

# A YEAR IN REVIEW: 2023

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# Outline

- Office Statistics
- Discipline Cases of Note From 2023
- ABA Opinions From 2023
- Miscellaneous



# 2023 OLPR Statistics



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# Office Statistics

- 2023 Complaints - 1151; 2022 Complaints – 1020
- Active lawyers in MN – 26,083 (30,226 licensed) (steady)
- 2023 Public Discipline— 28 lawyers (36 in 2022)
  - 3 Disbarred (5 in 2022)
  - 24 Suspended (21 in 2022)
  - 1 Publicly Reprimanded/Probation (6 in 2022)
  - Private Discipline:
    - 6 Private Probations (9 files) (6 in 2022)
    - 68 Admonitions (58 lawyers) (81 in 2022)
  - 2 lawyers transferred to disability status in lieu of discipline (3 in 2022)



# Office Statistics (Cont.)

## 2023 Dismissals

- 532 Summarily Dismissed (Determination that Discipline is Not Warranted, Without Investigation)
- 243 Determinations that Discipline is Not Warranted (after investigation)





# Office Statistics (Cont.)

Who filed complaints?

- Clients (438)
- Adverse Parties (283)
- Other Lay Person (103)
- Opposing Counsel (40)
- Director Initiated (36) — including 25 trust account overdrafts
- Judges, other interested parties
- Not complaints but counted as files--  
Reinstatements; Trusteeships; Resignation



# Office Statistics (Cont.)

- Most Frequent Nature of Complaint
  - Ineffective assistance of counsel
  - Communication
  - Dishonest conduct
- Most Frequent Areas of Law Involved
  - Criminal (284)
  - Family Law (182)
  - General Litigation (130) (number up from 2022)
  - Probate (86) (Real estate not far behind)



# Public Discipline Cases



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# Public Discipline

- 2023 Public Discipline:
  - 28 lawyers across 71 files
  - 3 Disbarred
  - 24 Suspended
  - 1 Publicly Reprimanded with probation



# Disbarments



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# Public Discipline Cases

## Disbarments

- **Hernandez, 989 N.W.2d 291 (Minn. 2023)**
- **Ratgen, 989 N.W.2d 896 (Minn. 2023)**
- **Udeani, 984 N.W.2d 550 (Minn. 2023)**





# Public Discipline Cases (Disbarments Cont.)

## *In re Hernandez*

- Complaints from 9 clients across 11 matters, involving:
  - Misappropriation
  - Dishonesty
  - Competency and diligence
  - UPL while CLE-suspended
- Did not respond to 3 petitions; allegations deemed admitted.
- Court asked for briefing on appropriate discipline; Hernandez did not respond.
- Court sets matter for oral argument and Hernandez appears.
- Assigned to Referee to consider aggravating and mitigating factors; Referee recommends disbarment.
- Court issues a briefing schedule and, again, Hernandez does not file anything.



# Public Discipline Cases (Disbarments Cont.) *In re Ratgen*

- Convicted of a felony for conspiracy to commit healthcare fraud in violation of 18 U.S.C. § 1349 (that was directly related to his practice of law)
- Engaged in other misconduct, including failing to cooperate (knowing false statements to the Director), failing to maintain required trust account books and records, and negligently misappropriating client funds.





# Public Discipline Cases (Disbarments Cont.)

## *In re Udeani*

- Petition filed involving 9 separate violations across 5 client matters
- Referee found violations for:
  - Failing to return unearned fees, including misappropriation
  - Failing to get countersigned receipts for cash payments
  - Competency and diligence
  - Failure to communicate
  - Non-cooperation
- Justice Thissen's Concurrence
  - Concern with relying on non-cooperation as an aggravating factor when it is also an independent rule violation





# Suspensions



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# Public Discipline Cases (Cont.)

## SUSPENSIONS

24 lawyers suspended (range from 30 days to 5 years). Some trends for discussion:

- Dishonest conduct
- Bad behavior (uncivil, harassing)
- Departures
- Reciprocal Discipline
- Other Notables



# Suspensions: Dishonesty



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# Suspension: Dishonesty

**In re Bruggeman:** Atty represented father and son who were injured in a car accident.

- One client was potential at fault driver creating a potential conflict
- Did not consult with clients about substance of complaint; e-signed affidavit on client's behalf without speaking with him
- Did not communicate with clients or defendant's insurance company; made false statements to clients about delays and case status



# Suspension: Dishonesty (Cont.)

## In re Bruggeman continued

- Atty claimed to have had ongoing negotiations with insurance company, not true
- During Director's investigation
  - Submitted falsified case logs to DEC
  - Made similar false statements to Director's Office about ongoing negotiations





# Suspension: Dishonesty (Cont.)

In re **Bruggeman** continued...

