A. Purpose and Nature of Sanctions

1.1 Purpose of Lawyer Discipline Proceedings
The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely properly to discharge their professional duties to clients, the public, the legal system, and the legal profession.

Annotation

The Basic Purposes of Discipline

Although courts vary in expressing their views on the purposes of lawyer discipline, they are in accord on the basic objectives. Generally, courts agree that protecting the public, upholding the integrity of the legal system, assuring the fair administration of justice, and deterring other lawyers from similar misconduct are the primary purposes of lawyer discipline. See, e.g., Gillette v. Edison, 593 F. Supp. 2d 1063, 1066 (D.N.D. 2009) ("The purpose of disciplinary proceedings is for the North Dakota Supreme Court to determine, in the public interest, whether an attorney should continue to practice law"); quoting North Dakota Standards for Imposing Lawyer Sanctions, Standard 1.1, court held that state supreme court had jurisdiction and authority to discipline lawyer for alleged misconduct occurring in connection with litigation in Indian tribal court); In re Wiederholt, 24 P.3d 1219, 1226 (Alaska 2001) ("The purposes underlying both attorney disciplinary and reinstatement proceedings are to safeguard the public, maintain the integrity of the profession, and to protect the administration of justice from reproach."); In re Buckalew, 731 P.2d 48 (Alaska 1986) (court emphasized that its paramount concern was for the protection of the public, but also included purposes of deterring unethical conduct and educating other lawyers and the public); In re Isler, 315 P.3d 711, 718–19 (Ariz. 2014) (objectives of lawyer discipline are protection of the public and the courts and deterrence of respondents and other lawyers from committing misconduct); In re Shepard, 457 S.W.3d 280, 284 (Ark. 2015) (purpose of court exercising its authority to regulate the practice of law is "to protect the public and to maintain the integrity of the courts and the honor of the profession"); Hugen v. People, 199 P.3d 760, 767 (Colo. O.P.D.J. 2008) (citing Standard 1.1 in considering petition for readmission: "The purpose of attorney disciplinary proceedings is
to protect the public and the administration of justice from attorneys who fail to uphold their professional duties to clients, the public, the legal system, and the legal profession.”); D’Attilo v. Statewide Grievance Comm’n, 188 A.3d 727, 739 (Conn. 2018) (the attorney disciplinary process exists “within the broader framework of the relationship between attorneys and the judiciary. . . . This unique position as officers and commissioners of the court . . . casts attorneys in a special relationship with the judiciary and subjects them to its discipline”) (citations omitted); In re Koyste, 111 A.3d 581, 589 (Del. 2015) (“the goals of lawyer discipline are to protect the public, to protect the administration of justice, to preserve confidence in the legal profession, and to deter other lawyers from similar misconduct”) (citation omitted); Iowa Supreme Ct. Att’y Disciplinary Bd. v. Buchanan, 757 N.W.2d 251, 256 (Iowa 2008) (listing obligation to protect the public from further harm by lawyer and deter other lawyers from engaging in similar misconduct, the court noted, “Finally, we are also mindful that one of the underlying purposes of attorney discipline is ‘to protect the integrity of and public confidence in our system of justice’”) (citations omitted); Att’y Grievance Comm’n v. McGlade, 42 A.3d 534, 547 (Md. 2012) (court explained that “[t]he purpose of disciplinary proceedings is ‘not to punish the lawyer, but to protect the public and the public’s confidence in the legal profession.’”) (citations omitted); In re Cupples, 952 S.W.2d 226, 232 (Mo. 1997) (“The purpose of disciplinary proceedings is to protect the public and the profession from persons unfit to practice law.”); In re Marshall, 394 P.3d 208, at *1 (Table) (Nev. 2017) (“We must ensure that the discipline is sufficient to protect the public, the courts, and the legal profession.”) (citations omitted); In re Disciplinary Action Against Nassif, 547 N.W.2d 541 (N.D. 1996) (citing Standard 1.1 of the North Dakota Standards for Imposing Lawyer Sanctions, court noted that since primary purpose of disciplinary process is protection of the public, disbarment of lawyer required due to his prior disciplinary history, pattern of gross incompetence, unacceptable office practices, inadequate recordkeeping, and mishandling and conversion of client funds); State ex rel. Oklahoma Bar Ass’n v. Demopolos, 352 P.3d 1210, 1213 (Okla. 2015) (“[p]rotecting the public and purification of the Bar are the primary purpose of the disciplinary proceedings rather than punishment of the offending attorney’’); In re Spilman, 240 P.3d 702 (Okla. 2010) (court has constitutional duty to ensure that goals of lawyer discipline are carried out, including preservation of public trust and confidence in the bar by strict maintenance of the profession’s integrity, protection of the public and the courts, and deterrence of similar behavior by both the disciplined lawyer and by other members of the bar); In re Chastain, 532 S.E.2d 264 (S.C. 2000) (citing Standard 1.1, court found that primary purpose of lawyer discipline proceedings is to protect the public from unscrupulous and indifferent lawyers); In re Discipline of Reynolds, 762 N.W.2d 341, 352 (S.D. 2009) (“The attorney disciplinary process is intended to: a) protect the public from further fraudulent, unethical or incompetent activities involving the
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lawyer; b) preserve the image and integrity of attorneys, the bar association and the legal profession as a whole; and, c) deter like conduct by other attorneys.”); In re Cottingham, 423 P.3d 818, 827 (Wash. 2018) (“[o]ne primary purpose of the attorney disciplinary system is to protect the public and the severity of the sanction should be calculated to achieve these ends”) (citations omitted); Lawyer Disciplinary Bd. v. Blyler, 787 S.E.2d 596, 611 (W. Va. 2016) (“[a]ttorney disciplinary proceedings are not designed solely to punish the attorney, but rather to protect the public, to reassure it as to the reliability and integrity of attorneys and to safeguard its interest in the administration of justice”) (citations omitted); Bd. of Prof’l Responsibility v. Custis, 348 P.3d 823, 828–29 (Wyo. 2015) (protecting the public, maintaining the integrity of the legal system, ensuring the fair administration of justice, and deterring other lawyers from committing similar misconduct are purposes of the attorney disciplinary system).

