

PUBLIC DISCIPLINE SUMMARY FOR 2022

by

Susan M. Humiston

Susan.Humiston@courts.state.mn.us

Office of Lawyers Professional Responsibility

Reprinted from *Bench & Bar of Minnesota* – March 2023

Public discipline is imposed by the Minnesota Supreme Court for a lawyer's serious professional misconduct. It provides notice to the public and legal profession that a lawyer has not discharged their professional duties as the Court expects. In 2022, 36 lawyers were publicly sanctioned, an increase from the 28 lawyers publicly disciplined in 2021.

Discipline in 2022

Public discipline is imposed not to punish the attorney, but to protect the public, the profession, and the judicial system, and to deter further misconduct by the attorney and others. Besides the 36 attorneys who received discipline in 2022, three additional attorneys were transferred to disability status in lieu of public discipline proceedings.

Five attorneys were disbarred in 2022: Gregory Anderson, Geoffrey Colosi, Peter Lennington, Matthew McCollister, and Jesse Powell. Two of the five lawyers disbarred in 2022 were disbarred based largely upon criminal convictions. Mr. Anderson pleaded guilty to conspiracy to commit bankruptcy fraud by helping a client to hide assets. Mr. Powell pleaded guilty to several felony counts of fourth-degree criminal sexual conduct involving clients. Mr. McCollister pleaded guilty to health care fraud relating to participation in chiropractor "runner" cases, but his disbarment was based upon his misappropriation of client funds. Mr. McCollister very sadly died by suicide just before his sentencing.

Mr. Colosi was disbarred for breaching his fiduciary duties to a vulnerable adult through the draining of her estate to enrich himself. Mr. Colosi's matter was interesting in part because his was an atypical case of disbarment in which the attorney had no prior discipline. Mr. Lennington was disbarred after abandoning his practice and numerous clients, including misappropriation of client funds by taking money, doing no work, and making no refunds.

The intentional misappropriation of client funds remains the most common cause of disbarment, but commission of serious criminal misconduct—particularly when related to the practice of law—also generally warrants disbarment.

Suspensions

Twenty-one lawyers were suspended in 2022, including one stayed suspension. The lawyers who were suspended in 2022 engaged in a wide variety of misconduct. Some involved the commission of felony-level criminal conduct outside of the practice of law (which, unlike crimes related to the practice of law, may lead to a lengthy suspension rather than disbarment). For example, John Huberty was suspended for five years for his conviction for attempted criminal sexual conduct in the third degree, where the victim was 13-15 years old and the actor was greater than 24 months older than the victim. Mr. Huberty's criminal conviction resulted in a stay of imposition and five years of probation. However, his lengthy suspension shows the Court's determination that, no matter how the criminal justice system may choose to handle an underlying crime, felony convictions of lawyers represent serious misconduct warranting serious sanctions.

Other lawyers engaged in dishonest conduct. For example, Lillian Ballard's misconduct involved multiple acts of dishonesty relating to her legal and academic background, including making false statements on a resume, forging a transcript, and making knowingly false statements to human resource personnel and the Director. (At the time the Court's decision was issued, I happened to be working with my high school senior on his resume for college applications, and took the opportunity to reiterate to him the importance of honesty in how one presents oneself to others, whether or not you are a lawyer.)

An example of dishonest conduct that also led to a suspension involved Dennis Smith. Mr. Smith failed to meet his communication and diligence obligations to a client, but also combined this misconduct with making false statements regarding his progress on a matter and communication with the client. While it might be tempting to dissemble when you find yourself behind on a matter, do not do so. Just offer an apology. All too often, we see lawyers elevate the level of discipline by engaging in dishonest conduct in an attempt to cover up lack of diligence or communication.

Sometimes suspensions are warranted due to the variety of rule violations involved and prior discipline of the lawyer. Kevin Duffy is an example. Mr. Duffy generally failed to act with competence and neglected communication in representing a

client in a bankruptcy matter, and then engaged in additional misconduct including mishandling client costs and failing to refund unearned costs in a number of matters. Mr. Duffy's prior discipline included five admonitions that had occurred from 1991-2015.

Public reprimands

Ten attorneys received public reprimands in 2022 (four reprimands-only, six reprimands and probation). A public reprimand is the least severe public sanction the Court generally imposes. One of the most common reasons for public reprimands is failure to maintain trust account books and records, leading to negligent misappropriation of client funds. In 2022, however, only one lawyer was publicly disciplined for failing to maintain compliant trust account books and records.

The lawyers who received public reprimands in 2022 engaged in other misconduct. For example, Ronald Bradley failed to act with diligence and competence, allowing a statute of limitations to run on a client's claim. Thomas Harmon engaged in the unauthorized practice of law for 20 months after his provisional authorization to practice in South Dakota expired. Joseph Roach provided incompetent advice, failed to communicate with his client, charged fees not agreed to by his client, and threatened to withhold a client's file until his fees were paid.

Two other cases may be of interest. Albert Usumanu received a public reprimand based on a stipulation with the Director's Office and upon the agreement of a majority of the Court for his misconduct in two immigration matters. However, two members of the Court, Justices Moore and McKeig, dissented, based upon the vulnerable status of Mr. Usumanu's immigration clients and his prior discipline. Justices Moore and McKeig did not believe that a public reprimand, even considering mitigating factors present, adequately addressed the misconduct present. In another matter, the Director dismissed a petition for disciplinary action after failing to convince a referee that an attorney engaged in misconduct by failing to adequately supervise trust account staff in his firm. This is a rare case of misconduct where, even though probable cause was received from a Lawyers Board panel, misconduct was not ultimately proven under the Director's clear-and-convincing burden.

Conclusion

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. Fortunately, very few of the more than 25,000 active lawyers in Minnesota have discipline records.

2022 public discipline covered a wide variety of misconduct. I hope this review motivates you to be ever vigilant in your practice. While most attorneys do not see themselves as engaging in dishonest or criminal conduct, so many other fact patterns can lead to discipline. Call if you need us—651-296-3952—and remember to take care of yourself. We are in a challenging profession that expects much of us.