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LEGAL ETHICS

Alphabet Soup: The Acronyms of Ethics

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In many states, the training, licensing and disciplining of attorneys is the province of attorneys general (AGs), and not of attorneys, in general, as we have in New Jersey. Legislators and administrators create and control the universes within which their lawyers and judges exist. In New Jersey, we appreciate that the legislature has entrusted bar-related functions to our Supreme Court, giving it a broad and deep mandate to control the administration of law and justice.

Toward the end of the last century, when new disciplinary system and new rules (RPCs) were being put into action, new administrative apparatuses were required, each to be known by its initials (ABV), in proper modern convention. In an effort to demystify the acronyms of the ethics system, we offer here the most commonly used, along with some information about the entities that bear those letters.

OAE

The Office of Attorney Ethics is an awesome creature of the Supreme Court, endowed with plenary power and discretion in licensing attorneys and in investigating and prosecuting ethics violations.

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The OAE's director (VIP), assistant, ethics counsel (EC), deputy ethics counsel (DEC) and staff are all appointed by the Supreme Court, and may not be otherwise engaged in the practice, nor may they render any advice.

The VIP administers the OAE, the District Ethics Committees (DEC), the Fee Arbitration Committees (FAC), the Committee on Character (COC), the Random Audit Program (RAP), the Annual Attorney Registration Statement (EZ) and the Trust Overdraft Notification Program (OMG).

Although most ethics violations are handled by the DEC, exceptions exist where the VIP retains control. Cases with serious and complex issues requiring immediate action, all cases in which an attorney is charged with a crime (SOL), cases in which the DEC requests intervention, and cases involving multijurisdictional practice or in-house counsel are handled by the VIP, who will also intervene in any case in which a DEC has not resolved the matter within one year of filing the grievance.

DEC

Reference to "the Ethics Committee" refers to one or more District Ethics Committees (also DEC!), although some attorneys casually refer to the OAE as "the Ethics Committee." Until 1978, in New Jersey, attorney discipline was administered by county ethics committees, which investigated complaints of unethical conduct and, if necessary, held hearings. They reported their findings to the Supreme Court, which took appropriate action. The system was slow and, because matters were handled differently by each committee, the results were

inconsistent. The system was revamped.

Today, the DEC's occupy geographical districts not necessarily congruent with county or vicinage borders. The Supremes appoint no fewer than eight committee members for four-year terms. At least four must be lawyers; at least two, nonlawyers.

Each DEC has a chair and vice chair (VC). The VIP, after consulting with the chair, shall appoint a secretary. The secretary, an attorney, has a critically important job. The secretary receives inquiries and grievances about attorneys within the district. Not empowered to investigate cases, the secretary screens each matter, and has 45 days thereafter in which to docket (DKT), decline or dismiss it.

A matter may be declined for a number of reasons (ABC). One reason is that the attorney is not subject to the jurisdiction of the Supreme Court. Another is that the matter involves an inquiry or grievance about advertising, requiring that it be sent to the Committee on Advertising (COA). Also, if a significant fee dispute is involved in the matter, it will usually be declined until the fee issue is addressed by fee arbitration (ARB).

If the grievance fails to allege facts that would justify further inquiry, the secretary will dismiss the matter. If, however, the grievance alleges facts which, if true, would constitute unethical conduct or incapacity, the matter will be docketed and assigned by a DEC to a member who serves as an investigator, and may later serve as presenter, on behalf of the OAE. The subject attorney is sent a letter advising that s/he has 10 days in which to reply and offer defenses (CYA) and documents. The investigator will usu-

ally interview the respondent as part of the investigation. The conclusions of the investigator must be submitted in writing to the secretary and chair of the DEC.

If, upon review of the investigator's report, the chair determines that there is a reasonable prospect of finding clear and convincing evidence of violation of an RPC, then the chair must determine whether the unethical conduct was of a minor nature. If minor, the chair may request that the director divert the matter and approve an agreement in lieu of discipline (AID). This is the ethics equivalent of PTI or a conditional discharge (CD).

If there is alleged unethical conduct that is not minor, a formal complaint is filed, and the matter is set for a hearing (HRG). The hearing is like a trial. The hearing panel will consist of three persons, of whom two are attorneys and one is a public member. The rules of evidence are relaxed, but respondent (RES) never is. The panel chair runs the hearing.

BTW

The OAE and the grievant are held to different standards of confidentiality. The director may not comment on any matter prior to the filing of a formal complaint, unless the respondent has waived or breached confidentiality, or there is a pending criminal charge, guilty plea or conviction, or the matter has become public knowledge. The grievant, however, protected by the First Amendment, may make public statements regarding the disciplinary process, the filing and content of the grievance, and the results, if any, of the grievance. If the grievant makes a public statement, the respondent may reply publicly

to any matter revealed by the grievant.

DRB

The Disciplinary Review Board (DRB) consists of nine members appointed for three-year terms by the Supreme Court. At least five members must be attorneys, and at least three must be nonlawyers. Both the chair and the vice-chair of the DRB are selected by the Supreme Court. The DRB reviews all decisions to impose discipline or to recommend a temporary suspension. At least five members who have considered the record and submissions in the case, including at least three who were present at oral arguments, must concur with the decision to impose discipline. The DRB answers directly to the Supreme Court.

The DRB reviews the following determinations whether they were made by the DEC, an ethics master or the Committee on Advertising (COA):

1. A determination to dismiss a grievance or inquiry before a hearing, and determinations to dismiss following a hearing.
2. All recommendations for discipline, except admonition and certain consent matters.
3. The applicability of disability inactive status. For this to apply, the respondent must be judicially declared to be mentally incapacitated or have been involuntarily committed to a treatment facility.

Although the OAE has great autonomy in such matters, the Supreme Court itself directly reviews all decisions of the DRB recommending disbarment, and all decisions recommending other discipline where either the OAE or the respondent has timely petitioned for review.

DOC

The Disciplinary Oversight Committee (DOC) consists of 11 members appointed by the Supreme Court. Five must be lawyers or judges (including retired judges), one must be the designee of the New Jersey State Bar Association (NJSBA) and five must be non-attorney members of the public at large. The DOC has no operational responsibilities, but is entirely advisory. It has the obligation to inform the court of the effectiveness of the disciplinary system, to review the OAE budget and to make recommendations thereto.

FYI

Attorneys who are faced with inquiries or grievances about their conduct should take comfort in knowing that the attorney disciplinary system in New Jersey is an arm of our Supreme Court, and that licensed attorneys will be passing judgment on their matters. At every level, there are checks and balances built into the disciplinary system, but none offers a greater guarantee of fairness than knowing that it will be lawyers investigating, evaluating and determining their cases. From the Supreme Court down through the DEC's and the DRB, all decisions of consequence will be viewed and reviewed by colleagues. Other systems of attorney discipline are not so highly evolved.

The system is favorable for attorneys, perhaps, but most J.D.s don't know our P' and Q's about the OAE and its acronymical progeny. When an ethics or disciplinary question, audit, investigation or grievance dumps you into the alphabet soup, call on a colleague. Call an ATTY EXPD w/ OAE. ASAP! OK? ■