

# Legal trouble

A look at what happens when lawyers and judges are accused of misconduct

INTERVIEWED BY MARK SCOTT

**T**rust is a critical component to any business relationship, but perhaps none more so than that of a lawyer and the company that the lawyer is representing.

“It’s impossible to have any kind of good lawyer-client relationship without trust going both ways,” says Geoffrey Stern, a Director at Kegler Brown Hill + Ritter and former Ohio Supreme Court Disciplinary Counsel.

“If you’re a business leader and you share confidential information with your lawyer, you have to trust that the lawyer is going to respect the need for confidentiality.”

Stern says the majority of lawyers are decent, honorable men and women who approach their work with a high level of integrity. But as with any profession, there are some individuals who find their way into trouble.

In the legal profession, that can result in an investigation by a committee of the local bar association or by the Ohio Supreme Court Office of Disciplinary Counsel. In some cases, it’s an intentional or reckless act of misconduct. But there are other times when it’s a misunderstanding that requires outside help to be resolved.

*Smart Business* spoke with Stern about how these investigations work and what you can do to protect your company’s interests.

## What is the goal when a lawyer or judge is being investigated?

The goal of the investigation is to determine whether probable cause exists to believe that an ethical rule has been violated. There is a threshold for this probable cause. The words in the rule are ‘substantial, credible evidence of misconduct.’

If that threshold is reached, the case moves on to trial. At the trial, misconduct

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has to be proven by what’s called ‘clear and convincing evidence,’ which requires a high level of proof. The committees that look into these cases are staffed on a volunteer basis by lawyers and judges, as well as some non-attorneys.

## How often do these investigations lead to guilty verdicts?

As Disciplinary Counsel of the Ohio Supreme Court for four years, my office handled about 14,000 grievances against judges and lawyers. Of the ethics complaints that are filed, only 1.5 percent of them go forward to trial. That’s controversial as some critics believe that the disciplinary system in policing itself is a big whitewash. I do not share that position.

More than 90 percent of the cases that go forward result in a finding of misconduct and a sanction that ranges from a public reprimand, which is usually published by the Ohio State Bar Association, all the way up to disbarment. Disbarment in Ohio is permanent. There is no way a disbarred Ohio lawyer can ever be readmitted to the practice. These disciplinary cases are not the same as legal malpractice.

Disciplinary matters deal with the licenses of lawyers and judges. Malpractice cases involve the seeking of monetary damages for departure by a lawyer from accepted standards of practice.



## How can you reduce the risk of a problem occurring in your company?

One common issue in the legal realm is conflict of interest, the idea that a lawyer cannot represent two masters. Rule 1.13 of the Ohio Rules of Professional Conduct deals with the relationship that a lawyer has with a business organization, such as a corporation, a partnership or an unincorporated entity.

The rule states that the lawyer retained by a business organization owes his or her allegiance to the organization and not necessarily to the CEO or the board. A question arises, however, that because the corporation does not have a separate physical existence, who really speaks for the corporation? This can become the subject of an investigation of a lawyer who attempts to represent the interests of the corporation and other persons with interests adverse to the corporation. A lawyer with proper consent may represent both the corporation and the officers, directors and board, known collectively as the constituents, but there may remain questions of conflicts and client consent to representation. In most cases, the relationship between the entity and the lawyer is a healthy and productive one. Focus on building and maintaining that trust, and you’ll avoid putting yourself in a situation where such a conflict of interest may occur. ●