

**ANNUAL REPORT OF THE
LAWYERS PROFESSIONAL RESPONSIBILITY BOARD**

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OFFICE OF LAWYERS PROFESSIONAL RESPONSIBILITY**

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I. INTRODUCTION AND HIGHLIGHTS

The Lawyers Professional Responsibility Board and the Director of the Office of Lawyers Professional Responsibility are required to report annually on the operation of the professional responsibility system in Minnesota. Rules on Lawyers Professional Responsibility 4(c) and 5(b). The reports are hereby jointly made for the period June 1, 2000, through May 31, 2001.

A Year of Change

In May of 2001, Justice Paul H. Anderson of the Minnesota Supreme Court was named the new liaison to the Board, replacing Justice Alan C. Page. The members of the Office and the Board welcome Justice Anderson and thank Justice Page for his years of service as liaison.

In contrast with last year when there were no changes to the membership of the Board, this year eight new members were added, five attorneys and three public members. Ideally, to ensure continuity, no more than three or four new members should be added to the Board annually. Due to resignations, vacancies occur on the Board in larger numbers. To prevent such a large turnover in the future, several of the terms of these new Board members have been staggered.

The five new attorney members are Wood R. Foster, Jr. and Neil M. Meyer, both from Minneapolis; Patrick J. McGuigan from St. Paul; Judith M. Rush from Roseville; and Cindy K. Telstad from Winona. The new public members are Kathleen Clarke Anderson and Larry M. Anderson from Minneapolis and Katie McWatt from St. Paul.

In addition, attorney Steven J. Olson of Osakis and public member Christopher J. Lake-Smith of St. Paul joined the Executive Committee, which also consists of Chair Charles E. Lundberg from Minneapolis; John C. Lervick, Vice Chair, from Alexandria; and Ann M. Bailly, public member, from Minneapolis. A short biographical sketch of current Board members is attached at A. 1.

Classification/Compensation Implementation

As noted last year, the Supreme Court contracted in March of 1999 with the National Center for State Courts and Public Administration Services to serve as lead consultants for a position classification and compensation study for approximately 1,500 judicial branch employees, including all 25 employees of the Office of Lawyers Professional Responsibility. The Director served on the steering committee for that study from the beginning until the committee completed its work in the summer of 2000. All employees in the Office received classification notices in April of 2000. Although compensation increases have been delayed for most members of the judicial branch, the Minnesota Supreme Court authorized the Office to award compensation increases in two stages, retroactive to review dates occurring after July 1, 2000. These increases included a flat merit increase for each employee and a variable performance increase based on supervisor evaluation. The compensation increases will be fully implemented by July 1, 2001. The members of the Board and the members of the Office are grateful to the justices of the Minnesota Supreme Court for their assistance in addressing these pay inequities and allowing the Office to move forward.

Board Opinions Reconsidered

In January of this year, the Minnesota Supreme Court reversed an admonition issued by this Office to an attorney for violation of a Board opinion (*In re 99-42*, 621 N.W.2d 240 (Minn. 2001)). In doing so, the Court made it clear that Board opinions were more limited in their authority than previously thought.

Over the three decades since the Board and Office were formed, the Board has issued a number of opinions that clarified existing rule provisions. In most instances, the lawyer was cited for a rule provision as well as an opinion violation. Since 1984, the Board and the Office were under the impression that a violation of a Board opinion was proper grounds for discipline. The Court has now made it clear that an opinion violation standing alone is not sufficient to result in discipline.

The Opinion Committee of the Board will remain active and opinions will continue to be cited when a predicate rule provision has been violated. Board opinions were intended to serve as, and continue to serve as, an effort to protect the public and to help the members of our profession understand their ethical obligations.

Fall Seminar

On September 22, 2000, the Office once again conducted an annual seminar in conjunction with the fall meeting of the Board. As a result of surveying the members of district ethics committees around the state, the emphasis of the seminar this year was on practical advice with regards to investigations and reporting. The seminar was very well attended by members of the profession from both the metro area and greater Minnesota. Evaluations submitted by attendees were overwhelmingly positive.

This year's seminar, to be held on September 10, 2001, at the offices of the Minnesota State Bar Association, will focus on the recommended changes to the Rules of Professional Conduct that have resulted from the deliberations of the ABA's Ethics 2000 Committee. The chair of that committee, and the Chief Justice of the Supreme Court of Delaware, E. Norman Veasey, will be the keynote speaker at the seminar. This year's event promises to be interesting, unusual, and informative.

Pending Litigation

In February of 1998, the Director and the Chair, along with the Chair of the Board on Judicial Standards, were named defendants in a lawsuit filed in federal court in Minnesota over the enforcement of Canon 5 of the Code of Judicial Conduct (U.S. District Court Case No. 98-831; Eighth Circuit File No. 99-4021, 99-4025 and 99-4029).

