

TAKING CARE OF BUSINESS

By

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I did the affidavit, enclosed the check, and I sent them to CLE. They came back with a note saying, this is fine as far as your CLE credits, but you must contact the Supreme Court [about removal from restricted status and suspension for delinquent registration fees] . . . I bet for two months that letter sat in back of me on my credenza like a little ghost sitting with me saying, find a way to fix this. But each day it seemed like there was just more to be done to try to keep the business together, to try to figure out what was going to be done.

. . . and this didn't happen because I was not mindful of the rules and regulations. This happened because I couldn't get my life into a balance that allowed me to take care of business.

These are the all-too human reasons why an attorney engaged in the unauthorized practice of law for nearly two years, while delinquent in paying attorney registration fees and meeting CLE requirements.

Several attorneys have recently been disciplined publicly for practicing law for protracted periods while suspended for registration fee delinquency or while on CLE-restricted status. It has also been reported that some attorneys are not paying interest on trust accounts to the IOLTA board. The Director's Office will soon undertake a systematic review of attorneys who are on restricted status, or who have been suspended for nonpayment of fees for substantial periods of time, to determine whether they are practicing law. Review will also be made of attorneys who are not paying trust account interest to the IOLTA board. Where appropriate, the Director's Office will seek discipline.

Rule 3, Supreme Court Rules for Registration of Attorneys, provides that an attorney who fails to pay the annual registration fee on time is automatically suspended from the practice of law until the fee and any penalty have been paid. Rule 3, Supreme Court Rules for Continuing Legal Education, provides, in effect, that attorneys may elect restricted status, and that the Supreme Court will transfer to restricted status any other attorneys who do not meet CLE requirements. Attorneys on restricted status may not represent people other than themselves and close relatives. Transfer to restricted status is not automatic but occurs only upon the election of the attorney or upon Supreme Court order.

Only substantial delinquencies in registration fee payment are treated as disciplinary matters. Short delinquencies can be cured by payment of a penalty. Since suspension for fee delinquency is automatic, less notice is given than to an attorney who does not meet CLE requirements. Transfer to CLE restricted status involves several notices and a court order. These differences in notice lead to slightly different disciplinary approaches. The great majority of attorneys have consistently complied with these Supreme Court rules. Available data suggest that most attorneys who do not pay fees or meet CLE requirements are not practicing law. They may be retired, or not reside in Minnesota, or have a different occupation. There is no readily available method for determining comprehensively which suspended lawyers are still practicing.

No systematic effort has been undertaken to determine which attorneys on restricted or fee-suspended status are practicing law in violation of Rule 5.5, Rules of Professional Conduct (unauthorized practice of law). The Office of Lawyers Professional Responsibility has checked CLE and fee status only in connection with investigation of disciplinary complaints — in effect a nonsystematic method of review. The IOLTA board has attempted to deal informally with attorneys who appear not to be paying interest properly. These nonsystematic methods have resulted in a small number of disciplines, for very substantial violations.

After consultations with the LPRB executive committee, the CLE board, and a representative of the IOLTA board, the Office of Lawyers Professional Responsibility has determined to undertake a more systematic effort. A list of attorneys in substantial noncompliance with the fee registration rules, the CLE rules, or the IOLTA rules will be provided to the Director's Office. Some efforts, such as by review of Yellow Pages listings, will be made to determine whether the listed lawyers are holding themselves out as

lawyers. If it appears that they are practicing in unauthorized ways, appropriate disciplinary action will be taken. For attorneys who are in substantial noncompliance with the Rules of Professional Conduct, public discipline, including suspension, may be sought.

In establishing the Board of Continuing Legal Education and its governing rules, the Minnesota Supreme Court has, in effect, determined that the public interest requires attorneys to continue their legal education. Failure to meet these requirements is an appropriate basis for discipline. Protracted failure to pay the attorney registration fee entails a kind of shirking of the common duty to support the activities of the several Supreme Court boards. The Court has also determined that interest on lawyer trust accounts, with limited exceptions, must be paid to the IOLTA board. Failure to do so conflicts with the policy interests which the Court has adopted.

Compliance with the various business rules of the Court does not go to the heart of professional responsibility in the way that integrity in client dealings does. Nonetheless, a profession with nearly 18,000 members must be organized and governed according to certain rules. For the small number who do not comply with the rules, there must also be consequences.

All of those involved in the professional responsibility system would much prefer that the rules be followed without invoking the discipline process. Attorneys are urged to comply voluntarily. Those who have not complied with the rules should take note of more systematic enforcement in deciding whether they will finally take care of business. Dealing with the "little ghost" on the credenza may, for one reason or another, be difficult. Dealing with a disciplinary proceeding and possible suspension is far more difficult.