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**Due Process:
Changes to Oregon's Lawyer Discipline System**

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Many lawyers don't give a lot of thought to the discipline system. At the same time, statistics compiled annually by the Oregon State Bar reflect that on a per capita basis in any given year about one in every ten Oregon licensees is the subject of a regulatory complaint. The baseline for constitutional due process in any lawyer regulatory system under (among others) *In re Ruffalo*, 390 US 544, 550 (1968), is notice and the opportunity to be heard. Unlike the increasingly close alignment among states on the substance of lawyer conduct with the widespread adoption of professional rules patterned on the ABA Model Rules of Professional Conduct, regulatory procedure varies significantly from state to state. ORS 9.529 describes Oregon's lawyer discipline system as "sui generis"—which Black's defines as "unique or peculiar." Oregon's system was developed in simpler times and reflected the practice culture of that largely bygone era. Effective January 1, however, Oregon's system has been updated in significant respects. In this column, we'll first outline the process that led to the recent amendments and then survey the key changes.

The Review

The Bar Rules of Procedure, which govern the mechanics of lawyer discipline in Oregon, were initially adopted in 1984. Although they had been

amended piecemeal over the past 30 years, the “Bar Rules” essentially reflected the practice environment of the early 1980s. At that time, there were about 7,000 members of the Oregon State Bar, the OSB professional staff was small and lawyer discipline was mostly handled by volunteers on an ad hoc basis. There are now over 15,000 OSB members, the Bar’s regulatory staff has grown to reflect that larger size and the number and complexity of disciplinary matters today made it increasingly difficult to rely primarily on volunteers.

In 2014, the Supreme Court invited the American Bar Association to evaluate Oregon’s disciplinary system in light of the changes both in Oregon and nationally that had taken place since the Bar Rules were adopted. The ABA provided the Supreme Court with a report later that year and the Oregon State Bar then appointed a special committee to review the ABA recommendations and to develop specific amendments to the Bar Rules. The review committee completed its work in late 2015 and forwarded a detailed set of proposals to the OSB Board of Governors. The Board of Governors, in turn, studied and sought input from the membership on the proposed changes. That process culminated in a set of specific amendments to the Bar Rules that were forwarded to the Supreme Court early last year. The Supreme Court adopted the amendments in May of last year and they became effective on January 1.

The Changes

It is important at the outset to stress that the basic architecture of Oregon's system has not changed. Initial complaints are still (generally) filed with the Bar's Client Assistance Office. Further investigation and formal proceedings are still handled by the Bar's Disciplinary Counsel. The State Professional Responsibility Board still functions as the "grand jury" for the disciplinary system by authorizing formal proceedings. The Disciplinary Board, in turn, conducts trial-level proceedings. Finally, appeals of trial panel decisions are still to the Supreme Court.

The amendments, nonetheless, are an important evolution in Oregon's system. They increasingly "professionalize" the system with the goal of improving the speed and the predictability of outcomes. The amendments range from semantic to structural.

Semantics. As lawyers, we know that words matter. In an effort to better reflect the three principal stages of the process before Supreme Court review, the recent amendments adopt a new set of terms: an "inquiry" describes the initial review of allegations at the Client Assistance Office; a "grievance" describes allegations investigated in a subsequent review by the Disciplinary Counsel; and a "complaint" is the charging instrument that initiates formal

proceedings approved by the State Professional Responsibility Board. Similarly, in an effort to better reflect the burden of proof, a lawyer who has been formally charged in a complaint is now a “respondent” rather than an “accused.”

Structural. Structural changes are largely in three areas. First, local professional responsibility committees (formerly known as “LPRCs”) have been eliminated in an effort to streamline investigations. This amendment reflects more recent practice of most investigations being conducted by the OSB’s professional staff and retains the ability of the Disciplinary Counsel to appoint outside investigators for particular cases. Second, the authority of the Disciplinary Counsel reflects the professional nature of OSB staff today by, for example, giving the Disciplinary Counsel the authority to offer diversion (rather than the SPRB) and to seek amendments to complaints based on the judgment of the Disciplinary Counsel (without necessarily having to go back to the SPRB). Third, and the most far-reaching structural change, the Disciplinary Board, which conducts disciplinary trials, is now headed by a professional “adjudicator” appointed by the Supreme Court. The adjudicator replaces the state chair of the Disciplinary Board and supervises the administrative aspects of the Disciplinary Board. More fundamentally, the adjudicator is now the presiding member of each three-person trial panel and, with the consent of both sides, can sit in the

functional equivalent of a “judge alone” trial. The adjudicator also has an expanded portfolio of pretrial responsibilities, such as ruling on pretrial motions and conducting pretrial hearings.

ABOUT THE AUTHOR

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