On April 30, 2001, the Eighth Circuit Court of Appeals, by a 2-1 vote, affirmed the lower court's ruling upholding the challenged provisions of Canon 5. On May 10, 2001, the plaintiff-appellants filed a Petition for Rehearing *En Banc* with the Eighth Circuit. The Chair and the Director are represented by the Attorney General's Office.

II. CASELOAD AND STATISTICS

The following charts (I-V) put this year's statistics into context by showing how Supreme Court action and Office caseloads for this year compare with previous years.

A. Statistics.

TABLE I
Supreme Court Dispositions and Reinstatements 1989-2000
Number of Lawyers

	Disbar.	Susp.	Probation	Reprimand	Dismissal	Reinstated	Reinstate Denied	Disability	SC AD/Aff	Other*	Total
1989	5	19	8	4	2	1	0	1	0	0	40
1990	8	27	9	10	0	2	2	2	0	0	60
1991	8	14	10	6	2	3	2	3	0	0	49
1992	7	16	8	5	0	3	0	2	0	0	41
1993	5	15	12	3	1	9	2	1	0	0	48
1994	8	5	7	0	0	4	0	1	0	0	25
1995	6	26	9	4	1	5	0	4	4	0	59
1996	4	27	5	0	3	4	1	2	1	1*	48
1997	10	16	6	2	1	5	2	2	1	1**	46
1998	15	18	10	2	1	4	3	2	1	0	56
1999	3	12	5	0	0	8	1	1	0	2***	32
2000	6	19	10	2	0	3	0	2	1	0	43

* 1 Supreme Court admonition reversed.

** 1 Supreme Court stay.

*** 1 Supreme Court stay.

1 Supreme Court private admonition ordered.

	Lawyers Board Goal	<u>12/97</u>	<u>12/98</u>	<u>12/99</u>	<u>12/00</u>	<u>4/30/01</u>
Total Open Files	500	493	493	484	557	589
Cases Over One Year Old	100	114	91	128	123	101
Complaints Received YTD		1,314	1,275	1,278	1,362	478
Files Closed YTD		1,379	1,275	1,287	1,289	446

TABLE III

	Percentage of Files Closed						
	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
1. <u>Total Dismissals</u>	81%	78%	78%	78%	77%	82%	80%
a. Summary Dismissals	40%	38%	39%	41%	40%	45%	43%
b. DNW/DEC	36%	36%	32%	31%	31%	31%	31%
c. DNW/DIR	5%	4%	6%	6%	6%	5%	6%
2. <u>Admonitions</u>	10%	8%	10%	8%	10%	9%	7%
3. <u>Private Probation</u>	2%	3%	1%	1.5%	1%	3%	3%
4. <u>Supreme Court Dispositions</u>	5%	8%	6%	7.5%	9%	6%	7%
a. Supreme Court Dismissal	--	-	-	-	-	--	--
b. Supreme Court Reprimand	--	-	-	-	-	--	--
c. Supreme Court Probation	1%	1%	1%	1%	2%	.5%	1%
d. Supreme Court Suspension	1%	4%	4%	4%	3%	2%	5%
e. Supreme Court Disbarment	3%	2%	1%	2.5%	4%	1%	1%

TABLE IV

Number of Months File Was Open at Disposition

	1993	1994	1995	1996	1997**	1998	1999	2000
Discipline Not Warranted/ District Ethics Committee	4	4	5	5	--	--	--	5
Discipline Not Warranted/ Director	8	8	7	7	--	--	--	8
Discipline Not Warranted*					6	6	5	--
Admonition	9	10	10	9	8	9	10	9
Private Probation	12	13	14	17	16	14	14	14
Supreme Court Reprimand	19	--	31	--	11	19	--	16
Supreme Court Probation	15	22	20	13	19	14	16	20
Supreme Court Suspension	16	17	20	20	24	18	13	20
Supreme Court Disbarment	24	14	14	17	17	27	8	26

*ADRS did not calculate number of months for DNW categories separately in 97-99. ADRS enhancements now allow such calculations.

**After discovering calculation errors in ADRS reports, ADRS was re-programmed, therefore the numbers for 1997 have been revised.

TABLE V

Average Time Cases Under Advisement by Supreme Court - 2000

Disposition	No. of Matters	Average Months
Supreme Court Reprimand (Stipulated)	2	.8
Supreme Court Probation (Stipulated)	9	1.6
Supreme Court Probation	1	2
Supreme Court Suspension (Stipulated)	15	1.2
Supreme Court Suspension	4	2.4
Supreme Court Disability	2	1
Supreme Court Disbarment (Stipulated)	2	.5
Supreme Court Disbarment	4	2.5

B. Minnesota Supreme Court Disciplinary Cases.

Attached at A. 2 is a table identifying the attorneys who were (1) publicly disciplined or (2) reinstated during calendar year 2000 to the practice of law after

suspension or disbarment. Six attorneys were disbarred in 2000; two attorneys have been disbarred in the first five months of 2001:

