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Alan Pratzel – Missouri's New Chief Disciplinary Counsel

Interviewed by Michael Downey

Introduction. Alan Pratzel became Chief Disciplinary Counsel of Missouri on April 2, 2007. In this column, BAMSL Professionalism & Ethics Committee member Michael Downey interviews Pratzel to learn Pratzel's background, his experience with the Missouri disciplinary system, and what he expects in the future for the Office of Chief Disciplinary Counsel and the regulation of lawyers in Missouri.

Pratzel's Background. Pratzel was born and raised in University City, graduated from University City High School, and earned his undergraduate degree in history and his law degree from Washington University.

After graduating from law school in 1975, Pratzel entered private practice with the St. Louis firm Lashly & Baer. In 2000, Pratzel moved to the Clayton firm Crotzer & Ford, then in 2002 opened his own solo practice, which he is closing as he assumes the position of Chief Disciplinary Counsel.

As detailed below, Pratzel has spent more than 20 years working in a Missouri's lawyer disciplinary system, including as a prosecutor for disciplinary cases in St. Louis City and as an administrator managing cases in both St. Louis City and County.

Pratzel and his wife have three grown children.

Interview.

MPD: How did you become involved in the Missouri disciplinary system?

AP: In the mid-1980s, as I recall 1985, Lashly & Baer was asked to "volunteer somebody" to assist with the disciplinary process, and the chairman of the firm, John Fox Arnold, asked me to become involved. I readily accepted and in 1985 became what was then called the Division Special Representative for one of the divisions of the St. Louis City Disciplinary Committee, which was then known as the Twenty-Second Judicial Circuit Bar Committee. This was a prosecutorial position that handled a portion of the docket of City disciplinary cases.

About a year later, the Administrative Special Representative Committee in St. Louis City resigned and I was asked by Harold Barrick, who was at that time the Chief Disciplinary Counsel for the state, to assume that administrative position. I agreed and gave up the prosecutorial position for a period of time.

I continued as the Administrative Special Representative for the Committee until 1997, when one of the division special representatives resigned. I was asked to take over that position by then Chief Disciplinary Counsel John Howe. I had come to really enjoy the work, thought it was something that was necessary to the profession, and that it served a very important role in terms of lawyers being a self-regulating profession.

Lashly & Baer was always very cooperative in allowing me to increase my role in that process. In 1997 I became both the administrative head of the St. Louis City Committee in addition to holding the prosecutorial position for one the divisions.

I maintained this dual role until two years ago, when my counterpart in St. Louis County retired and I was asked to take on the additional responsibility of the Administrative Special Representative for the Region X Disciplinary Committee. For the last two years basically I've worn three hats for the process here in the City and County of St. Louis. I've been the Administrative Special Representative for the

City Committee, Region XI, and the County Committee, Region X, and I've continued throughout this period to handle one of the divisions in the City as a Division Special Rep in a prosecutorial role.

MPD: What do you actually do in your dual role as administrator and prosecutor?

AP: The complaints all go through the Jefferson City office, the Office of the Chief Disciplinary Counsel ("OCDC").

Intake counsel handle complaints that come into that office, determine whether a complaint should be opened and docketed. If that's the case, the OCDC either handles the complaint themselves from Jefferson City or sends it to one of the Regional Committees.

In most cases when the matter involves an attorney who either offices or resides in St. Louis City or County, intake counsel will refer the opened file to my office.

Acting in my administrative role, I receive the file. A letter is sent to the complainant acknowledging receipt of the file and asking them to supplement any materials they have already submitted.

A letter is also sent contemporaneously to the attorney enclosing a copy of the complaint. The attorney has three weeks to file a response with the committee responding to the charges contained in the complaint. At this stage it is a very informal process, and under Rule 5 these investigations are of a summary nature. The investigation is generally conducted in writing so that we have a record of what's been alleged and what the responses to those allegations are.

A copy of the attorney's response is sent to the complaining party whether that person is a client, a judge, or someone else. The complainant has an opportunity to reply to the attorney's response.

At that point, the materials are packaged – the complaint, the response and a reply if one has been received – along with the attorney's disciplinary history if there is one, and that package of documents is sent to the Committee for it to consider and vote disposition of the complaint. Each division of the Committee – there are two in St. Louis City, four in the County – carry their own docket of cases that have been assigned to them.

Part of my administrative role is to make sure that the dockets of each individual division are kept relatively equal, and that if multiple complaints are filed against a single attorney then all those complaints are sent to the same division so that different divisions do not handle complaints against the same attorney.

The administrative job also involves sending out closure letters or further communications to the parties regarding the disposition of a complaint, whether it was dismissal or discipline was issued.