For further discussion of the purposes of lawyer discipline, see generally Mary M. Devlin, The Development of Lawyer Disciplinary Procedures in the United States, 7 Geo. J. Legal Ethics 911 (1994) (examining history of lawyer discipline); Fred C. Zacharias, The Purposes of Lawyer Discipline, 45 Wm. & Mary L. Rev. 675, 677 (2003) (suggesting that “protecting the public” is too simplistic a characterization of the purpose of lawyer discipline; arguing that more precise identification of a wide variety of purposes of discipline would create better results).

• Protection of the Public

Protection of the public is commonly cited as the first and foremost purpose for imposing lawyer discipline. See, e.g., In re Vance, 421 P.3d 53 (Alaska 2018) (lengthy suspension not necessary to protect the public where the nature of misconduct coupled with mitigating factors warrants a suspension on low end of the possible range); In re Hanlon, 110 P.3d 937 (Alaska 2005) (three-year suspension imposed; rejecting argument that sanction effectively would end lawyer’s legal career, court observed that respondent admitted that primary purpose of lawyer discipline is to protect the public; more severe sanction warranted to serve the interests of the public and bar); In re Comstock, No. 12-N-16765, 2015 WL 4238008, at *4 (Cal. Bar Ct. June 25, 2015) (“The purpose of attorney discipline is not to punish the attorney but to protect the public, the courts and the legal profession, and to maintain high professional standards for attorneys.”); Statewide Grievance Comm’n v. Ganim, 87 A.3d 1078, 1092 (Conn. 2014) (“if a court disciplines an attorney, it does so not to mete out punishment to an offender, but so that the administration of justice may be safeguarded and the courts and the public protected from the misconduct or unfitness of those who are licensed to perform the important functions of the legal profession.”); In re Bria, 86 A.3d 1118, at *5 (Table) (Del. 2014) (attorneys owe duties not only to clients but to the general public as well; “[m]embers of the public are entitled to be able to trust lawyers to protect their property, liberty, and
their lives.”); In re Fry, 806 S.E.2d 604, 606 (Ga. 2017) (“the primary purpose of a
disciplinary action is to protect the public from attorneys who are not qualified to
practice law due to incompetence or unprofessional conduct.”); In re Harrington,
385 P.3d 905, 916 (Kan. 2016) (“the ultimate goal in disciplinary matters is to pro-
tect the public . . . ”); Att’y Grievance Comm’n of Maryland v. Barnett, 102 A.3d 310, 319
(Md. 2014) (“[t]his Court sanctions a lawyer not to punish the lawyer, but instead
to protect the public and public’s confidence in the legal profession”); In re Torre,
127 A.3d 690, 696 (N.J. 2015) (“[t]he attorney disciplinary system is not designed to
punish lawyers. Its goals are to protect the public and preserve the public’s confi-
dence in the bar. The imposition of discipline in a particular case, thus, is meant to
foster continued faith in the legal profession as a whole.”) (internal citations omit-
ted); In re Torres, 374 P.3d 700, 701–02 (N.M. 2016) (where attorney’s neglect was an
isolated occurrence, public would be protected by a sanction of a public censure
and a one-year deferred suspension); In re Hann, 848 N.W.2d 725 (N.D. 2014) (court
imposed several conditions on disciplined attorney’s return to practice of law in
order to ensure that public protected); Disciplinary Counsel v. Schuman, 92 N.E.3d
850 (Ohio 2017) (primary purpose of attorney discipline is to protect the public,
not to punish); State ex rel. Oklahoma Bar Ass’n v. Bounds, 415 P.3d 519, 520 (Okla.
2018) (“[p]rotection of the public and purification of the Bar are the primary pur-
poses of disciplinary proceedings rather than to punish the accused lawyer.”); In
re Conduct of Ramirez, 408 P.3d 1065, 1071 (Or. 2018) (“our purpose is to protect the
public and the administration of justice from lawyers who have not discharged
properly their duties to clients, the public, the legal system, or the profession.”)
(internal citations omitted); In re McMaster, 795 S.E.2d 853, 855 (S.C. 2017) (“[t]he
primary purpose of . . . suspension is the removal of an unfit person from the
profession for the protection of the courts and the public, not punishment of the
offending attorney.”) (citations omitted); In re Disciplinary Proceeding Against Jones,
338 P.3d 842, 856–57 (Wash. 2014) (protecting the public from dishonest lawyers is
part of the lawyer disciplinary process). But see Office of Lawyer Disciplinary Coun-
sel v. Plants, 759 S.E.2d 220 (W. Va. 2014) (interim suspension for prosecutor/attor-
ney accused of domestic violence denied; no conflict of interest found between his
personal interests and his duties as a prosecutor).