<u>2000</u>	<u>2001</u>
Loren L. Heinemann (2/24/00)	William P. Kaszynski (1/11/01)
Robert W. Dygert (4/4/00)	Mark Allen Levine (4/11/01)
Michael G. Singer (4/20/00)	
Chester C. Graham (5/11/00)	
Harry N. Ray (5/25/00)	
Lewis M. Koss (6/1/00)	

Since the consecutive record years in disbarments in 1997 (10 disbarments) and 1998 (15 disbarments), the number of attorneys who have been disbarred has dropped noticeably. In the past two years and five months, there have been four fewer disbarments than there were in calendar year 1998 alone. Given that the annual average of disbarments from 1985 to 1997 was six, it would appear that we are in fact returning to an average in that range and that the 25 disbarments that occurred in the 24-month period covering 1997 and 1998 were an aberration. Although it is unclear why such numbers of disbarments occurred in such a short period, it is reassuring to see that fewer attorneys are engaging in the type of egregious misconduct that leads to the most severe form of discipline.

Among the public disciplinary cases decided in 2000 and during the first five months of 2001 are:

Michael G. Singer of Minnetonka was disbarred for failing to repay \$13,000 in loans from a client and for misappropriating an additional \$50,000 from the same client.

William P. Kaszynski of St. Paul was disbarred for multiple instances of client neglect and misrepresentation, for failure to communicate with clients, for incompetence, trust account violations, false advertising, inadequate supervision of a non-attorney employee and subordinate attorney, and for failure to cooperate with the disciplinary process.

Donald Bedelle Fuller of Minneapolis was indefinitely suspended with no minimum term for improper withdrawal from representation of a client, improper disclosure of client confidences, failure to disclose the source of attorney's fees in violation of the rules of a tribunal, and for submission of false evidence in a disciplinary proceeding.

Jesse Gant, III of St. Paul was suspended for 90 days to be followed by two years of supervised probation following reinstatement for pursuing frivolous litigation and for violating procedural rules of the trial and appellate courts in numerous cases, for failing to pay a court reporter, for failing to pay a court-ordered sanction, and for failing to cooperate with the disciplinary investigation.

Michael Lee Martinez of Woodbury was suspended for 60 days to be followed by two years of supervised probation for failing to file or pay employee withholding tax returns, failing to adequately communicate with clients, failing to diligently pursue several client matters, and for non-cooperation with the disciplinary investigation.

III. DIRECTOR'S OFFICE.

A. Budget.

1. FY'01 and FY'02 Budgets.

Expenditures for the fiscal year ending June 30, 2001, are projected to be \$1,963,726. The FY'02 budget includes anticipated expenditures of \$2,112,423. The FY'02 payroll budget includes a 3% cost of living adjustment and a 3% merit increase for those eligible. The FY'02 budget does not provide for additional staffing. Current staffing is sufficient.

Effective July 1, 2000, the Lawyers Professional Responsibility Board's portion of the attorney registration fee was reduced by \$10.00 to \$100.00. This reduction rolled back the portion of attorney registration fees allocated to the Office

to 1995-1996 levels. The Director anticipates that a fee increase may be necessary for the fiscal year beginning July 1, 2003.

B. Administration.

Computerization.

Advisory Opinion Database.

The advisory opinion service automated data collection and reporting system implemented in March 2000 has been a huge success. The computerized intake procedure provides the attorneys in the Director's Office with easy access to information and references for issuing advisory opinions. The system enables the Office to issue more advisory opinions without additional staffing and expands the availability of ethics resources that can be disseminated to the bar when issuing opinions.

Attorney Discipline Record System (ADRS)

The ADRS implemented in July 1997 allows users quick access to an attorney's disciplinary history and provides statistical information. In the past year the Office contracted with the Macro Group to program enhancements to the ADRS system. The enhancements include the capability to track panel matter assignments and complainant appeals and provides statistical reports for both of these processes. The opening complaint process was streamlined by the development of a more user-friendly screen to code new complaints. The enhancements are now complete and the system continues to serve the Office well.

Website.

The Office of Lawyers Professional Responsibility continues to maintain and regularly update its website. The address is www.courts.state.mn.us/lprb. Attached at A. 3 is the title page showing the current contents of the website.

C. Personnel.

When fully staffed, the Director's Office employs 10 attorneys, 4.5 paralegals, 1 administrator, 7.5 support staff and 1 part-time law clerk (*see* organizational chart at A. 4). The Office experienced several personnel changes this year. In April 2001, Senior Assistant Director Eric Cooperstein resigned after working in the Director's Office for more than 5 years. The Office has recently hired Cassie Hanson, a 2000 graduate of the University of Iowa Law School, and a former judicial law clerk, to begin employment with the Office as an Attorney I in June of 2001. In June of 2000, law clerk Melannie Matschiner left the Office to pursue her legal career. Law clerk Melissa Maloney was hired and will be taking the bar exam this summer. In July 2000, paralegals Joanne Prillaman and Peggy Berg left the Office for new opportunities. Jenny Boushley and Patricia La Rue were hired in August to fill those vacancies.