Joint stipulation: 90-day suspension

- Respondent presented substantial mitigation related to personal issues that created major stressors





# Suspension: Dishonesty (Cont.)

**In re McLaughlin:** Had several complaints filed against him and engaged in various violations that included misappropriation of client funds, poor books and records, but also lots of dishonesty.

- Represented a client in crim matter, had a hearing but wanted it via Zoom claiming he had another hearing in Ramsey County that conflicted.
- False, no such conflicting hearing existed



# Suspension: Dishonesty (Cont.)

## In re McLaughlin continued

- To support request provided a document showing the hearing conflict in Anoka county.
  - McLaughlin was not attorney of record for the Anoka county one
  - Also, when he told court about conflict, he said it was the conflict was with a hearing in Ramsey County.





# Suspension: Dishonesty (Cont.)

## In re McLaughlin continued

- Court called him on it. Pointed out the inconsistency, that he was not attorney of record in the Anoka County hearings and that he originally said the hearing was in Ramsey Co.
- Attorney does not take accountability and basically characterizes it as a “miscommunication”





# Suspension: Dishonesty (Cont.)

## In re McLaughlin continued

- Then he lied some more
  - To client: Said that he had to ask for a continuance because client's counsel in another criminal matter withdrew and there was a substitution.
  - To client and client's mother: Told them that there was a continuance when there was not.
  - By omission: When withdrawing did not tell client the reason was because of his dishonesty.
  - To Court again: When court asked if he self-report, he claimed that he did. Untrue.



# Suspension: Dishonesty (Cont.)

## In re McLaughlin continued

- Then he lied some more continued...
  - To client: Told client that the case would go faster if client terminated the representation. Again, mischaracterizing things and hiding the true issue.
  - To the Director: During course of investigation attorney again mischaracterized everything as a “miscommunication.”





# Suspension: Dishonesty (Cont.)

## In re McLaughlin continued

- Stipulated disposition of indefinite suspension with no right to petition for reinstatement for 24 months.
- Restitution (related to the misappropriation)
- Remorse
- Lack of selfish motive (for misappropriation)
- Inexperience (for the non-dishonest conduct)





# Suspension: Dishonesty (Cont.)

**In re Keenan:** Allegations of client neglect, failure to communicate, dishonesty toward client and opposing counsel, UPL while fee-suspended, failing to withdraw, false statements to and non-cooperation with three disciplinary investigations.

- Didn't respond to petition; allegations deemed admitted
- Court sought briefing on appropriate discipline; R did not respond.



# Suspensions: Bad Behavior/Incivility



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# Suspension: Bad Behavior/Incivility

**In re Winter:** Winter represented a client in divorce proceeding.

- During course of representation Winter engaged in very inappropriate behavior
  - Asks client “are those your real eyes?”
  - Compliments client’s appearance
  - During mediation, tells client
    - “I’m glad there’s a water pitcher between us”
    - He “needed to stay in his own lane because [client] was so beautiful”





# Suspension: Bad Behavior/Incivility (Cont.)

## In re Winter continued

- As representation progresses, lawyer and client exchanged emails
  - Attorney was increasingly flirtatious and eventually became explicit in his emails.
  - Attorney asks client to come into the office and client responds with “I thought we were speaking hypothetically”
  - Client becomes uncomfortable and eventually terminates the representation



# Suspension: Bad Behavior/Incivility (Cont.)

## In re Winter continued

- Joint stipulation was a public reprimand
- Court imposed 30 days
- Some notes:
  - Case of first impression
  - Difficult when there's no caselaw on point
  - One of the various departure cases that we will talk about later





