

FARB IN THE NEWS



Proposed plan would keep lawyer misconduct secret



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The Iowa Supreme Court has been asked to decide whether to offer lawyers facing discipline a powerful carrot - confidentiality - in exchange for expediting the process of suspending law licenses.

Under the proposed rule change, lawyers suspended for stealing from clients, drug and alcohol problems, and neglecting important cases could hide what they did and resume practice without clients ever knowing what ethical violations they committed.

The move comes after a **Des Moines Register investigation in March** found that severe sanctions by the largely self-policing system were rare and that some of those decisions take years to resolve and become public.

The head of the judicial branch's office of professional regulation, Paul Wieck II, said he has asked the high court to make several changes on how attorneys are

disciplined.

One would allow lawyers the option of consenting to a license suspension when facts of a case are undisputed, reducing the often lengthy time it takes to prosecute allegations of wrongdoing. Forgoing formal proceedings would allow attorneys to keep allegations against them private and would act as incentive to resolve cases, he said.

Past coverage: Investigating the state's lawyer discipline practices

Wieck also wants to give the assistant director of the state Attorney Disciplinary Board the authority to dismiss cases that are frivolous, redundant, stale or lacking in detail, or those that do not "otherwise reasonably warrant investigation," without oversight from others.

But a top official who oversees the discipline of physicians in Iowa said allowing more misconduct among lawyers to be kept secret would not serve the public's interest. Iowans who have filed

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complaints against lawyers complain there is already too much secrecy and self-policing in the system.

"I don't know what they're trying to achieve by that. Limit the notoriety of cases, I suppose," said Mark Bowden, executive director of the Iowa Board of Medicine. "I would think they would have to make that information public."

Clients: Discipline should be more transparent

Existing rules for both doctors and lawyers in Iowa allow for some minor infractions to be handled with private reprimands. But all license actions against physicians are made public - except in limited cases when a doctor has a disability and voluntarily consents to enter a highly regulated treatment program.

Court rules allow lawyers at risk of being disbarred for the worst infractions to surrender their licenses in lieu of formal prosecution, a process that has typically allowed them to keep allegations confidential.

But far more attorneys are suspended every year in Iowa than the few who consent to disbarment.

While attorneys have staunchly defended the existing disciplinary system as fair, numerous readers complained after the Register's March report that it is lopsided.

Elizabeth Andersen, a nurse who has filed complaints in the past against an

Urbandale lawyer for alleged unethical practices, said allowing suspensions to be kept secret would make problems worse.

"Keeping transgressions secret is only going to embolden them," Andersen said. "That's just one more way for them to hide their mistakes."

Andersen and her husband, a physician, filed two complaints against an Urbandale lawyer they faced in court, alleging he broke numerous ethical rules and deceived a judge. She said that the attorney disciplinary board decided to do nothing, and that she and her husband were never allowed to see how the lawyer responded to their complaints.

Lawyers' responses to disciplinary allegations are kept confidential under court rules.

"I absolutely believe you should be able see the lawyer's response (to a complaint) and challenge any lies told to protect unethical behavior," Andersen said.

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Robert Peters, 35, of Colfax succeeded in having his former lawyer, Anthony Johnson, disciplined last year. The Supreme Court suspended the Ankeny attorney for three years after it found he had neglected several clients "wholesale."

Johnson charged Peters nearly one-third of his annual salary - \$10,900 - in a divorce case. Peters wound up losing partial custody of his children and was ordered to pay his ex-wife half his income because Johnson failed to do due diligence, the court said.

Peters said an attorney's disciplinary history should be more public, not less.

"The courts keep your criminal records forever, they should do the same for attorneys who get in trouble," he said.

"My attorney had been disciplined in another state before I hired him, and I had no way of knowing that," he said. "It's hard to pick a good lawyer. It's pretty much buyer beware."

Disciplinary system gets another lawyer to prosecute cases

Iowa's Supreme Court is expected to weigh in on the proposed rule changes at its next administrative conference on Aug. 24. After that, the changes will be posted on the court's website for a period of 30 to 90 days, so the public can comment. A decision on the changes will come after that.

"The court has decided to move forward with the package of rule changes. Reaction so far has been favorable," said Rebecca Colton, spokeswoman for the court.

The measures come as public reprimands, suspensions and license revocations have increased almost 50 percent since the 1980s, a rise that mirrors growth in the number of lawyers practicing in Iowa. Many are being disciplined for negligence of cases or incompetence stemming from addiction or mental health problems.

Wieck has received permission from the Supreme Court to hire one more lawyer this year on a temporary basis to help prosecute cases before the grievance commission.

Under current rules, the disciplinary board's staff conducts a confidential screening and investigation of complaints, then makes a presentation and recommendation to the board. The Supreme Court must approve any public admonishment or serious sanction.

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If the board recommends formal prosecution, the case is heard through a separate panel, the five-person grievance commission. The commission can dismiss the case or issue a private admonition, public reprimand, suspension or revocation.

Last year, 26 lawyers were suspended. Fewer than 30 across the state have been formally disbarred in the last decade, the Register found.

But all allegations are kept confidential until cases are resolved, meaning complainants and clients may not know for years about a lawyer accused of wrongdoing.

The board has not, for example, made public any details regarding the law license of Bryan Tingle, 45, a former Warren County attorney who was arrested for smoking meth this spring.

Tingle, of Carlisle, was spotted by a narcotics officer driving down U.S. Highway 65 with a glass pipe in his hand. He took a plea agreement last month and was convicted of possession of drug paraphernalia, a simple misdemeanor. A more serious charge of possession of a Schedule II controlled substance was dropped.

Wieck said there was nothing "of a public nature" he could report regarding the case. Tingle's attorney, Christopher Kragnes, did not return phone calls last week seeking comment.

In some cases, the court has taken years to

make decisions public, as attorneys have wrangled in proceedings before the grievance commission and high court.

In April, for example, the Supreme Court suspended for 30 days the license of a Des Moines attorney whose discipline case took five years to resolve.

Richard Schmidt was convicted for repeatedly choking his ex-wife, Jill Schmidt, to the point of unconsciousness in front of their three young sons in 2006.

The grievance commission recommended a six-month suspension. The high court suspended Schmidt's license for 30 days. He has had his license reinstated.

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