D. Trusteeships.

Pursuant to Rule 27, Rules on Lawyers Professional Responsibility (RLPR), the Supreme Court periodically appoints the Office as trustee to inventory files and, when necessary, trust accounts, of disabled, disappeared, deceased, suspended, disbarred or resigned lawyers.

The Office received one new trusteeship this year, Theodore Abe. The Director obtained signatory power over the trust account, audited the account and presented a proposed disbursement schedule to the Court, which the Court approved. The Director has disbursed nearly the entire account balance pursuant to the Court's order.

In December 2000, the files of Reynaud Harp and Carol Sue Merlin were destroyed pursuant to Court order. In May of 2001, the files of Michael B. Smith, which had been retained in a storage facility in Brainerd for two years, were destroyed pursuant to Court order.

Approximately 350 files remain in storage in the Director's Office in the Peter Orkins matter which will be destroyed in October 2001; 140 Barry Robinson files which will be destroyed in February 2002; 163 files in the Abe matter which become eligible for destruction in February 2003; and 210 files in the Gerald McNabb matter which can be destroyed in April 2003.

In April 1999 the Director was appointed trustee over the trust account of deceased lawyer Karla Wahl. Funds belonging to clients whom the Director has been unable to locate remain in the account. The Court has ordered the Director to maintain the trust account until August 2001, at which time any remaining balance may be forwarded to the Minnesota Department of Commerce as unclaimed property.

E. Complainant Appeals.

Under Rule 8(e), Rules on Lawyers Professional Responsibility, a complainant has the right to appeal from the Director's disposition in most cases. The file is then reviewed by a Board member. During 2000, the Director's Office received 232 complainant appeals, compared to 238 such appeals in 1999. There were 234 determinations made by Board members in 2000 as follows:

Approve Director's disposition	219	<u>94</u>
Direct further investigation	12	5
Instruct Director to issue an admonition	0	0
Instruct Director to issue charges	3	1

A total of 36 clerical hours were spent in 2000 processing the appeal files, as well as a relatively small amount of attorney time, which was expended responding

to complainants, respondents and Board members, as well as reviewing files and letters to determine a variety of appeal issues.

F. Probation.

Probation attempts to serve the dual functions of protecting the public and assisting the disciplined attorney to improve his or her practice and conform to the Rules of Professional Conduct. During 2000, 97 attorneys were on public or private probation. Approximately one fourth of these probations were supervised by volunteer attorney supervisors who reviewed their office procedures and client file inventories.

TOTAL PROBATION FILES OPEN DURING 2000

Public Supervised Probation Files	25	
Public Unsupervised Probation Files	<u>18</u>	
Total Public Probation Files		43
Private Supervised Probation Files	24	
Private Unsupervised Probation Files	<u>30</u>	
Total Private Probation Files		<u>54</u>
Total Probation Files Open During 2000		97

TOTAL PROBATION FILES

Total probation files as of 1/1/00		66
Probation files opened during 2000		31
Private probations extended during 2000		2
Probation files closed during 2000		<u>(22)</u>
Total Probation Files Open as of 12/31/00		77

PROBATIONS OPENED IN 2000

Public Probation Files

Court-ordered Probation Files		
Supervised	4	
Unsupervised	<u>6</u>	10
Reinstatements		
Supervised	1	
Unsupervised	<u>1</u>	
Total Public Probation Files		<u>2</u>
		12

Private Probation Files

Supervised	13	
Unsupervised	<u>8</u>	
Total Private Probation Files		<u>21</u>
Total Probation Files Opened in 2000		33

Two private probations were extended during 2000. Three probations were revoked in 2000 (Ranum, Shaughnessy and Zatz). Following a four-month suspension, Ranum was reinstated and placed on a two-year probation on November 2, 2000. Since January 1, 2001, three private probationers (Brehmer, Danielson and Hoedeman) have been suspended. There are currently six probationers with pending revocation proceedings.

The Court and the Director's Office attempt to tailor the terms and conditions of probation to the specific issues facing the attorney such as office management, organization and procrastination issues, billing and record keeping practices as well as psychological problems or chemical dependency.

