

OCDC SPOTLIGHT

Reinstatement and Recidivism: A Few Numbers to Think About

by Carl Schaeperkoetter, Staff Counsel
Office of Chief Disciplinary Counsel

Recidivism: A tendency to relapse into a former pattern of behavior, especially a tendency to return to criminal habits. (*The American Heritage Dictionary, 2nd College Edition*)

The Missouri disciplinary system has two purposes: protection of the public and integrity of the profession. One component of the disciplinary system is the opportunity for a suspended or disbarred lawyer to apply for reinstatement upon proper showing that the lawyer has undergone sufficient rehabilitation to no longer pose a significant threat of harm to clients (the public) or be an embarrassment to the bar (integrity of the profession). This article takes a look at numbers over the last 12 years to see how many reinstated lawyers became “repeat offenders,” i.e. recidivism. The conclusory numbers show that 45 lawyers were reinstated to the practice of law between 1992 and 2003; 11 of those lawyers, as of this date, have received subsequent discipline: six admonitions, one reprimand, and four disbarments.¹

THE REINSTATEMENT PROCESS

The procedure for reinstatement is contained in Rule 5.28. That rule addresses both reinstatements after disciplinary actions and reinstatement applications for failure to pay annual enrollment fees for more than three years. This article addresses only reinstatement after disciplinary action.

A lawyer seeking reinstatement must comply with all of the requirements of

Rule 5.28. The requirements vary, depending on whether a lawyer’s discipline was a suspension or disbarment. In either instance, the applicant must take and pass the Multistate Professional Responsibility Examination. A lawyer suspended for less than three years must take at least 15 hours of continuing legal education credits within 12 months prior to the application. For lawyers suspended three years or more, 30 hours of continuing legal education credit must be taken within 24 months prior to the date of the application. A disbarred lawyer, instead of taking CLE credit, must take and pass the Missouri Bar Examination. Rule 5.28 contains other requirements, such as restitution, notification of injured clients, and special conditions for reinstatement imposed by the Court. Each applicant should carefully review Rule 5.28 to assure that all requirements have been met.

Once application has been made to the Court, the matter is assigned to the Chief Disciplinary Counsel for an investigation, followed by a report from the Office of Chief Disciplinary Counsel. The applicant is given an opportunity to respond to the report, the Chief Disciplinary Counsel makes a recommendation on whether the applicant should be reinstated, and then the report, response and recommendation are submitted to the Supreme Court for ruling. The Court makes its own decision on reinstatement; the recommendation of the Chief Disciplinary Counsel is advisory only.

THE 12-YEAR RECORD

The author chose a 12-year period from 1992 through 2003 to review the disciplinary record of successful reinstatement applicants. The author chose that period because of rule changes in 1990 that established a new disciplinary system in Missouri effective July 1, 1991. At that time the Office of the Chief Disciplinary Counsel was created to perform the investigative and prosecutorial functions of the discipline system. Since July 1, 1991, reinstatement applications have been processed by the OCDC. Previously, reinstatement applications were processed by the Missouri Bar Administration.

Between 1992 and 2003, 45 lawyers were reinstated by the Missouri Supreme Court after having been suspended or disbarred for disciplinary reasons. During that same time period, 45 other applications were denied by the Court and an additional 12 applications either were dismissed by the Court for procedural reasons or withdrawn by the applicant. Of the 45 successful reinstatement applicants, OCDC records show that 18 of them (40%) have received a complaint since reinstatement. Thus, 27 of the 45 (60%) have had no post-reinstatement contact with the disciplinary system.

Of the 18 reinstated lawyers against whom complaint files were opened, seven had all complaints closed with no discipline. Eleven received some form of discipline since reinstatement. Six received admonitions only. An admonition is the lowest level of

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