

Disciplinary Sanctions

By Sharon K. Weedon

Because the vast majority of the members of The Missouri Bar have never had firsthand experience with the attorney discipline system, you may be among the number who lack familiarity with the sanctions for professional misconduct. So that you may better understand the Disciplinary Action page in the *Journal of The Missouri Bar* (c'mon, we all check it), this article offers a thumbnail sketch of Missouri sanctions and what is taken into account in imposing them.

The lowest level of sanction is an admonition, which comes to the attorney by way of letter. Admonitions can be issued by the Office of Chief Disciplinary Counsel (OCDC) or by the regional committees that sit in Springfield, Kansas City, and St. Louis. The fact that a lawyer has an admonition is information “available to the public,” i.e., anyone who calls OCDC and asks whether a particular lawyer has discipline will be told about admonitions issued in the preceding three years. See Rule 5.31(d).

After the three years have lapsed, and if there have been no intervening admonitions, the inquiring caller is told the attorney “has no public discipline” (unless there is other disciplinary history, as explained below).

It should be borne in mind that the sanction model the Supreme Court of Missouri follows is one of progressive discipline. That means that all sanction history, even admonitions more than

three years old, are taken into account in assessing subsequent sanctions.

Within the last 10 years, “diversion” and “probation” have been added to the panoply of measures available to those seeking to enforce compliance with the Rules of Professional Conduct. Diversion does not really belong in this article, because it is not discipline. See Rule 5.105(f). It is, however, a handy tool to deal with conduct that is “fixable,” minor, and that poses little or no threat to the public. Rule 5.105(c). Like admonition, diversion agreements can be hammered out between the respondent lawyer and disciplinary authorities without the imprimatur of the Supreme Court of Missouri.

Next up the ladder are reprimand, probation, suspension, and disbarment. All of these disciplines must be ordered by the Supreme Court of Missouri. Disciplinary authorities, respondent attorneys, and disciplinary hearing panels are empowered only to recommend to the Court any sanction above admonition or diversion; such discipline must be imposed, i.e., ordered, by the Supreme Court of Missouri. Reprimands, probation, suspensions (stayed and actual), and disbarment are reported in the *Journal of The Missouri Bar* and remain part of the attorney’s disciplinary history for the duration of his career.

The disciplinary system used to distinguish between private and public reprimands, but now all reprimands are public. Reprimands do not impinge

the attorney’s privilege of practicing law. They do, however, remain part of the attorney’s disciplinary history and play an important role in the progressive sanction model.

Stayed suspension, followed by actual suspension, is the next step up the ladder. A stayed suspension is commonly coupled with probation that, ideally, through its terms and conditions allow OCDC staff counsel to monitor conduct specific to the professional misconduct underlying the sanction. For example, an attorney who habitually fails to comply with Rule 15’s continuing legal education (CLE) reporting requirements may be put on a stayed suspension with probation, the terms of which require the lawyer to report to OCDC regarding completion of CLE credits. Similarly, if a lawyer is on probation ordered through the criminal justice system, in some circumstances a stayed license suspension, coupled with a disciplinary probation that tracks the criminal one, will be ordered.

The length of a suspension has consequences when the attorney applies for reinstatement of his privilege to practice. If the attorney has been suspended indefinitely with leave to apply for reinstatement in a period of six months or less and is not on probation, and if OCDC does not file a motion advising the Court that a full-blown reinstatement investigation is believed appropriate, then the Court may order a license reinstated on the basis of the application alone. Otherwise, applications for reinstatement are referred

to OCDC for report (investigation) and to make a recommendation (for or against reinstatement). Reinstatement investigations are not unlike the process a bar applicant goes through in establishing his character and fitness to sit for the bar, although reinstatement investigations are tailored to answer the question as to whether the misconduct that caused the license interruption has been rectified. Continuing legal education make-up sessions, as well as a successful retaking of the multi-state professional responsibility examination, may also figure into a suspension reinstatement. For more information on reinstatement, see Rule 5.27.

Disbarment, or loss of the privilege bestowed by the Court in granting a

license, is, of course, the most serious discipline. Typically, disbarred attorneys must wait five years to apply for reinstatement. Retaking and passing the Missouri Bar examination is a prerequisite to reinstatement after disbarment.

The Supreme Court of Missouri and disciplinary authorities routinely refer to and rely on the American Bar Association's *Standards for Imposing Lawyer Sanctions* (1991 ed.) for an analytic framework to use in sanction analysis. See *In re Stormont*, 873 S.W. 2d 227 (Mo banc 1994); *In re Coleman*, 295 S.W. 3d 857 (Mo banc 2009). The *Standards* identify four foundational queries: What ethical duty did the lawyer violate (to a client, the public, the legal system, or

profession)? What was the lawyer's mental state (intentional, knowing, or negligent)? What was the extent of actual or potential injury caused by the misconduct? And what aggravating or mitigating circumstances are present? The *Standards* provide the Court and those participating in the disciplinary system with a common vocabulary and analytical framework for discussing sanctions, while leaving intact the roles of *stare decisis* and the uniqueness of each discipline case in assessing the appropriate discipline.

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