PROBATIONS OPENED IN 2000 INVOLVING:

Client Related Violations	8
Non-Client Related Violations	10
Both Client & Non-Client Violations	<u>15</u>
Total Probation Files Opened	33

PROBATION FILES CLOSED IN 2000

Probations Successfully Completed	17
Probation Revocations	3
Probations Closed with Extensions	<u>2</u>
Total Probation Files Closed in 2000	22

Improper trust account procedures continue to be an issue for attorneys. Trust account violations are second only to neglect and non-communication violations as the most common misconduct for which probation is imposed. Eleven (11) of the 33 new probations opened during 2000 involved problems with an attorney's trust account. All of these probationers are required to submit their

complete trust account books and records for review by the Director's Office. Other misconduct for which probation has been imposed includes:

AREAS OF MISCONDUCT

Reflected in 97 files open in 2000

Competence (Violation of Rules 1.1 and 1.2, MRPC)	13
Neglect & Non-Communication (Violation of Rules 1.1 and 1.2, MRPC)	75
Conflict of Interest	4
Fees & Opinion 15 Violations	19
Trust Account Books and Records (Violation of Rule 1.15, MRPC, and LPRB Opinion 9)	57
Termination of Representation	12
Unauthorized Practice of Law (Violation of Rule 8.4(b), MRPC)	6
Taxes	16
Supervision of Non-Lawyers (Violation of Rule 5.3, MRPC)	6
Non-Cooperation (Violation of Rule 8.1, MRPC)	24
Breach of Confidentiality (Violation of Rule 1.6, MRPC)	2
Criminal Conduct (Violation of Rule 8.4(b), MRPC)	13
Misrepresentations (Violation of Rule 8.4(c), MRPC)	32
Conduct Prejudicial to the Administration of Justice (Violation of Rule 8.4(d), MRPC)	42

**A file may involve more than one area of misconduct.

DISABILITY RELATED PROBATIONS

Ongoing probations with a mental health component increased 20% from 10 in 1999 to 12 in 2000. As a percentage of all probations, the number of probations relating, at least in part to psychological disorders, increased from 9.9% in 1999 to 12.2% in 2000.

Chemical Dependency - existing files on 1/1/00	0	
New files opened during 2000	<u>3</u>	
Total Chemical Dependency Related Probation Files		3
Psychological Disorders - existing files on 1/1/00	8	
New files opened during 2000	<u>4</u>	
Total Psychological Disorder Related Probation Files		<u>12</u>
Total Disability Related Probations		15

The Director manages probations with mental health issues by requiring the probationer to initiate or continue treatment with a licensed consulting psychologist or other mental health professional acceptable to the Director and to complete all therapy programs recommended by the therapist. The probationer is required to provide the Director with authorization to periodically obtain from the therapist narrative reports or copies of records to verify that the probationer is taking any prescribed medication and cooperating with the recommended treatment plan. One current private probation specifically involves the supervisor in monitoring the probationer's mental health status and permits the supervisor to review the probationer's medical records to the extent necessary to verify compliance with the terms of the probation.

Generally, the Director will address chemical dependency by requiring the probationer to remain abstinent and attend Alcohol Anonymous (AA). In more serious cases, the Director will require random urinalysis (UA) tests. Currently, the Director is monitoring two probationers who are submitting random UAs to verify their abstinence from alcohol and other drugs. There is also a stipulation for public probation now under advisement which would require, among other things, that a third probationer call in and submit random UAs.

The Office takes UA testing very seriously. The probationer must submit to UA testing for drug screening on a random basis, at a testing facility approved by the Director. The testing facility must perform observed collections and maintain a chain of custody. Once the facility is approved, the probationer calls the Probation Paralegal between 8:30 a.m. and 3:00 p.m. every Monday, Wednesday and Friday throughout the term of the probation to determine whether he or she needs to appear for testing. The testing facility must mail copies of all test results directly to the Director on a continuing basis and is requested to notify the Director immediately by phone of any positive test result.

To preserve the integrity of the random schedule, any waiver of the probationer's call-in obligation must be scheduled well in advance. Therefore, except in very unusual circumstances (e.g., death in the family), the probationer must request any waiver of his or her call-in obligation at least a month in advance. The Director will only grant limited waivers of the call-in requirement. Waiver is not automatically granted.

A number of attorneys have successfully completed probation involving chemical dependency and mental health issues. When this occurs, the dual functions of public protection and assisting the disciplined attorney have been achieved.

Two Senior Assistant Directors monitor the probation program with the assistance of the Probation Paralegal.

TIME BY PROBATION DEPT. STAFF (hrs./wk.)

Attorney 1	8
Attorney 2	12
Paralegal	16

G. Advisory Opinions.

The Director's Office offers an advisory opinion service to Minnesota lawyers and judges. The goal of this service is to offer ethical advice to licensed Minnesota attorneys.

Almost all advisory opinions are requested and given by telephone; a small number of opinions (1-2%) are provided in writing. The Director's Office declines to give opinions where the question concerns third-party conduct, a question of law, advertising and solicitation, or past conduct. Advisory opinions are the personal opinion of the assistant director issuing the opinion and are not binding upon the Lawyers Board or the Supreme Court.