As a division special representative, I also receive complaints sent to my division. Wearing the special representative hat, I basically present the facts of the complaint to my division.

Each division of the committee generally meets once a month to consider cases. The members of the Committee are volunteer attorneys and lay persons. They spend a lot of time reviewing materials and also considering and voting on the disposition of complaints. In some cases they'll go out and do research if necessary or review documents. We are very fortunate to have very dedicated committee members who are very involved in the process.

We're always on the lookout for those types of people, and we look for volunteers for that process. The committee members serve 2 four-year terms, and as those terms expire we need to fill those positions.

MPD: The City or County Committee decides what the disposition should be at this stage?

AP: Yes. More than half of the complaints, probably close to two-thirds, are dismissed on a finding of no probable cause. The complaint may simply be about bad results – nothing that violates the Rules of Professional Conduct.

As you can imagine, we receive a lot of complaints from clients who simply got a bad result. They don't know what happened, but they blame their attorney. They know about the process and they file a complaint. To the extent those complaints are opened, more than half of

them are ultimately closed on a finding of no probable cause.

Of the remaining complaints, a certain percentage involve violations of a nature that don't require the filing of an Information [i.e., a formal charge]. They may only require a letter of admonition under Supreme Court Rule 5. It's an admonition to the attorney stating the nature of the violation and warning the attorney against that type of conduct in the future. If the attorney accepts the admonition, the letter becomes part of that attorney's disciplinary file in the office of the OCDC. A fair percentage of the complaints are handled in this fashion.

A certain percentage of the complaints involve violations where the committee believes that the violation is serious enough to warrant suspension or disbarment and require formal proceedings. This involves the filing of an Information, service of those charges on the attorney, and a full evidentiary hearing before a panel of two lawyers and one non-lawyer, called a Disciplinary Hearing Panel. That Disciplinary Hearing Panel takes the evidence and makes findings, conclusions and recommendations to the Supreme Court.[1]

The record of the Disciplinary Hearing Panel proceedings and its recommendation are filed with the Court. If the parties agree to the discipline, then the parties may enter into a joint disposition. If they don't agree to a disposition, then the case is briefed and argued to the Court. The ultimate decider or arbiter of that case is the Supreme Court. The entire disciplinary process works under their authority.

MPD: Is the Supreme Court involved in issuing admonitions or case closures?

AP: No, generally not. To the extent a case is closed on a finding of no probable cause, the complaining party has a right of appeal to the Missouri Supreme Court Advisory Committee, which is another body that oversees the disciplinary process and works closely within the process.

The Supreme Court Advisory Committee in this context sits as a kind of appellate body that reviews the record that the disciplinary committee has assembled and either says, "Yes, that decision is correct," or finds that the decision was incorrect or that some matter was not adequately investigated. In the latter instance, the Advisory Committee assigns the file to another committee or to the OCDC for reinvestigation. There is no appeal beyond the Advisory Committee.

With regard to admonitions, if the attorney accepts the admonition, that is the end of the case. The complainant is notified of the discipline, the admonition goes into the attorney's permanent file, and that is the end of the case. The Court generally will not become involved unless the attorney at a later date ends up before the Court on an Information.

The attorney has a right within 15 days after service of an admonition to reject the admonition. If the attorney rejects the admonition, Rule 5 mandates that the committee shall file an Information with the Court. So it is possible in an admonition case that the Court could become involved if the attorney rejects the discipline.

MPD: Is this Missouri Supreme Court Advisory Committee the same committee that oversees the preparation of ethics advisory opinions?

AP: Yes, Sara Rittman is the legal ethics counsel for the State of Missouri. She is also the chief administrative officer for the Missouri Supreme Court Advisory Committee. To the extent that an attorney in the State of Missouri has an informal question that they would like help with, Sara is available and does a great job of responding to requests from attorneys who are dealing in their day-to-day practice with an ethical issue.

In addition, the Advisory Committee and Sara have responsibility for the issuance of formal ethics opinions which are researched, reviewed

[1] *MPD Note: Due to a rule change effective July 1, 2012, a lawyer's name is placed on a list of pending disciplinary cases after the lawyer answers an Information. That list is available at http://bit.ly/153LBDc. A third party may then obtain the Information and answer from the Advisory Committee. In addition, the disciplinary hearing itself is now open to the public (or media).*

by the Advisory Committee, and issued by the Advisory Committee.

MPD: What caused you to seek the position of Chief Disciplinary Counsel?

