea is why a respondent attorney cannot charge a client-complainant for the time spent responding to a disciplinary complaint. *See, "Responding to an ethics complaint: on whose dime?"* Minnesota Lawyer, *February 13, 1998*.

Complainants are not bound by the confidentiality requirements of the Rules on Lawyers Professional Responsibility. State rules that have attempted to restrict a complainant's ability to disclose the status or results of a disciplinary investigation have generally been held to be unconstitutional restrictions on free speech. *See, e.g., Petition of Brooks*, 678 A.2d 140 (NH 1996); *Doe v. Supreme Court of Florida*, 734 F.Supp. 981 (S.D.Fla. 1990). Only the Director's Office and other participants in the disciplinary system are so bound. Thus, complainants are free to make statements outside the process or to seek to publicize a dismissed complaint or private admonition. Statements made outside the disciplinary proceedings are not covered by Rule 21, however, and may form the basis of civil liability if they otherwise meet the standards for

defamation or slander. *See, e.g., Complaint of J.G. against R.P.*, 392 N.W.2d 544, 545 (Minn. 1986).

Sometimes it is difficult to know where this line between in or outside the disciplinary process is to be drawn, so the Director's Office usually advises attorneys to exercise restraint.

In giving such advice, the Director's Office is mindful that under Rule 21, RLPR, there is another type of immunity in the disciplinary system as well. The Director's Office personnel, Lawyers Board members, district ethics committee members and probation supervisors are afforded immunity from suit for their actions taken in the course of their official duties.

The risk of civil suit comes as much from disgruntled complainants as from respondent attorneys. Members of the Director's Office have been sued in their official capacity by unhappy complainants on several occasions. Even with immunity, there is the inconvenience to the lawyer and to the Attorney General's staff to have to go into court and seek dismissal of such suits.

To date, gratefully, there has been a 100 percent success rate.