On March 1, 2000, the Director's Office converted to an advisory opinion tracking system that is entirely paperless and computerized. Thus, when a request for an advisory opinion is received, the receptionist makes the necessary identifying entries to the computer database and refers the call to an assistant director. The assistant director then enters into the database a description of the question, the opinion, and the appropriate coding. All necessary statistics and reports can thus be generated from the database.

In 2000, the Director's Office received 1,752 requests for advisory opinions, an increase of 117 from requests received in 1999.

Set forth below is a statistical summary of advisory opinions for the period 1990 through 2000:

YEAR	OPINIONS GIVEN BY TELEPHONE	OPINIONS GIVEN IN WRITING	TOTAL OPINIONS GIVEN	OPINIONS DECLINED	TOTAL
1990	1130 (83%)	26 (2%)	1156 (85%)	199 (15%)	1355
1991	1083 (84%)	23 (2%)	1206 (86%)	186 (14%)	1292
1992	1201 (86%)	15 (1%)	1216 (87%)	182 (13%)	1398
1993	1401 (87%)	16 (1%)	1417 (88%)	201 (12%)	1618
1994	1489 (84%)	10 (1%)	1499 (85%)	266 (15%)	1765
1995	1567 (87%)	22 (1%)	1589 (88%)	206 (12%)	1795
1996	1568 (88%)	16 (1%)	1584 (89%)	199 (11%)	1783
1997	1577 (90%)	15 (1%)	1592 (91%)	165 (9%)	1757
1998	1478 (91%)	23 (1%)	1501 (92%)	131 (8%)	1632
1999	1464 (90%)	17 (1%)	1481 (91%)	154 (9%)	1635
2000	1585 (90%)	28 (2%)	1610 (92%)	142 (8%)	1752

In 2000, the Director's Office expended 405 hours in issuing advisory opinions (385 in assistant director time and 20 in paralegal and clerical time). This compares with 422.50 hours in 1999 (390 in assistant director time and 32.50 in paralegal and clerical time). Conflict of interest was again the most frequent area of inquiry.

H. Judgments and Collections

In 2000, the Minnesota Supreme Court entered judgments in 39 disciplinary matters totaling \$37,464.91. The Director's Office collected a total of \$28,463.88 on judgments entered in and prior to 2000; of this amount, \$15,645.63 (or 55% of the total) was for judgments entered in 2000. The Director's Office collected \$10,584.72 (63%) more in 2000 than in 1999. The value of the judgments entered by the Director's Office was \$18,449.95 (51%) more in 2000 than in 1999. Forty-two percent of the judgments entered in 2000 have been collected. The Director's Office filed satisfactions of 22 judgments.

The total amount of outstanding judgments as of January 1, 2001, was \$200,596.76.

A summary of the 2000 statistics, and how they compare to 1999, is presented below:

	2000	1999
Number of judgments entered	39	20
Dollar value of judgments entered	\$ 37,464.91	\$ 19,014.96
Total amount collected	\$ 28,463.88	\$ 17,879.16
Portion attributable to current year's judgments	\$ 15,645.63	\$ 10,337.50
Portion attributable to judgments of prior years	\$ 12,818.25	\$ 7,541.66

The Director's Office docketed no judgments in 2000 and undertook no extraordinary collection action.

The Director's Office filed 59 National Discipline Data Bank Reports in 2000.

I. Professional Firms.

Under the Minnesota Professional Firms Act, Minn. Stat. § 319B.01 to 319B.12, a professional firm engaged in the practice of law must file with the Board an initial report and annual reports thereafter, accompanied by a filing fee. The Professional Firms Act contains limitations on the structure and operation of professional firms and sets forth the information to be contained in the reports.

The Director's Office has monitored the reporting requirements of the statute since 1973. Annual reports are sought from all known legal professional firms, which includes professional corporations, professional limited liability corporations and professional limited liability partnerships. A portion of the Office website is devoted to the filing requirements for professional firms and an article reminding the bar of the requirements was published in the April 30, 2001, *Minnesota Lawyer*.

Although the statutory authority exists to revoke the corporate charter of professional firms that fail to comply with the reporting requirements, no revocation proceedings have been pursued. The following are statistics for income collected as filing fees by the professional firms department as of March 7, 2001:

1208	@	\$25.00	\$30,200.00
57	@	100.00	<u>5,700.00</u>
			35,900.00
19*	for	4,000.00	<u>4,000.00</u>
			<u>39,900.00</u>

*Funds collected for fees owed for 1999 and prior years.

Total Attorney Hours:	51
Total Non-attorney Hours:	203

A Senior Assistant Director, paralegal, and file clerk staff the professional firms department. The professional firms roster, statistical data, and regular notice letters are retained on computer to facilitate efficient processing.

J. Overdraft Notification.

Since 1990, banks have reported overdrafts on lawyer trust accounts to the Director's Office. The number of overdraft reports increased from 83 in 1999 to 113 in 2000. This is the first year in which the number of overdrafts reported has increased, after three consecutive years of decreases.