# Suspension: Bad Behavior/Incivility (Cont.)

**In re Halunen:** Attorney was sole owner and managing partner of firm

- Lawyer encouraged two individuals to apply for a job at his law firm
  - Individual he met on a dating app
  - Law student seeking a summer internship
  - Subjected both employees to unwelcome physical and verbal sexual conduct
  - Attempted to convince the employees to not go public with allegations; threatened civil action, criminal prosecution, and professional consequences if they do





# Suspension: Bad Behavior/Incivility (Cont.)

## **In re Halunen** continued

Joint stipulation: 6-month suspension followed by 2 years supervised probation

- Parties filed memorandum explaining why recommended discipline was appropriate
- Part of it was attorney took corrective measure before complaint filed, showed remorse, and addressed elements that would have been part of a reinstatement proceeding



# Suspension: Bad Behavior/Incivility (Cont.)

## In re Halunen continued

- Court: 1-year suspension, believed stipulation was inadequate to protect the public and deter future misconduct
- Dissent and Concurrence: recommended 18–24 month suspension
- Another court departure case





# Suspension: Bad Behavior/Incivility (Cont.)

## **In re Nickitas**

- Failed to properly apply for IFP status for client;
- Used profane and abusive language while communicating with court staff
- Made false and disparaging comments about judicial officer
- Attempted to exert improper pressure on judicial officer



# Suspension: Bad Behavior/Incivility (Cont.)

## In re Nickitas continued

- Referee found violations of Rules 1.1, 1.3, 4.4(a), 8.2(a), and 8.4(d).
- Prior discipline for similar conduct, experience as lawyer, and lack of remorse were aggravating factors.
- Referee recommended 120-day suspension but served in four discrete 30-day increments so that R could continue to serve legal aid clients.
- Court disagreed with staggered suspension.





# Departures



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# Suspension: Departures

**In re Winter:** (previous discussion)

**In re Halunen:** (previous discussion)

**In re Bloomquist:** City Attorney neglect resulted in statute of limitations running on dozens of cases. Director and attorney stipulated to public reprimand; court imposed 30 days





# Suspension: Departures

**In re McCloud:** Referee recommended 90-day suspension, with reinstatement by affidavit, followed by 2-year probation; Court disagreed, requiring reinstatement petition and hearing.

**In re Person:** Parties stipulated to 60-day suspension; after briefing, Court disagreed and imposed 4-month suspension, with 2-year probation. Violations included diligence, competence, assisting a client to engage in fraudulent conduct, and making false statements in furtherance of the fraud.



# Suspension: Departures

**In re Inman:** Possession of child porn case. Washington state attorney and Washington state allowed him to resign. Our cases law pointed to 5-year suspension. Court did not depart, but they did ask us to brief why not disbarment.





Reciprocal



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# Suspension: Reciprocal

**In re Gardiner:** Tennessee suspended R for 3 years, comprised of 4 months active suspension followed by 32 months probation for violations of 1.1, 1.3, 3.3, 5.3, 8.4(a). MN ordered 4-month suspension, retroactive to TN order, followed by 32-month probation.

**In re Tonry:** Attorney was disciplined in Oregon for willful practicing without a license. Stipulated to the identical reciprocal.





# Other Notables



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# Suspension: Notables

**In re Ask:** 8.4(b) – Felony DUI; 30-day suspension with probationary requirement for entirety of criminal probation period, regardless of whether R is discharged early from criminal probation.

**In re Igbanugo:** 7 client matters, including: neglect, communication, unreasonable fees, improper availability fees, failing to refund unearned fees, lack of supervision of lawyers and non-lawyers, making false statements. 10-month suspension.





# Suspension: Notables (Cont.)

**In re Espinosa:** Underlying misconduct not too unique, neglect, abandoned case and noncooperation. But could not serve respondent because he was in hospice care. Indefinite suspension with no specific timeline.



# Private Discipline



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# Private Discipline

- Admonitions: 68 in 2023
  - Rule 1.3 (diligence) – 15 files
  - Rule 1.16(d) (obligations upon termination of representation) – 13 files
  - Rule 1.15(c)(5) – 12 files
  - Rule 1.4(a)(4) (communication) – 14
  - Rule 1.4(a)(3) (communication) – 8
    - Note: communication as a total may be more since we count by the subdivision.

