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Letter Perfect: Ethics by Initials

For the past 10 years, my work has brought me regularly into the backyard of the Office of Attorney Ethics, where, in a surprising demonstration of modernity, acronyms have littered the landscape since deep in the last century.

By **Marc Garfinkle** | May 26, 2021



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Many attorneys, especially those of my generation, are uncomfortable with the acronyms of modern written communication: FYI, BTW, OMG and so forth. At first, we tried pronouncing them. That didn't work. With practice, we mastered some of the early ones: PTA, MPG, BSA, FBI. We were just getting used to BLT and BYO and CYA when—*BAM! ZAP!*—some other generations came along and buried us in Scrabble tiles. Although it is unnatural to communicate with abbreviations, we learn quickly. Teaching in a law school, I saw the ease with which my vocabulary expanded from LOL to LMAO to LMFAO.

While long lists of seemingly unrelated letter combinations may intimidate some members of my generation of lawyers, this writer goes boldly into the UNKN. For the past 10 years, my work has brought me regularly into the backyard of the Office of Attorney Ethics, where, in a surprising demonstration of modernity,

acronyms have littered the landscape since deep in the last century. These are not ordinary acronyms—these are part and parcel of your law license. Although your practice may not require you to know about PTI or RRR or FTA or OTC, you should know *these*, presented here as a public service. NP (formerly, YW).

The Office of Attorney Ethics (OAE) is our mother ship. It has plenary power over our licensing and discipline. It is a creature of the Supreme Court (BIG9) which sets the rules and the tone for attorney behavior. The Director (VIP), Assistant Director (VIP2B), Ethics Counsel (EC), and Deputy Ethics Counsel (DEC) are all appointed by the BIG9 and are prohibited from engaging in the practice of law. The VIP administers the OAE, the District Ethics Committee (another DEC), and a slew of subordinate organisms identified by less well-known initials. These include the Fee Arbitration Committees (IOU), the Random Audit Program (ONO), the Committee on Character (SOB), the Annual Attorney Registration Statement (EZPZ), and the Trust Overdraft notification program (WTF).

As indicated, DEC also signifies the District Ethics Committees. Typically, when attorneys say, “the Ethics Committee,” they are referring to either the OAE in Ewing or to one of the 14 DEC’s, which are not necessarily congruent with vicinages. The BIG9 appoints no fewer than eight committee members in each district for terms of four years. At least four of the members must be lawyers, and at least two must *not* be lawyers. The Chair and the Vice Chair and the Secretary are all appointed directly by the VIP.

Complaints against attorneys are generally initiated by Grievance (GRV), Inquiry (HUH) or Referral (REF) from another judicial body (UH-OH). The secretary (SEC/DEC) receives and screens inquiries and grievances about attorneys in the district. Then s/he has 45 days in which to docket, decline or dismiss (DDD) the matter. A matter may be declined for a number of reasons. The most common are that the attorney is not subject to the jurisdiction of the BIG9, the matter should be redirected to the Committee on Attorney Advertising (COAA), or the matter involves a fee dispute which may be declined until it is addressed by the Committee on Attorney Fee Arbitration (ARB). Some cases—such as those involving Attorney Trust Accounts (ATA) and those deemed complex—must be handled by the OAE in Ewing. The rest are heard by the DEC.

The SEC/DEC will dismiss any matter that fails to allege facts justifying further inquiry. If the charging documents allege facts that, if true, would constitute unethical conduct or incapacity, the SEC/DEC will docket the matter and assign it to a committee member to investigate. As the matter progresses, the member may change roles, switching from Investigator (INV) to Presenter (PRSNTR) on behalf of the OAE. The subject lawyer is sent an “In re: Gavel letter,” better known as the “Ten Day Letter” (4U10), which advises the attorney that s/he has 10 days in which to reply and offer defenses and explanations. At this point, the attorney (ESQ) becomes the Respondent (RES). An RES who indicates that a disability caused or contributed to the matter alleged may apply for relief by requesting a special status called Disability Inactive Status (DIS), which may allow the lawyer to put the matter on hold until the underlying issues can be addressed and, hopefully, resolved.

If a matter is contested in any regard, it advances to a hearing. If the allegations are stipulated to be true, the matter may advance in several ways, including the attorney’s Consent to Discipline (YOY). Irrespective of the path, all recommendations of discipline which emerge from the process must be presented to the Disciplinary Review Board (DRB).

The DRB consists of nine members appointed by the BIG9 for three-year terms. At least five members must be lawyers and at least three must not be. Both the Chair and the Vice Chair are selected by the BIG9. The DRB reviews all decisions to impose discipline (except admonitions and certain consent matters) and to recommend temporary suspension. The DRB’s name implies that it reviews the disciplinary decisions of the Ethics committees and the COAA, suggesting that the OAE makes the determination of discipline, and then the DRB reviews it. In truth, the DRB does far more than review; it is the actual power to reckon with. The investigations, interviews, ethics pleadings and hearings—whether before a three-attorney panel (ESQ3) or a Special Ethics Master (SEM)—are all purposed to inform the DRB, whose purview includes advising the BIG9

on the appropriate discipline. For a DRB decision to be binding, at least five members who have considered the record and the submissions in the case, including at least three who were present at oral arguments must concur with the decision.

Last, but not least (LBNL), is the 11-member Disciplinary Oversight Committee (DOC), all appointed by the BIG9. Five members must be lawyers or judges (including retired judges), one must be a designee of the New Jersey State Bar Association (NJSBA), and five must be non-attorney members of the public. Having no operational powers, the DOC's role is to review the OAE's budget, to inform the BIG9 of the effectiveness of the attorney disciplinary system, and to make pertinent recommendations.

Together, these alphabetical elements compose the attorney disciplinary system in New Jersey, rightly regarded as perhaps the finest and fairest in America. Those who would question that assessment are encouraged to do their ABCs: review the systems in other jurisdictions and compare them to ours. Ours is not letter-perfect, but it's pretty darned good (PDG).

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