

Ethics Lawyers Say Attorney Discipline Has Gotten Tougher | The Legal Intelligencer

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Lawyers seem to be facing greater consequences for ethics violations in recent years, according to some attorney discipline counsel.

That crackdown has particularly targeted attorneys who let their administrative responsibilities slip, and small firm and solo practitioners are bearing the brunt of change, lawyers say.

“I think the board and the court are taking some things a lot more seriously than they used to,” BrotmanLaw’s Ellen Brotman said. She said the Pennsylvania Supreme Court and the Disciplinary Board have indicated their strong disapproval for any form of mishandling client funds, whether that comes from stealing or simple mismanagement.

Brotman said, based on her experience, the Office of Disciplinary Counsel appears to be more willing to temporarily suspend lawyers who don’t produce their records or maintain them properly. “Creating risk unnecessarily for the client is something the board and the court don’t want to see,” she said.

Josh Byrne with Marshall Dennehey Warner Coleman & Goggin said he’s observed more cases stemming from administrative-level ethics violations in his own practice. “Anecdotally, there has been an upswing in cases that historically might have been treated as negligence cases in the legal malpractice context. Without having done any real survey, it would appear that the Office of Disciplinary Counsel is prosecuting more cases under Rule 1.1 that involve attorney negligence and lack of communication under Rule 1.4 than they may have historically,” he said.

Byrne said most of the instances he’s encountered are ODC requests for statements of position, and the matters resolve before they can lead to disciplinary action. Because those issues remain private, he said, it is difficult to quantify how often they actually occur.

In fact, several attorneys who spoke with The Legal said there is a dearth of data that gives a full picture of attorney discipline in Pennsylvania. The Disciplinary Board regularly reports the numbers of disciplinary actions in the state, but lawyers said analyzing those actions can be a struggle.

The board’s year-over-year data doesn’t show any dramatic trends in the last decade. Total disbarments were low in 2021, at 18, but the years preceding fell in line with disbarment numbers going back to 2011, which wavered between 30 and 46. Recent suspensions and reprimands, too, fluctuated year to year without significantly changing overall.

Still, with the caveat that they spoke from their own observation, ethics lawyers said attorneys are facing more frequent notices, and, in some instances, harsher discipline.

Solo practitioner Sam Stretton said defending attorneys in ethics cases has gotten harder in the last decade, with a particular uptick in the last four or five years. “Sometimes you feel like you have to battle when it should be a walk in the park,” he said.

Stretton said he has now seen two instances in which the state Supreme Court denied attorneys reinstatement in contradiction to board recommendations on the theory that the lawyers still owed money. He said certain justices, such as Chief Justice Max Baer and Justice David Wecht, have been particularly harsh on rule-breaking attorneys.

“Without saying it they seem to have changed. Our disciplinary system is primarily punitive,” Stretton said.

Byrne said the current justices seem more inclined to hand down discipline that is more severe than what the board recommended, but he attributed the shift to the court’s interest in protecting client funds.

“I think it’s fair to say that the Supreme Court always tries to walk the line between being fair to attorneys and maintaining the integrity of the profession. It is a difficult line to walk, and sometimes has very harsh consequences for practitioners,” Byrne said.

Brotman, too, said the change indicates the board and the court want to protect the profession’s integrity, not that they are prioritizing punishment.

Stretton, for his part, said too-harsh discipline could lead attorneys to lose confidence in the system. He said the change stems from an influx of large-firm attorneys serving in hearing committees and on the Disciplinary Board, leaving less room for input from the smaller-scale practitioners who tend to encounter administrative-type ethical quandaries more frequently.

While other attorneys agreed solo and small firm lawyers are more prone to run into ethical dilemmas, they said the best solution is to get ahead of preventable violations.

Daniel Siegel of the Law Offices of Daniel J. Siegel said his office reviewed public disciplinary opinions from between 2001 and 2020 and found 292 referred to improper trust account practices or IOLTA violations as a basis for discipline.

Siegel said attorneys nationwide receive inadequate training on how to properly manage IOLTA accounts, something he said becomes a particular issue for lawyers trying to run their own practices.

“Good people get into trouble that can really snowball,” he said.

According to Byrne, “The most important measures that attorneys can take to avoid both disciplinary action and professional liability are to be very careful about calendaring, to follow the rules regarding the maintenance of client funds to a T, and to communicate with their clients.”