

## A GUILTY PLEA CAN WREAK HAVOC ON YOUR ABILITY TO PRACTICE LAW

I'm Sheila J. Naifeh, and I have been a solo practitioner in Tulsa for 26 years. I regularly teach Continuing Legal Education classes on the subject of ethics. My practice consists of representing lawyers who have disciplinary issues by helping them navigate through formal and informal grievances, disciplinary hearings, suspensions, reinstatements, and the effect mental health issues could have on their license to practice. Lately there has been an increase in interim suspensions of lawyers related to their conduct in **and out** of the courtroom.

Rule 7.1 of the RGDP, 5 O. S. Ch. 1, App. 1-A, states that "A lawyer who has been convicted or who tenders a plea of guilty or nolo contendere pursuant to a deferred sentence plea agreement in any jurisdiction of a crime which demonstrates such lawyer's unfitness to practice law ... **shall be subject to discipline.**"

The primary purpose of these interim suspensions is to protect the public. The Court gives the Oklahoma Bar Association through the Office of the General Counsel the authority to investigate these matters.

Since late 2015, the Supreme Court has directed all county clerks in Oklahoma to send a copy of the judgment and sentences of all lawyer's pleas to the Supreme Court within five days of receipt. This is considered the start of a Rule 7 case. The Oklahoma Bar Association through the General Counsel no longer has discretion in whether the criminal case is brought before the Supreme Court. As a result, every case in which there is a plea or conviction will get a Supreme Court Bar Docket (SCBD) case number and will now become a matter of public record. This not only means all felony cases, as has been the standard in the past, but **all misdemeanor cases** as well.

Only after the bar docket case is publicly filed does the Supreme Court, through Order the Chief Justice, make a cursory interlocutory decision as to the lawyer's fitness to practice law. The Court has three options: to dismiss the case, to ask the lawyer to show cause why an interim suspension should not be entered, or to immediately suspend the lawyer. The Supreme Court makes no distinction between a guilty or no contest plea, and even a deferred sentence is treated as a conviction for purposes of handing down an interim suspension.

An interim suspension can have a huge impact on the way a lawyer's professional life unfolds. The suspended lawyer has to notify all current clients of the suspension, withdraw from all pending cases, and shut down their practice for an indeterminate period of time. Most of these cases can take from six months to a year for a final resolution.

An interim suspension is not a discipline, but through briefing and a three-judge tribunal hearing, the Court will make a final decision based on the evidence presented by the lawyer and General Counsel as to the lawyer's fitness to practice law. The end result is a final discipline such as a reprimand, public censure, a term of suspension and a diversion program specific to that lawyer's transgression, or disbarment.

The lawyer has an opportunity to brief why the interim suspension should be set aside. If they do not lift the suspension, the lawyer can then file a brief in mitigation of discipline. The lawyer has a right to testify at the three-judge tribunal and call witnesses on his behalf. The General Counsel can call witnesses who have been harmed by the conduct. The Professional Tribunal will then make a written recommendation to the Court for their consideration. It is a high burden for the lawyer, but the mitigating evidence through briefing and the tribunal hearing go a long way to helping the Court determine the outcome.

The Court does look at a lawyer's pattern of arrests and convictions to determine whether he will harm the public if he continues to practice because he may pose a substantial threat of harm to his clients. In my experience, it is common for a lawyer to receive a deferred or reduced sentence for a first time misdemeanor DUI, (for example,) and those cases tend to be dismissed by the Court without disruption of his practice. If, however, there is a serious bodily injury, the consequence may be more severe.

Not all interim suspensions are a result of a conviction or guilty plea. A Rule 6 Supreme Court Bar Docket case can be filed if the lawyer engaged in bad conduct, such as misappropriating funds, engaging in inappropriate relations with a client, or other conduct that is prejudicial to the administration of justice. The same procedure is followed in these cases.

These immediate interim suspensions are brought on very short notice and the briefing schedule is very quick. This creates substantial negative consequences for the lawyer, his clients, third parties, and to the entire legal system while giving that lawyer little time to put together a defense.

**You have no duty to self report.** If you try, the General Counsel will also tell you there is no duty to self report. Upon conceiving a plan to correct the situation that gave rise to the arrest or bad behavior, and in anticipation of a plea, self-reporting can be a positive thing as it is viewed as a mitigating factor.

On a side note, many of my friends laugh at the idea I am well-versed in ethics. The reason is simple. As a new lawyer, I was obsessed with reading all the disciplinary cases. I just wanted to make sure that I knew what I could get away with. √