• License to Practice Law a Privilege
  Protection of the public squares with the notion that a license to practice law
is neither a right nor an entitlement, but a privilege conferred on the lawyer pri-
marily for the benefit of the public. See, e.g., In re Shepard, 457 S.W.3d 280, 283 (Ark.
2015) (“the practice of law is a privilege, not a right.”); Statewide Grievance Comm’n.
v. Ganim, 87 A.3d 1078, 1092 (Conn. 2014) (an attorney, as an officer of the court, “is
continually accountable to it for the manner in which he exercises the privilege
which has been accorded him. His admission is upon the implied condition that
his continued enjoyment of the right conferred is dependent upon his remaining a fit and safe person to exercise it, so that when he . . . has become or is an unfit or unsafe person to be entrusted with the responsibilities and obligations of an attorney, his right to continue in the enjoyment of his professional privilege may and ought to be declared forfeited.”) In re Crossen, 880 N.E.2d 352, 388 (Mass. 2008) (“The right to practice law is not one of the inherent rights of every citizen . . . [but] is a peculiar privilege granted and continued only to those who demonstrate special fitness in intellectual attainment and in moral character.”) (citation omitted); In re Reinstatement of Drain, 376 P.3d 208 (Okla. 2016) (in reinstating a lawyer who had voluntarily resigned from the bar for personal reasons, court opined that those attorneys who resign and then seek reinstatement are not automatically entitled to the privileges and advantages of being a member of the bar); Steele v. Bonner, 782 N.W.2d 379, 384 (S.D. 2010) (regarding the practice of law, the court stated that “Certainly, it is in no sense an absolute right. It is in the nature of a franchise to the enjoyment of which no one is admitted as a matter of right, but only upon proof of fitness and qualifications which must be maintained if the privilege is to continue in enjoyment.”) (citations omitted); In re Discipline of Laprath, 670 N.W.2d 41 (S.D. 2003) (holder of law license holds privilege to serve public, not absolute right); Bd. of Prof’l Responsibility v. Barry, 545 S.W.3d 408, 426 (Tenn. 2018) (“a license to practice law in this state is not a right but a privilege. The license to practice law in this State is a continuing proclamation by the Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and as an officer of the Court.”) (internal citations omitted). But see Ala. State Bar v. McBrayer, 20 So.3d 100, 105 (Ala. 2009) (“This Court has previously recognized ‘that the right to engage in the practice of law in Alabama is a property right that may be denied only if the denial comports with the procedural due process of law guaranteed by the Alabama and United States Constitutions.’”) (citation omitted).