AP: For me, it was just a natural progression to my involvement with the system. I've become increasingly involved in the system since 1985. When this opportunity became available, I thought it was something I would like to do on a full-time basis. It's such an important part of the profession that I thought it was an important role for me to try to fill. I also think there are issues that need to be addressed that I felt comfortable addressing.

MPD: What are some of the issues you'd like to address and some of your priorities as Chief Disciplinary Counsel?

AP: One of the things I'd like to do is become more proactive in terms of the system. Rule 5 is a pretty reactive rule. It's responding to charges of unethical conduct and investigating those charges. I'd like to be able to do more – to be more proactive in terms of education of the public and the profession about the Rules and how to avoid problems. With the public, I would like the Office to explain that a bad result is not always the result of unethical conduct. That is the proactive part that I would like to address.

I would also like to address the relationship with the Missouri Bar. I think it's fair to say that there have been ups and downs in terms of that relationship over the last six or seven years. Sam Phillips, the interim Chief Disciplinary Counsel, has done a great job in building bridges with the Bar, and I look to continue what Sam and some of the other Staff Counsel at OCDC have done to build bridges. In addition, I would like to call for some help from the Bar particularly in areas where we need more volunteers as hearing officers or committee members. There are places where there can be much more of a cooperative relationship than there has been between the disciplinary process and the Bar.

I would also like to address technology in the system, which goes hand-in-hand with the timeliness of handling complaints. We need to address how long it takes from the time a complaint is filed until disposition of that complaint.

One of the ways to do that is to increase the use of technology. It's something that will save time but will also hopefully help pay for itself because there are some expenses and costs that we currently incur that can be saved and transferred to increased use of technology.

MPD: How long does it typically take for a disciplinary matter to go from complaint to disposition?

AP: The current model at the OCDC provides that 75% of all complaints should be disposed of within six months and 90% of all complaints disposed of within twelve months. I think that's a fair and effective model.

You're always going to have some cases that are going to take a little longer because of the complexities, and you'll have many cases that should take a lot less time because they're fairly straightforward. But I think that's a good model. We are coming very close to reaching that goal through the efforts of Sam and others who are currently at the OCDC. I look to continue those efforts, and once we have met that goal to stay within those parameters.

MPD: What types of problems most frequently result in disciplinary complaints?

AP: These are largely practice management issues. You have attorneys who generally don't communicate with their clients to the extent that they should or to the extent that the client believes that they should. The rule on communication requires reasonable levels of communication. If you have a client calling you four or five times a day, that doesn't necessarily mean that you have to respond four or five times a day. However, we have attorneys who don't call clients when something significant happens in their case or simply don't call clients for months on end in response to phone calls. Communication and practice management issues are a significant part of what we deal with in the disciplinary process.

Neglect cases are also a significant part of the complaints that we receive. You have attorneys who in some cases accept a fee or retainer from

a client and just don't get the work done in a timely fashion.

The other significant source of complaints has to do with competence issues. These involve attorneys who accept cases in areas where they shouldn't be practicing. If you're a personal injury attorney, you should probably not accept a case on an immigration matter. It's something that has become very technical. The vast majority of complaints fall in these three areas – competence, diligence and communication.

MPD: What are some of the most interesting ethical or disciplinary matters that you have addressed?

AP: The most interesting cases to me and really the most rewarding ones involve clients who have been damaged economically or otherwise as a result of something the lawyer has done. Even when they are not the most interesting they are certainly the most rewarding for me, because you have situations that are not run-of-the-mill where attorneys have done something that has really caused long-term, serious damage to a client. That's where I feel our work is really protecting the public and protecting the integrity of the Bar. That really is what we do.

If you read any Supreme Court decision where they opine on what the lawyer disciplinary process is all about, what you will find is that the process does not exist to punish the attorney. It is there to protect the public and the integrity of the Bar. The cases that I have found most rewarding have been those where we have an attorney that has done something that caused severe damage to a client and where the protection of the public calls for perhaps significant discipline to protect the public and to protect the Bar's integrity.

MPD: What resources on ethics and discipline do you consult when you have questions and want to see what the law is?

AP: For me, the first line is always the Rules of Professional Conduct. Just about every time I read the rules, even though I've been doing this for over 20 years, I find something that is new to me. I encourage members of the Bar to take a look at the Rules on a regular basis. Just read the Rules, read parts of the Rules, read the comments to the Rules.

The comments have some very good information and narrative regarding how a Rule is to be applied in specific situations. The comments add meat to the bones of the Rules and are very helpful to the practitioner.

