

# The Top 5 Reasons Lawyers Get in Trouble and Suggestions on How to Avoid Problems

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The information and statistics presented are based upon the annual Attorney Discipline System Report provided by the Office of Attorney Ethics released June 1, 2016.

- In 2015 the OAE filed 234 complaints up from the 226 filed in 2014.

## PUBLIC DISCIPLINE

- Disciplinary sanctions are imposed by the Supreme Court. Sanctions include final discipline which is imposed after the completion of an investigation, hearing and review by the Disciplinary Review Board (DRB) and emergent actions, which are imposed to protect the public while the disciplinary case is pending.

## Random Audit Program

- The OAE conducts random audits of private law firms that handle client funds to ensure compliance with the Supreme Court's stringent financial record keeping rule. The purpose of the program is to protect the public from those few attorneys who misuse client funds and to educate and inform attorneys about proper accounting procedures. New Jersey is one of only 9 states with a random audit program.
- The random audit program conducted 463 audits of law firms in 2015. As a result of the program, the Supreme Court imposed disciplinary measures against 4 attorneys in 2015, with one attorney receiving a reprimand and the other three barred by consent.

- The New Jersey Supreme Court established the Random Audit Program in 1981 for the primary purpose of ensuring that the New Jersey law firms maintain proper trust and business accounts in conformance with the Supreme Court's Recordkeeping Rule 1:21-6, and educating law firms on their fiduciary responsibilities under the recordkeeping rule. In light of the successes of the program, the Supreme Court authorized the hiring of two additional random auditors in 2015 which led to a 19% increase once the prior years total number of audits.<sup>a</sup>

- Good News: almost fourteen and a half percent (14.4%) fewer attorneys were disciplined in 2015 (149) than in 2014 (174).
- As of December 31, 2015, the attorney population in NJ was 97,187 - one attorney for every 92 New Jersey Citizens.

- Eleven lawyers were disciplined in 2015 due to the Trust Overdraft Notification Program. This requires all financial institutions report to the OAE whenever an attorney trust account check is presented against insufficient funds. In 2015 11 attorneys were detected and disciplined through this program.

# SANCTIONS

- Types of Disciplinary Sanctions
- There are 2 types of disciplinary sanctions. The first and most common is final discipline. The second type of disciplinary sanction is imposed as a result of emergent action

## Final Discipline

There are 5 forms of final disciplinary sanctions: disbarment, suspension (for a definite or indefinite term), censure, reprimand and admonition.

# How do we get there?

## Grounds for Final Discipline:

- **Knowing Misappropriation** - this was the most common reason why attorneys were disciplined in 2015. More than 16% of the 116 attorneys disciplined in 2015 were guilty of knowingly misappropriating trust funds.
- **Other Money Offenses** - this category includes negligent or reckless misappropriation, serious trust account deficiencies, and failure to safeguard funds and escrow violations.
- **Gross Neglect/Lack of Diligence/Incompetence**- (15 of 116 cases) attorneys who engage in grossly negligent conduct or who lack diligence or act incompetently are a clear danger to the public.
- **Non-Cooperation with Ethics Authorities**- (11 of the 116 cases). Attorneys have an ethical obligation under RPC 8.1(b) and R.1:20-3(g)(3) to cooperate during the investigation, hearing and processing of disciplinary matters. Some lawyers are disciplined for non-cooperation even though the grievance originally filed against them was ultimately dismissed because there was no proof of unethical conduct.
- **Fraud and Misrepresentation**- whether resulting from criminal or disciplinary findings accounted for 10 of 116 cases

- **Criminal convictions** - 7 of 116 cases involved attorneys convicted of crimes. of Justice
- Conflict of Interest
- Lack of communication
- Ineligible practicing law
- Unauthorized Practice of law