- **Preservation of the Public’s Trust and Confidence**

  The privilege of practicing law carries with it the obligation to be worthy of the public’s trust and confidence. Thus, lawyers are required to continually demonstrate good character in all endeavors. As the Court of Appeals of Maryland explained in *Maryland State Bar Association v. Agnew*:

  Few vocations offer as great a spectrum for good and honorable works as does the legal profession. The attorney is entrusted with the life savings and investments of his clients. He becomes the guardian of the mentally deficient and potential savior for the accused. He is a fiduciary, a confidant, an advisor, and an advocate. However, the great privilege of serving in all of these capacities does not come without
the concomitant responsibilities of truth, candor and honesty. In fact, it can be said that the presence of these virtues in members of the bar comprises a large portion of the fulcrum upon which the scales of justice rest. Consequently, an attorney’s character must remain beyond reproach.

318 A.2d 811, 814 (Md. 1974) (disbarment imposed on former Vice President Spiro Agnew following conviction for tax evasion). See also In re Ivy, 374 P.3d 374, 387 (Alaska 2016) (public confidence in the profession’s ability to discipline itself is of the utmost importance) (citations omitted); In re Buckalew, 731 P.2d 48, 55 (Alaska 1986) (“It is of the utmost importance that the public have confidence in the profession’s ability to discipline itself—lest the privilege be withdrawn.”); Ligon v. Tapp, 519 S.W.3d 315 (Ark. 2017) (the totality of the attorney’s misconduct combined with prior discipline warranted disbarment to preserve the public’s confidence in the legal profession); In re Lee, 95 A.3d 66 (D.C. 2014) (disbarment appropriate where attorney misappropriated funds, despite mitigating factors, in order for public to maintain confidence in the bar); In re Addams, 579 A.2d 190, 194 (D.C. 1990) (“It is . . . important that we reemphasize that the principal reason for discipline is to preserve the confidence of the public in the integrity and trustworthiness of lawyers in general.”) (citation omitted); In re Fry, 806 S.E.2d 604 (Ga. 2017) (protection of public’s confidence in the legal system is an important consideration in imposing discipline); Att’y Grievance Comm’n v. Agbaje, 93 A.3d 262, 285 (Md. 2014) (“the purpose of a sanction is not to punish but rather, to protect . . . the public’s confidence in the legal profession.”) (citations omitted); In re Corbett, 84 N.E.3d 837, 839 (Mass. 2014) (“[w]hile each case is unique, and every offending attorney must receive the sanction most appropriate in the circumstances, the common overarching factor for our consideration in all cases is the effect upon, and perception of, the public and the bar.”); In re Cammarano, 98 A.3d 1184, 1187 (N.J. 2014) (“misconduct that breaches a fundamental and solemn trust is itself sufficient to trigger automatic disbarment.”) (citations omitted); In re Key, 113 P.3d 340 (N.M. 2005) (court equally concerned with protection of the public as purpose of attorney discipline, as well as the public’s perception of the profession and the legal system); Disciplinary Counsel v. Calabrese, 36 N.E.3d 151 (Ohio 2015) (court disbarred attorney, in part, to maintain public confidence in the legal profession); In re Reinstatement of Blake, 371 P.3d 465 (Okla. 2016) (a primary objective of the bar disciplinary system is to maintain confidence in the bar); In re Discipline of Reynolds, 762 N.W.2d 341, 352 (S.D. 2009) (“Only by providing high quality lawyering can the integrity of the legal profession remain inveterate and the confidence of the public and the Bar remain strong.”) (citations omitted); Petition of Pier, 561 N.W.2d 297, 302 (S.D. 1997) (“Handling client funds requires trust and confidence—attributes essential to the attorney-client relationship.”); cf. In
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In re Disciplinary Proceeding Against Johns, 847 N.W.2d 179 (Wash. 2014) (court dismissed disciplinary proceedings against attorney convicted of drunk driving incident in which his brother was killed, ruling that public confidence in the bar would not be shaken by the dismissal since attorney had already suffered consequences in criminal proceeding and underlying incident had nothing to do with his status as an attorney); In re Disciplinary Proceeding Against Curran, 801 P.2d 962, 974 (Wash. 1990) (conceding that purpose of maintaining public confidence in the bar is “not nearly as important as protecting the public from unworthy practitioners”).

