2018 Sutin, Thayer & Brown Conference

Fact Pattern Two

Jane Kennedy has been a member of the NNBA for about five years. During that time she has held a number of jobs in the legal profession, with stints at the Navajo Housing Authority, the Navajo Department of Justice, DNA and the Office of Legislative Counsel. In between her jobs with these governmental entities, she has had several periods where she ran a private practice.

Jane’s short career has been a troubled one. Almost immediately after she was first licensed, complaints concerning her practice started rolling into the offices of the esteemed chairman of the NNBA Disciplinary Committee, Jay Mason. Complaints concerning Jane become a regular part of the agenda for the Committee’s quarterly meetings.

The Committee deals with these complaints with its customary zeal and diligence. Each complaint receives an initial review and is then sent to Jane for her response. With some frequency, Jane fails to respond in a timely fashion and she is summarily suspended from practice until she submits her response. When her responses are finally received, they are reviewed by the Committee and then often sent to the original complainant. Once the complainant’s reply is received, it is put on the agenda for discussion at the next regular meeting of the Committee.

Many of the complaints against Jane are fee disputes and, in several cases, the Committee orders Jane to repay portions of fees to her clients. Jane experiences some trouble in making these payments on time and frequently asks the Committee for extensions of time on her repayment schedule.

And then Jane’s life is transformed. Jane grew up on a farm near Lamar, Colorado, and spent her youth repairing the hydraulics on enormous farm tractors and keeping the farm’s irrigation system running. An old friend, Jan Looperhicken, who is now the governor of the state, offers her the job of director of the state Department of Center Pivots and Wheel Lines. This is an appointed office and Jane goes for confirmation before the Colorado Senate.

During the confirmation hearing, Senator Ben Brown (R-Falfa), asks Jane whether there are any ethics complaints pending against her with the NNBA Disciplinary Committee. Jane answers, “Senator Brown, I don’t believe there are any.” Relieved that there are no pending complaints, Brown moves to cut off debate on the confirmation and Jane is confirmed in her new role.

In fact, on the day of the confirmation, nine complaints are pending against Kennedy. In the case of two of the complaints, she had contacted the Disciplinary Committee on the very day of the confirmation hearing and asked for an extension of time to repay fees to her clients.

The hearing is widely broadcast and is seen by several members of the Disciplinary Committee. How should the Disciplinary Committee proceed with regard to Jane? What rules, if any, has Jane violated?