Obviously, the Supreme Court's decisions applying those Rules are always very helpful. This is a system that is applied by judges who have great knowledge and experience. When the Court issues an opinion, that opinion should be reviewed by members of the Bar to assist them in their practice. To the extent that you have issues that are not addressed either by the Rules or by the Court's decisions, I generally go to other jurisdictions and frankly just start geographically – Illinois is always a good place to start.

MPD: What other advice can you give to law firms about avoiding disciplinary complaints?

AP: In the context of a law firm, a mentoring system for young lawyers is a good idea. In most cases, whether it's formal or ad hoc it exists in most law firms. Young attorneys are mentored and taught how to do things by attorneys who have been in practice for many years. I think it's a great system for avoiding problems with the Rules of Professional Conduct.

On a much more pragmatic level, the thing that any attorney – whether they're young or have been out for many, many years – needs to do is simply deal with the clients the way that they'd want to be dealt with if they were the client. Communicate with them if you've been hired to do something. Do that work according to the Rules, in other words in a diligent, zealous fashion. Don't avoid contact with that client because you might have bad news for them, because it simply becomes a larger issue when something bad has happened and you haven't communicated that to the client. To me, communication, diligence and competence are the main issues.

Now in the context of a small firm or a sole practice, you might not have access to a mentoring relationship. I would encourage such lawyers to seek out a mentoring relationship

with someone who has practiced for many years who would be able to mentor that person. I believe the Bar Association has a mentoring program that they offer. It's a great program. In the end those types of things will make my job easier.

MPD: What advice do you have (other than knowing the Rules) to help lawyers be effective in an ethics role in their own firm?

AP: In the context of the firm aside from mentoring there is an aspect of supervision – there is a responsibility in terms of supervision of young lawyers. You can't just send someone out and have them go about their legal work without having responsibility to supervise their work.

The other thing in a law firm context that I think is important is that law firms are for various reasons increasing the use of paralegals and administrative assistants to perform tasks. Certainly in the case of paralegals you have to make sure that you're not crossing the line in terms of supervision and allowing those paralegals to engage in activities that could be termed or characterized as the practice of law.

We also should be aware of unauthorized practice of law issues because we do get complaints by clients who never have even seen their lawyer. All they have dealt with are nonprofessional staff. Something goes wrong with that case, and they file a complaint. There are responsibilities in terms of counseling that client in the attorney-client relationship that cannot be passed on to nonprofessional staff.

MPD: You have been involved in the disciplinary process of Missouri for about 20 years now. What changes have you seen in that process? Is there any sort of trend that you've noticed?

AP: The trend has been both good and bad. Technology has obviously had an effect on the practice. The good side of technology is that it has allowed an attorney to become much more efficient and effective and avoid issues through technology because they don't have to reinvent the wheel every time they represent a client.

The downside of technology has been that some tasks have become "cookie-cutter" tasks. The attorney has to be careful to provide appropriate counsel to clients regarding their legal options. Technology has allowed that to occur to an extent. It's something that needs to be carefully examined.

The other change I've seen is the movement towards more specialization in the practice of law, which, again, is something of a two-edged sword. It's good because it allows an attorney to focus on an area and become knowledgeable and competent in that area, but the downside is that there may be an inclination to accept cases outside the area of specialization. That's something that needs to be carefully monitored by the attorney for purposes of risk management and for purposes of the Rules of Professional Conduct – the competence rule.

MPD: Is there anything else on the horizon that you think lawyers should be prepared for on ethics or disciplinary matters?

AP: There are two hot topics. We've recently had some Rule changes in terms of advertising. I've spoken at seminars regarding the new advertising Rules, trying to educate both the public and the Bar. Every lawyer who advertises or even issues firm pamphlets needs to be aware of the Rule changes regarding advertising. It's an area that is going to be a continuing area of development in terms of the Rules as well as the complaint process. The changes try to balance the interests of the lawyer to get information about their services to the public against the interest of the public not to be overwhelmed with lawyer advertising. I think the recent Rules are a step in that direction.

The other hot topic is multi-jurisdictional practice. This is an area where we have begun to see some activity. I think that it is going to be an increasingly active area in terms of national firms engaging in the practice of law in Missouri – what are the limits on those types of practices – as well as firms that practice in areas that have traditionally not been thought of by some people as the practice of law. Those are areas that are going to continue to develop in the near and distant future.

MPD: Any closing comments?

AP: Only that I'm honored to have been appointed by the Supreme Court to the Chief Disciplinary Counsel position. I look forward to working in concert with the Court and in cooperation with the Supreme Court Advisory Committee as well as the organized Bar in the State of Missouri, and I look forward to finding points of common interest where we can cooperate on some initiatives for the future. I'm very excited about that and look forward to taking on challenges of the position.

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