• Continued Fitness

Also inherent to the privilege of holding a license is the ability of the lawyer to maintain the standards established for fitness to practice law. See, e.g., In re Buckalew, 731 P.2d 48, 55 (Alaska 1986) (“[After admission,] the requirement of good character does not cease to exist. In fact, it continues to be one of the most important requisites of bar membership in this state.”); Statewide Grievance Comm’n v. Ganim, 87 A.3d 1078, 1092 (Conn. 2014) (admission to the bar is conditioned upon an attorney “remaining a fit and safe person to exercise it, so that when he, by misconduct in any capacity, discloses that he has become or is an unfit or unsafe person to be entrusted with the responsibilities and obligations of an attorney, his right to continue in the enjoyment of his professional privilege may and ought to be declared forfeited.”); Office of Disciplinary Counsel v. Buffington, No. SCAD-14-0000880, 2014 WL 3056353 (Haw. July 7, 2014) at *1 (attorney allowed to resign from the bar in lieu of discipline after engaging in misconduct that reflected adversely on her fitness as a lawyer); Atty Grievance Comm’n v. Greenleaf, 91 A.3d 1066, 1073 (Md. 2014) (court protects the public by suspending or disbarring a lawyer who is unfit to continue to practice law); In re Riehm, 883 N.W.2d 223, 232 (Minn. 2016) (primary purpose of the lawyer disciplinary process is to “assess an attorney’s fitness to practice law, including the attorney’s personal integrity.”); In re Legato, 161 A.3d 111, 116 (N.J. 2017) (although lawyer’s criminal conduct occurred outside the practice of law, offenses revealed unfitness to continue as member of the bar; “the privilege to practice law is dependent on an attorney’s ability to maintain a high moral character.”) (citations omitted); State ex rel. Okla. Bar Ass’n v. Drummond, 393 P.3d 207, 215 (Okla. 2017) (while every criminal conviction does not prove an attorney is unfit to practice law, smuggling contraband into prison does; disbarment warranted); In re Henry, 841 N.W.2d 471, 475–76 (S.D. 2013) (a “license to practice law in South Dakota is a continuing proclamation by the Supreme Court that the holder is fit to be entrusted with professional and judicial matters and to aid in the administration of justice.”) (citations omitted); Lawyer Disciplinary Bd. v. Stanton, 760 S.E.2d 453, 464 (W. Va. 2014) (court ruled that evidence not squarely
within the purview of the disciplinary charges could be considered because of relevance to lawyer’s fitness to practice law) (citations omitted).

- **Protection of Reputation**

Protecting the integrity and reputation of the courts and the bar are additional objectives of the lawyer disciplinary process. See, e.g., *In re Phillips*, 244 P.3d 549, 554 (Ariz. 2010) (another purpose of lawyer discipline “is to instill public confidence in the Bar’s integrity”; six-month suspension warranted for supervisory and managerial breaches by managing partner who had full control of law firm’s policies and practices and made decisions directly affecting the public, the profession, and the integrity of the legal system); *In re Vanderslice*, 166 A.3d 1244 (Del. 2015) (court disbarred lawyer where his misappropriation of funds caused a waste of judicial resources and denigrated the reputation of Delaware’s legal profession); *Iowa Supreme Court Att’y Disciplinary Bd. v. Hedgecoth*, 862 N.W.2d 354 (Iowa 2014) (preserving the reputation of the bar is a factor to consider when determining an appropriate disciplinary sanction); *State ex rel. Counsel for Discipline v. Halstead*, 902 N.W.2d 701 (Neb. 2017) (one-year suspension for attorney who falsified guardianship petitions necessary to maintain the reputation of the bar); *In re Cammarano*, 98 A.3d 1184, 1187 (N.J. 2014) (court disbarred attorney who accepted a bribe while serving as an elected official, finding his conduct “wholly incompatible with the high standards expected of members of the bar and tarnish[ing] the repute of an honorable profession.”) *In re Torres*, 374 P.3d 700 (N.M. 2016) (attorney discipline is meant to protect the public and the reputation of the profession). But see *Att’y Grievance Comm’n v. Reno*, 103 A.3d 565 (Md. 2014) (court rejected argument that damage to lawyer’s reputation constituted mitigating factor, ruling that damage to a lawyer’s image occurs in nearly every disciplinary proceeding).

- **Deterrence**

Deterrence, another stated purpose for discipline, has a twofold purpose, as aptly described in *Attorney Grievance Comm’n v. Shapiro*, 108 A.3d 394, 410 (Md. 2015). In that case, the Court of Appeal held that “[s]anctions protect the public in two ways: through deterrence of the type of conduct which will not be tolerated, and by removing those unfit to continue in the practice of law from the rolls of those authorized to practice law in this State . . . Therefore, the public interest is served when sanctions designed to effect general and specific deterrence are imposed on attorney who violates the disciplinary rules, and those sanctions demonstrate to members of the legal profession the type of conduct that will not be tolerated.” Courts frequently proclaim the goal of deterring other members of the bar from engaging in similar misconduct when issuing sanctions upon an attorney. See, e.g., *In re Isler*, 315 P.3d 711, 718–19 (Ariz. 2014) (part of the purpose of