

Summary of Public Discipline

Last month, this column featured a summary of admonitions, or private disciplinary dispositions. Such a column has been an annual staple of these *Bench & Bar* columns for many years. Since such dispositions are by their nature neither public nor publicized, it has always been thought that providing insight into the types of nonserious misconduct that result in discipline is beneficial to the bar and to the public.

Public discipline decisions issued by the Minnesota Supreme Court, on the other hand, are knowable by anyone willing to take the time to look. Public discipline opinions and orders are posted on the supreme court's website¹ every Wednesday at 10:00 a.m., along with all supreme court decisions of the week. The MSBA has a service by which lawyers are notified of these decisions by email even without having to seek them out.² Public discipline decisions also can be found on the Lawyers Board website through the "Lawyer Search" function.³ The Director's Office issues a nondescriptive press release after every supreme court public discipline decision, and some of these are picked up by local media. There are thus many ways to learn about public discipline decisions.

Nevertheless, many busy lawyers simply are unable to keep abreast of public discipline cases and thus may

miss some important pronouncements of the court or analysis about a particular Minnesota Rule of Professional Conduct. So, this month I will supplement the summary of private disciplines with a summary of public disciplines. These differ in that the conduct is more serious, as is the disciplinary sanction imposed—oh, and names can be used. Except

in the matters resulting in disbarment, however, this column will not include names since the primary purpose is educational.⁴

In calendar year 2012, 38 Minnesota attorneys were publicly disciplined by the supreme court, which is on the high end of the average number of annual disciplines, typically three or four every month. Public discipline is either a public reprimand, a reprimand with probation, suspension (of varying length), or disbarment. Transfers to disability inactive status and reinstatements also generate a public decision from the court, but those are not being counted for the purposes of this column.

Disbarments

Six Minnesota-licensed attorneys were disbarred in 2012. Each case is slightly unique, but helps to answer the question of "just what does it take to get disbarred in this state?"

Joseph Rymanowski committed multiple acts of misconduct, including failing to account, failing to refund unearned fees, filing claims without client consent, plus engaging in a pattern of client neglect and noncommunication. He also failed to cooperate with the disciplinary process.

Erin Marie Wolff is an interesting and "text book" example of reciprocal discipline, which is an expedited process by which a lawyer licensed in multiple jurisdictions may receive identical discipline in each jurisdiction. Ms. Wolff was licensed in Minnesota under the name Wolff (her maiden name), then moved to Arizona, where she became licensed under her married name. She was disbarred in Arizona for misappropriation of client funds and other serious misconduct. She returned to Minnesota, reactivated her license under her maiden name, and began practicing. It thus took some time for the Arizona matter to "catch up with her" here, but eventually it did and she was reciprocally disbarred.

Steven Paul Lundeen engaged in a pattern of misconduct somewhat reminiscent of Mr. Rymanowski, with misappropriation of client funds (specifically the taking of advance fees, performing little or no work, and then failing to

refund the unearned fees upon request), multiple instances of neglect, false statements, failure to comply with court orders, unauthorized practice of law, and noncooperation.

Deno Berndt was disbarred for major misappropriation of client funds and misrepresentations to conceal his actions. The Client Security Fund has been dealing with multiple claims from Mr. Berndt's former clients.

Finally, Richard A. Sand and William A. Jacobs were disbarred following criminal felony convictions, for which each was imprisoned.

Suspensions

In most years, suspension is the most common level of public discipline imposed by the supreme court. Suspensions are of two distinct types: those of 90 days or fewer, from which reinstatement is by affidavit of compliance, and those longer than 90 days (which can include indefinite suspension even if the minimum period is less than 90 days), for which a reinstatement petition and hearing are required. Twenty-two Minnesota lawyers received suspensions in 2012, varying in length from 30 days to three years. Nineteen of these attorneys must petition and undergo a hearing to be reinstated.

Listing all the misconduct committed by these attorneys would be daunting, and many of the matters included (but certainly were not limited to) instances of neglect, noncommunication and noncooperation. But some of the more unique acts of misconduct committed by these attorneys included: failing to pay an arbitration award, making misrepresentations to a tribunal, pursuing frivolous appeals, continued practice of law after an earlier suspension, settling a case without authority, contacting a represented codefendant without counsel's permission, filing frivolous and vexatious pleadings, and failing to comply with the terms of a conditional admission agreement.⁵

Reprimands

Eight lawyers were publicly reprimanded and assigned a period of probation for various acts of misconduct considered serious enough to warrant



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public discipline, but yet not so serious as to require suspension from the practice of law. As can be seen, often there are several violations that alone might not require public discipline, but in combination were considered serious.

In 2012, reprimands were imposed for: engaging in a conflict of interest with a current client and then with a former client; lacking diligence and failing to communicate in three matters and failing to refund unearned fees and other client property; failing to maintain trust account records, which resulted in negligent misappropriation of client funds, and failing to supervise nonlawyer staff; engaging in an improper business transaction with a client plus neglect and unreasonable fees; making false billing entries and misrepresentations to members of the lawyer's law firm; disclosing confidential information, making misrepresentations to a client, and failing to provide documents after withdrawal; contacting a represented party without consent, neglecting a matter, and failing to communicate. One attorney was reprimanded and reinstated from an earlier suspension for failing to comply with the obligation to notify clients of his suspension and other neglect.

Reciprocal Discipline

In addition to Ms. Wolff, described above, two other lawyers were reciprocally disciplined in 2012, both following public discipline in North Dakota. Not surprisingly, many North Dakota attorneys are also licensed in Minnesota, and it is the most common jurisdiction from which reciprocal disciplines occur in Minnesota. One attorney was reprimanded for failing to appear at a trial after his motion for a continuance was denied; the other was indefinitely suspended for a minimum of three years for mishandling client funds, neglect, and charging excess fees.