During 2000, the Director's Office terminated 107 overdraft inquiries (some of which were initiated in prior years). Ninety-eight (98) of the terminations were without a disciplinary investigation; 9 terminations were followed by a disciplinary investigation.

The following 2000 public discipline cases involved trust account overdraft notices received by the Director's Office in 2000 and/or previous years:

In re Eichhorn-Hicks, 615 N.W.2d 356 (Minn. 2000) (Suspension)

In re Ranum, 611 N.W.2d 344 (Minn. 2000) (Suspension)

In re Gant, 615 N.W.2d 271 (Minn. 2000) (Suspension)

In re Flatten, 611 N.W.2d 340 (Minn. 2000) (Suspension)

1. Terminated Inquiries.

In 38 of the overdraft inquiries terminated without a discipline investigation, changes or improvements were recommended in the form of an instructional letter. In general, the most common deficiencies in attorneys' trust account records are a lack of subsidiary client ledgers and a failure to properly reconcile to the trust account, resulting in either a shortage or a surplus in the account. The following statistics for 2000 reflect the various causes of overdrafts on trust accounts:

<u>Overdraft Cause</u>	<u>No. of Closings</u>
Bank error	27
Mathematical/clerical error	21
Late deposit	13
Service or check charges	9
Third party check bounced	7
Improper/lacking endorsements	6
Check written in error on TA	5
Deposit to wrong account	4
Other	4
Reporting error	2

2. Disciplinary File Openings.

The Director opens disciplinary investigations when the attorney's response does not adequately explain the overdraft or significant problems are identified by reviewing the records submitted. During 2000, trust account inquiries resulted in disciplinary file openings in the following situations:

<u>Reason for Investigation</u>	
Shortages	3
Response fails to explain OD	2
Commingling	2
Using trust account as personal/operating account	1
Grossly inadequate books and records	<u>1</u>
Total	9

3. Time Requirements.

Set forth below are the staff time requirements to administer the overdraft notification program:

	<u>1/99-12/99</u>	<u>1/00-12/00</u>
Attorney	240.00 hrs	240.00 hrs
Paralegal and other staff	<u>105.00 hrs</u>	<u>123.50 hrs</u>
Total	345.00 hrs	363.50 hrs

K. Disclosure.

1. Department Function.

The disclosure department responds to written requests for attorney disciplinary records. Public discipline is always disclosed. Private discipline is disclosed only with a properly executed consent from the affected attorney. In addition, the Director's Office responds to telephone requests for attorney public discipline records. The telephone requests and responses are not tabulated.

2. Source and Number of Written Requests for Disclosure.
Calendar Year 2000.

	<u># of Requests</u>	<u># of Attorneys</u>	<u>Discipline Imposed</u>	<u>Open Files</u>
A. National Conference of Bar Examiners	90	90	1	0
B. Individual Attorneys	4	4	1	0
C. Local Referral Services				
1. MSBA	21	206	0	0
2. RCBA	11	66	0	0
D. Governor's Office	19	59	4	0
E. Other State Discipline Counsels/State Bars or Federal Jurisdiction	243	253	10	6
F. F.B.I.	26	27	0	0
G. MSBA: Specialist Certification Program	18	138	13	2
H. Miscellaneous Requests	18	381	5	0
TOTAL	450	1224	34	8
(1999 Totals)	(530)	(887)	(39)	(7)

IV. DISTRICT ETHICS COMMITTEES.

Minnesota is one of only a handful of jurisdictions that have succeeded in making effective use of the local district ethics committees (DECs) to investigate complaints of lawyer misconduct. The system in Minnesota continues to work well and results in uniform application of ethical standards because the 21 bar

association committees have (1) uniform rules of procedure, pursuant to the Rules on Lawyers Professional Responsibility; (2) are directly supervised by the Director's Office; and (3) have a large enough jurisdiction for the most part that respondents are not routinely known personally by the investigators.

Initial peer review of complaints by practitioners in their own area is exceedingly valuable in reinforcing confidence in the system for lawyers. Input and participation by non-lawyer members instills confidence in the public that the system is not protectionist. The quantity and quality of the DEC investigative reports remain high. For the calendar year 2000, the Director's Office followed the recommendations of the DEC's in 91 percent of the matters referred from the Committees back to the Office. The legal profession, and the public at large, are indebted to those who volunteer significant time to the disciplinary system.

In 2000, the overall monthly average volume of files under consideration by the DEC's was 153, fluctuating between a low of 128 and a high of 169. This is higher than the 1999 overall average of 133. The year-to-date average volume for 2001 through April 30 is 157. Rule 7(c), RLPR, provides a 90-day goal for investigations. The average file age for pending matters in all DEC's for April 2001 was 2.7 months, with the Hennepin (Fourth District) Ethics Committee at 1.8 months and the Ramsey (Second District) Ethics Committee at 2.7 months. For *completed* DEC investigations in April 2001, the overall average for the prior 12 months was 3.5 months, with the Hennepin DEC at 3.5 months and the Ramsey DEC at 3.7 months, down slightly from prior years.