**\*See Director's March 2024 Bench and Bar Article\***



# 2023 ABA Opinions



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# ABA Opinions

- Formal Opinion 504 (March 2023)
  - Choice of Law
- Formal Opinion 505 (May 2023)
  - Handling Prepaid Fees
- Formal Opinion 506 (June 2023)
  - Non-lawyer assistance for client intake
- Formal Opinion 507 (July 2023)
  - Office Share Confidentiality
- Formal Opinion 508 (September 2023)
  - Witness Prep (prep vs “coaching”)



# ABA Opinions (Cont.)

## Formal Opinion 504 (March 2023)

### *Choice of Law*

- ABA Reviewed the Choice of Law provision of the ethics rules under Rule 8.5
- Which jurisdiction's ethics rules apply?
- Matters before tribunals, the rules of the jurisdiction in which the tribunal sits applies.
- For all other conduct, including conduct in anticipation of litigation not yet filed, a lawyer must comply with the rules of the jurisdiction in which the lawyer's conduct occurs.
- But if the predominant effect of the lawyer's conduct is in a different jurisdiction, then that jurisdiction's rules apply.





# ABA Opinions (Cont.)

## Formal Opinion 508 (September 2023)

### *Witness Preparation*

- Clarifying importance and scope of witness preparation
- Ethical Preparatory Conduct
  - Includes things like instructing client to tell the truth, importance of telling the truth, explaining case strategy and nature of testimonial process, decorum, providing context for the witness's testimony, inquiring into the witness's probable testimony and recollection, and exploring the witness's version of events in light of other evidence.



# ABA Opinions (Cont.)

## Formal Opinion 508 (September 2023)

### *Witness Preparation*

- Unethical Preparatory Conduct
  - Counseling witness to give false testimony
  - Assisting witness in offering false testimony
  - Advising witness or client to disobey court order
  - Offering unlawful inducement to a witness
- Unethical Conduct During Testimony
  - Winking at a witness during trial
  - Kicking a deponent under the table
  - Passing notes or whispering to witness mid-testimony
  - Speaking objections to suggest an answer for the witness





# Miscellaneous



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# Advisory Opinion (A/O) Service

- Available to licensed MN attorneys
- OLPR attorneys will provide no cost verbal opinion on application of specific facts to rules; every day an attorney is assigned to A/O tasks and spends much of the day returning calls; will receive answer the same day or next day
- Confidential; non-binding on third parties
- No opinion will be offered on (1) conduct of third parties, (2) where conduct has already occurred, and (3) OLPR does not approve lawyer advertising, but will advise rules relating to same
- In 2023, the OLPR provided 1792 opinions
- Options: Submit a written request online (preferred where facts are complicated or detailed); call 651-296-3952 or toll-free 1-800-657-3601 and ask for the A/O attorney
- Website: <https://lprb.mncourts.gov>





# Miscellaneous Information

- Consider volunteering!
- **DEC volunteer**
  - 1 or 2 investigations a year (attend screening meetings).
  - Learn the rules.
  - Receive training and provide an important service to the profession.
- **Probation Supervisor**
- **Recruit** public members as DEC volunteers
  - 20% requirement.
- **Consider** becoming a LPRB member.



# Additional Resources

- Wealth of resources on website, <http://lprb.mncourts.gov>.
- Index and text of Bench & Bar articles and MN Lawyer ethics columns by the Office, sorted by rule, subject and year (no precedential value but useful guidance).
- Current rules (MRPC and RLPR) and Board opinions.
- Suspended and disbarred lawyer list.
- Attorney search containing all public discipline, with links to Court opinions and petitions for discipline.
- Trust account information and resources, including FAQs.
- Professional firms filing requirements.
- Cross border (multi-jurisdictional practice) information.
- Annual reports of OLPR, including historical reports.
- Announcements and news.
- Board and Office directory.
- Complaint forms in English, Hmong, Russian, Somali, and Spanish.





# Client Security Fund

- Available to compensate clients who have been victims of dishonest conduct by an attorney that results in a direct loss.
- Loss must arise from an attorney-client relationship.
- Must be caused by dishonest conduct of attorney.
- Direct loss is compensable; consequential damages are not.
- Has approved for payment over \$8.6 million over life of the fund (33 years) relating to 695 claims against 194 lawyers.
- Currently fully-funded and no part of registration fee goes to fund.
- [www.csb.mncourts.gov](http://www.csb.mncourts.gov).



# Closing

- Questions?
- Thank You!





Thank you



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