Conclusion

Prosecuting the most serious disciplinary matters is a major function of the Director's Office. As of the writing of this column, five lawyers already have been publicly disciplined in the first month of 2013. Thirty-five more matters (another year's worth) are at various stages of the litigation process leading to public discipline, from the issuing of charges until the matter is completely under advisement by the supreme court, either on stipulation or following a contested referee hearing, briefing, and oral argument. With much

of this year yet to go, it appears that 2013 will be another busy year for the lawyer discipline system. ▲

Notes

¹ <http://www.mncourts.gov/?page=230>.

² The MSBA's website also hosts William Wernz's *Minnesota Legal Ethics*, an eBook treatise which includes regular commentary on public discipline decisions.

³ <http://lprb.mncourts.gov/LawyerSearch/Pages/default.aspx>.

⁴ For anyone interested in reading any of the matters referenced in this column, a list of the actual case names will be included with the version of this column posted on the LPRB/OLPR website. Then, by using the lawyer search function on our site, one can obtain a copy of the decision, petition and any stipulation.

⁵ Conditional admission is a process by which the Board of Law Examiners may admit an attorney to practice subject to conditions, in effect a probationary period. Revocation of such agreements is handled by the OLPR. See Rules 12(a) and 15(a)(10), Rules on Lawyers Professional Responsibility.

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Pro Bono Opportunity of the Month Seniors: Driver's License Reinstatement

A very low-income client of Mid-Minnesota Legal Aid in Minneapolis, who has a suspended driver's license due to an unpaid court judgment, needs help petitioning either DMV or district court to reinstate her license. Mistakes regarding her car insurance led to the judgment that cost her license. The client speaks English but could benefit from translation (Spanish). More details regarding the client's legal goals and options will be provided upon request. Contact Sean Burke at sburke@mylegalaid.org or by telephone at (612) 746-3759. Further information about this and other pro bono opportunities can be found online at www.projusticemn.org/volunteer

DREAMer Project Offers Opportunity

Testifying before Congress, undocumented Pulitzer Prize-winning journalist Jose Antonio Vargas spoke of his life as a DREAMer, an immigrant brought into the country as a minor without legal status. Vargas was sent from the Philippines to America to join his legal citizen grandfather at the age of 12 and didn't find out he lacked legal status until he tried to apply for a driver's license at age 16. At the hearing he asked a question that has nagged at members of Minnesota's private bar when faced with youths being deported from the only country they have known as home: "What do you want to do with me?"

As a first step towards addressing Mr. Vargas' question, on June 15, 2012, President Obama announced a new immigration program entitled Deferred Action for Childhood Arrivals (DACA), which would grant deferred action and work authorization to eligible DREAMers across the country. For the estimated 1.7 million qualified applicants, undocumented youths who graduated or were attending high school and who passed a criminal background check and met other basic requirements, DACA was a life-changing proposal which offered a chance to work and attend college legally for the first time.

With over 5,400 potential DACA applicants in Minnesota alone, the Obama Administration's announcement created a surge of demand for legal services in our state. In an effort to meet this need the private bar jumped to action, volunteering their time to assist these clients. One example of these pro bono efforts is the Immigrant Law Center of Minnesota's DREAMer Project: a pro bono program established to provide free legal services to low-income DACA applicants across Minnesota.

Through ILCM's DREAMer Project, seven Twin Cities law firms and a host of current and retired immigration attorneys have provided immediate pro bono services to Minnesota's immigrant youth. Within months of the president's announcement, ILCM had trained over 50 pro bono attorneys to volunteer. Currently, 160 pro bono DACA cases have been placed with volunteer attorneys for full representation and over 50 have already been approved.

DREAMer Marcela sought out the pro bono project after facing prohibitively expensive fees for a DACA application from several private attorneys. A documented resident of the United States since childhood, Marcela said "I went to school and got a two-year degree but I was never able to use it. [DACA] makes it possible for me get more education and a job. It makes a huge difference!"

For further information about deferred action or the Immigrant Law Center of Minnesota's pro bono DREAMer project email Anand Balasubrahmanyam at communications@ilcm.org.

Domestic Violence Project Wins Recognition

The Stearns County Domestic Violence Project, in which Mid-Minnesota Legal Aid's St. Cloud office is a partner, was recognized last month as one of ten notable innovations in criminal justice nationwide.

The recognition was extended by the Association of Prosecuting Attorneys in partnership with the U.S. Department of Justice's Bureau of Justice Assistance and the Center for Court Innovation at the Innovations in Criminal Justice II Summit in Miami, Florida.

Over the past four years the Stearns County project has worked to reduce domestic violence, increase victim safety and batterer accountability, and make more efficient use of criminal justice system resources, accomplishing demonstrable results.

Relying on a specialized, trained team of judges, prosecutors, probation agents, legal aid lawyers and advocates, the project brings intensive judicial and probationary supervision to bear on dangerous, repeat felony domestic violence offenders. The court sets detailed conditions for release and probation of abusers, who are then subject to strict enforcement through round-the-clock surveillance, weekly accountability check-ins with the judge, and intensive intervention to address any chemical dependency or mental health issues. Simultaneously, victim support services are concentrated and coordinated to enhance victim and child safety.

To date, the Project reports achieving results including reduced crime, reduction in the time required to resolve a domestic abuse case, and 58 percent of victims who received at least 14 months of access to legal services reporting having separated from their abusers. Project staff have also developed and tapped expertise to enhance law enforcement response to abuse cases, improve assessments of child safety, and coordinate firearms enforcement.

The Project is the work of the Stearns County Domestic Violence Partnership, including Stearns County Attorney Janelle Kendall, the local district court, and MMLA, among others.

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