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**Sui Generis:
Oregon's Disciplinary System, Part 1**

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We all get a lot of mail from the Oregon State Bar—CLE flyers, dues notices and the like. There's one kind of envelope from Tigard, however, that no one wants: the one marked "Personal and Confidential." That usually signals that someone has filed a bar complaint and the recipient is being asked to respond. It's also an unwanted introduction to a system that most lawyers don't usually spend much time thinking about.

Oregon's disciplinary system has been described by the Supreme Court (*In re Barber*, 322 Or 194, 206, 904 P2d 620 (1995)), by statute (ORS 9.529) and by Bar Rule (BR 1.3) as "sui generis." For those of us whose Latin is a little rusty, Black's Law Dictionary defines "sui generis" as "of its own kind or class; unique or peculiar." All apply to the disciplinary system. It's not that Oregon's system is unique nationally. Oregon's regulatory system shares many common elements with states throughout the country and the ABA's Model Rules for Lawyer Disciplinary Enforcement. But, it is much different than either the civil or criminal systems with which most lawyers are familiar.

This month and next we'll look at Oregon's disciplinary system. In this column we'll examine what occurs before formal charges are filed and next month we'll turn to what happens after. With both, we'll focus on three questions

I'm often asked by lawyers who fall into the system: (1) what are my odds? (2) what happens? and (3) how long does it take?

What Are My Odds? The “odds” in any given case, of course, turn on the facts of that case. At the same time, the ABA publishes a comprehensive national survey of state disciplinary systems every year that includes information submitted by the OSB. From that, we can make three statistical generalizations about the investigative phase. *First*, you've got a lot of company. Each year the Bar's intake point, the Client Assistance Office, generally receives the equivalent of one complaint for at least every 10 lawyers in Oregon. *Second*, most complaints are dismissed at this stage either for lack of jurisdiction or on the merits. *Third*, based on preliminary investigations, the Bar pursues formal prosecutions against roughly one lawyer in every 100 each year.

What Happens? When the Bar receives a complaint, it is generally reviewed first by the CAO. The CAO, which is staffed by the Bar's General Counsel rather than the Disciplinary Counsel, was set up as a screening mechanism to determine whether complaints raise potential misconduct under the RPCs or instead involve other issues between lawyers and clients such as asserted malpractice, fee disputes or simply miscommunication. Unless a complaint clearly does not involve issues within the Bar's regulatory purview, the accused lawyer is typically asked to provide a written response. If the CAO determines that a complaint does not involve misconduct, it dismisses the matter

subject only to an appeal to the General Counsel. By contrast, if the CAO determines under BR 2.5(b)(2) “that there is sufficient evidence to support a reasonable belief that misconduct may have occurred” it refers the complaint to the Disciplinary Counsel for further investigation.

Once with the Disciplinary Counsel, both the lawyer and the complainant are typically asked to provide further information. The Disciplinary Counsel also frequently contacts witnesses on its own. Occasionally (and usually only in very fact-intensive cases) the Disciplinary Counsel also asks a Local Professional Responsibility Committee to undertake further investigation. When the Disciplinary Counsel has completed its investigation, it can either dismiss the complaint (subject to appeal to the State Professional Responsibility Board) or it can forward the complaint to the SPRB for a decision on whether formal prosecution is warranted. The SPRB plays a role roughly analogous to a grand jury and can (among its principal options): (a) dismiss the complaint; (b) approve formal charges; or (c) offer the lawyer a non-disciplinary private admonition (in lieu of a formal prosecution).

How Long? “It depends.” Each investigation varies on its own facts and a wide variety of other elements ranging from overall case volume at the time to the vigor with which the complainant stays involved in the case. A rough rule of thumb, however, is that the CAO phase of any given investigation is measured in weeks and the Disciplinary Counsel phase is measured in months.

Summing Up. An old saying among defense lawyers is “take the first door out.” It wasn’t coined in the disciplinary system, but is an apt approach. A polite, professional and thorough response to the CAO or the Disciplinary Counsel can often lead to an early and favorable resolution at the investigative stage. For situations where that doesn’t result, next month we’ll survey the formal phase of Oregon’s disciplinary system.

ABOUT THE AUTHOR

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