

THE LOUISIANA STATE BAR ASSOCIATION

- **The Disciplinary Process**
- **Rules of Professional Conduct**
- **Cases**

Presented by MAPS, Inc, and Phil St. Pe' April 2010

LOUISIANA STATE BAR ASSOCIATION

DISCIPLINARY BOARD

14 Members – appointed by Supreme Court

(4 members of public)

- 2 Committees
 - a) 9 Adjudicative members
 - b) 5 Administrative members

ADJUDICATIVE COMMITTEE

- 3 committees of 3
- One public member for each committee
- Acts as Appellate Court for hearing committees
- Reviews findings of fact of hearing committees and makes recommendations to the Supreme Court.

ADMINISTRATIVE COMMITTEE

- Approves Hearing Committee- which hears evidence in each case (currently more than 85 hearing committees.
- Manages the system
- Manages financial matters

- Studies lawyer trends
- Recommends rule changes

HEARING COMMITTEES

A) Tier I Committees:
3 members (2 lawyers, 1 public)

Duties:

- Conduct hearings on charges of misconduct, transfer to disability status.
- Then, makes finding of facts, conclusions of law, and recommendations of proposed discipline to the ADJUDICATIVE COMMITTEE.
- Burden of proof- clear and convincing (*Quaid* 646 So.2d 348)

B) Tier II:

- Reviews dismissal of complaint by Disciplinary Committee.

OFFICE OF DISCIPLINARY COUNSEL

(Sherwood Forest Blvd- Baton Rouge)

- Prosecutorial functions
- Investigates all complaints and petitions for readmission.
 - 15 Lawyers

- 8 Investigators
- 20 Board and Administrative Staff

After investigation it may:

- File formal charges
- Recommend prosecution
- Dismiss

ADMINISTRATIVE STAFF

(2800 Veterans Blvd., Metairie)

- Board Administrator
- Deputy Administrator
- Docket Clerk
- Staff attorneys
- Support Personnel

RULES OF PROFESSIONAL CONDUCT

Rule 1.5(f) – Fees

Payment of fees in advance of services shall be subject to the following rules:

- 1) When the client pays the lawyer a fee to retain the lawyer's general availability to the client and the fee is not related to a particular representation, the funds become the property of the lawyer when paid and may be placed in the lawyer's operating account.
- 2) When the client pays the lawyer all or part of a fixed fee or of a minimum fee for particular representation with services to be rendered in the future, the funds become the property of the lawyer when paid, subject to the provisions of Rule 1.5 (f)(5).

Such funds need not be placed in the lawyer's trust account, but may be placed in the lawyer's operating account.

- 3) When the client pays the lawyer an advance *deposit* against fees which are to accrue in the future on an hourly or other agreed basis, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may transfer these funds as fees are earned from the trust account to the operating account, without further authorization from the client for each transfer, but must render a periodic accounting for these funds as is reasonable under the circumstances.
- 4) When the client pays the lawyer an advance *deposit* to be used for costs and expenses, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may expend these funds as costs and expenses accrue, without further authorization from the client for each expenditure, but must render a periodic accounting for these funds as is reasonable under the circumstances.

(M. Bonnette 937 So.2d 835)

(F. Ramsey 951 So.2d 1077)

(Tucker 88 B 0704)

(B. Guidry 99 DB 098)

USE OF TRIAL TRANSCRIPT

- Burden of Proof
- Use of Paralegal
- Conflict of Interest

(Cudzik 738 So.2d 1054)

MULTIPLE VIOLATIONS

Failure to account, failure to return fees, failure to deposit in trust account, commingling and confusion, failure to

protect interest of client trust, failure to cooperate with ODC.
(*Akilan Maw v Ali*- 829 So.2d 1015)

Rule 18(g) (EN GLOBO SETTLEMENTS)

A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in writing signed by the client, or a court approves a settlement in a certified class action. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and the participation of each person in the settlement.

(*Aulston* 829 So.2d 1012)
(*Faucheaux* 2002-0054)

SUPREME COURT HAS ORIGINAL JURISDICTION IN DISCIPLINARY MATTERS

- (La. Const. Art. 5, § 5)
- Not trial or appellate courts
- Motion to strike
- Re hearings

Rule 2.4 - DUTY TO INFORM UNREPRESENTED PARTIES

A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not

representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

Rule 8.3(a) REPORTING A VIOLATION

A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the Office of Disciplinary Counsel.

(M. Richman 891 So.2d 12392)
(Public Opinion 06 RPCC 010)