

INTEGRITY: THAT INITIAL COMPROMISE

By

Kenneth L. Jorgensen, Director
Minnesota Office of Lawyers Professional Responsibility

Reprinted from *Bench & Bar of Minnesota* (March 2004)

Disbarment cases give rise to all sorts of emotions for the rest of the bar. Many are outraged or disgusted by the callous behavior of their peers. Others are grateful or at least relieved that the system has eliminated an unworthy practitioner. A few may feel sympathy for the tragedy that has befallen the individual lawyer. Some lawyers worry that such cases will further erode the profession's image. Still others are frightened when they read about the latest excommunication of another bar member. At a recent seminar, a lawyer commented, "When I read those disbarment opinions, they scare the hell out me and my practice does not even require me to handle client funds."

The underlying reasons for the behaviors resulting in disbarment are numerous and varied. Greed, pride, ego, financial distress, personal problems, and the inability to tell others "no," especially family members, are the explanations offered by many lawyers who are disbarred. Fewer cases involve inherently dishonest individuals who, for one reason or another, successfully avoided detection through the character and fitness examination process.

Disbarments are vital to a lawyer discipline system. Aside from purging those who present serious risk of harm to clients and others, disbarments validate the legal profession's commitment to self-regulation. They may also deter other lawyers from engaging in similar behavior. In short, disbarments are a necessary (and also important) evil.

Yet despite my 20 years in the business of disciplining lawyers, many disbarments still manage to bother me personally. In addition to prompting all of the emotions experienced by other lawyers, disbarments or disbarment decisions have caused me to experience the occasional bout of insomnia or nausea. It is hard to not empathize with someone's loss of vocation and the collateral consequences to the lawyer's family and others. Possibly because I want to make handling disbarment cases more palatable, or maybe just my morbid curiosity, I have over the years began to take a somewhat more scientific approach to disbarment cases. What caused the lawyer to steal and why have become almost equally as important to me as how the theft was accomplished and how much money was taken.

Oftentimes the reason behind the lawyer theft is readily apparent from the investigative facts and documents. Where it is not, some disbarred lawyers will speak freely about the circumstances that motivated them to go awry. Others say very little or nothing due to shame, embarrassment, a genuine lack of insight into their behavior, or because of the potential for criminal prosecution. When the opportunities have presented themselves, I have not hesitated to ask "Why and how do you believe this happened?"

From these observations and interviews, it has become clear that the reasons why lawyers steal are varied and often unique to their own personal circumstances. At the same time, the explanations for how

these lawyers came to rationalize their use of client funds are eerily alike.

Two disbarment cases best illustrate these points. One involved a relatively young lawyer who misappropriated nearly \$1 million from more than 20 clients. The other was a lawyer in the twilight of his career who had taken less than \$50,000 from a single client. Almost immediately upon receiving his client's complaint, the older lawyer made full restitution, whereas the young lawyer was unable to repay any of his victims, leaving the Client Security Fund to rescue the casualties of his thefts.

Other notable distinctions were that the younger lawyer was living beyond his means and used the embezzled funds to fuel an excessive lifestyle. In contrast, non-law-related business reversals had placed the older lawyer in a position where the stolen funds were used to pay for basic necessities. One of the lawyers was well-known in the community, while the other had practiced in virtual anonymity. One was a general practitioner, while the other practiced exclusively in injury law. Apart from both lawyers' refusal and inability to seek the help of others, the facts and circumstances of these two disbarment cases had very little in common.

Interviews with both lawyers, however, revealed an almost indistinguishable explanation for how they came to misappropriate client funds. When asked to pinpoint the cause of their respective downfalls, both identified their very first use of client funds as the *compromise of integrity* that began their slippery slope to disbarment. Both confessed to initially "borrowing" or "using" a nominal amount of client trust funds. Although neither intended to permanently deprive clients of a single dime, each lawyer reported experiencing severe distress over the temporary use of even a small amount of funds. Replacing the client funds ameliorated this distress for both lawyers and, according to one, emboldened him: "My temporary financial crisis was addressed, no one knew the difference and no client was in the least bit harmed."

Both lawyers repeated this pattern of using and replacing client funds until, as they explained, it became psychologically easier and easier to access client money. One explained that his repayment of initial thefts enabled him to rationalize subsequent thefts in larger amounts. According to this lawyer, "Because I had always repaid the earlier amounts I worried less about not only whether to take the funds, but also whether I'd be able to pay it back."

When eventually both lawyers encountered difficulties replacing the missing funds, they found it necessary to lie to clients or others in order to conceal their thefts. "I knew it was just a matter of time before I got caught, but I still couldn't bring myself to admit to the investigator that I had taken client money," explained one lawyer. Said the other, "In the end I was afraid to answer my phone -- I didn't have their money and had told so many lies I could no longer keep them straight in my head."

Many lawyers will read this column and think, "This doesn't apply to me -- I would never use or even borrow client funds." To a certain degree, they are correct. The number of lawyers who use client funds is minimal. Then again integrity compromises are not limited to misuse of client funds. The occasion to compromise one's integrity occurs daily for most lawyers. Opportunities for integrity compromise can include such benign tasks as executing and notarizing documents, communicating with clients, responding to discovery and client billing.

Illustrations of integrity-eroding compromises are documented in lawyer discipline decisions and elsewhere. Failing to comply with simple notarization formalities could be the initial compromise leading to unauthorized signatures^{[Ftn 1](#)} and forged or fraudulent legal documents. The white lie about the document that went out in today's mail might be the initial compromise that later transforms itself into wild

tales about fictitious hearings or settlements that never took place.[Ftn 2](#) Unauthorized “rounding up” of one’s billable hours could be the precursor to billing fraud.[Ftn 3](#)

Candor and truthfulness are the foundation of our adversarial system of justice. It is no coincidence that the vast majority of those who are denied entry into the profession, and those whose exit is hastened from it, are found lacking in these characteristics.

An adversarial system places great demands on the integrity of those who administer it. Client demands can further amplify this burden. The public that calls us to be socially responsible professionals are the same people who want a “hardball lawyer” when they have a legal problem.[Ftn 4](#) Few lawyers would ever think of “borrowing” client money. This sort of compromise goes beyond that which could be justified by all but a very few lawyers. Even so, we all must continue to be vigilant for other forms of compromises that potentially jeopardize our integrity. If not, like the disbarred lawyers in this article, we risk becoming psychologically desensitized to the type of self-consciousness that is integral to good lawyering.

NOTES

¹ See e.g., *In re Gale*, No. A03-58 (Minn. 01/28/04) (where a 30-day stayed suspension was imposed upon a lawyer who improperly notarized his daughter-in-law’s signature on a mortgage loan in reliance upon son’s representation that son was authorized to sign the wife’s name to the mortgage loan).

² See e.g., *In re McCoy*, 447 N.W.2d 887 (Minn. 1989) (lawyer disbarred for inter alia telling clients he had filed adoption petition and having clients stand in hall outside courtroom while lawyer purportedly attended adoption hearing that never took place).

³ Leona Helmsley claimed in 1994 that her real estate lawyer billed her for a 43-hour day. See Andrew Blum, “The Empress Strikes Back,” *Nat’l L.J.*, July 11, 1994.

⁴ See e.g., *Brewer & Bickel*, “Etiquette of the Advocate,” *Texas Lawyer* (March 21, 1994).