For the calendar year 2000, the DEC's completed 495 investigations, taking an average of 3.4 months to complete each investigation. The Hennepin DEC was assigned 207 of these investigations, taking an average of 3.5 months per investigation (*See* Attachment A. 5, DEC Investigation Summary).

Because the Hennepin DEC uses a two tiered complaint review process not used by the other DEC's, their statistics are separately monitored and broken down to reflect file aging at the various decision points in the process. In the Hennepin DEC, investigators first make their presentation to a screening committee which meets every other Wednesday. Should the committee recommend dismissal of a complaint, it is referred back to the Director's Office for disposition. Should the committee conclude there might have been a rule violation or that additional investigation is warranted, a meeting of one of three Hennepin DEC panels will be scheduled with both complainant and respondent invited to attend and tell their story. Panel meetings are held every other Wednesday. For calendar year 2000, 153 matters were referred back to the Director's Office after screening without being referred to the DEC panel. It took an average of 3.1 months to complete the DEC investigation of these matters. There were 43 matters referred to the Hennepin DEC panel before being sent back to the Director's Office. These panel matters took an average of 4.6 months to complete. There were 11 matters withdrawn from the DEC prior to the completion of the investigation. Most often, the reason for withdrawal was delay in completing the investigation. In these cases the investigation was completed by the Director's Office.

For the calendar year 2000, 495 completed DEC investigations resulted in the following dispositions¹:

Determination discipline not warranted	380
Admonition	60
Suspension	3
Private probation	12
Disbarment	0
Public probation	0
Attorney deceased	1

¹ 39 files received back from the DEC's in 2000 remained open as of 1/1/01.

A statewide seminar for DEC members, hosted by the Director's Office, is scheduled for September 10, 2001. For the Hennepin DEC, a separate training/orientation seminar is held annually in August with an additional session in September for non-attorney members. The Director's Office continues to provide support to the DEC's through the liaisons assigned to each district.

V. FY'02 GOALS AND OBJECTIVES

With eight new Board members, many new Panel Chairs, new Committee Chairs, and new Panel membership, the challenge this year will be to effectively incorporate the changes that have been made to increase the efficiency of our professional responsibility system.

In addition, we will begin to address the proposed changes in the rule framework that will impact our profession in the coming years as a result of Ethics 2000. Even though the petition to the Minnesota Supreme Court for these changes is a year or two away, once in place, these amended rules will likely be in effect for 15 to 20 years.

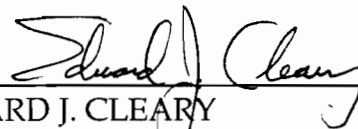
While most observers are aware of the prosecutorial duties performed by the Office, many remain unaware of the preventive advice the Office regularly offers as a service to the legal community. For the eighth year in a row, the number of advisory opinions issued to lawyers requesting guidance outnumbered the number of complaints filed. The Office continues to help educate the bar with bi-weekly articles in the MINNESOTA LAWYER and with a monthly column appearing in the BENCH & BAR. In addition to producing an office seminar in the fall, the members of the Office continue to accept as many teaching and speaking engagements as possible, appearing before both lawyers and non-lawyers, in a continuing effort to help lawyers navigate the waters of professional ethics and to help educate the public as to how our profession is regulated. In the past 12 months, members of the Office have been involved in 58 speaking engagements (*see* A. 6). In addition,

several members of the Office, including the Director, continue to serve as adjunct law professors at the University of Minnesota Law School and William Mitchell College of Law.

The members of the Office and the members of the Board remain cognizant of their duty to protect the public and, in doing so, serve the profession. Consequently, the lawyers in the Office will continue to do their very best to educate and advise the members of the profession to help prevent ethical violations. Nevertheless, when misconduct occurs, the Office and the Board remain prepared to do what must be done to serve the public interest.

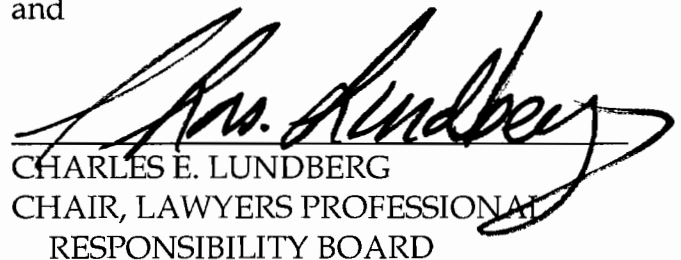
Dated: June 1, 2001.

Respectfully submitted,



EDWARD J. CLEARY
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY

and



CHARLES E. LUNDBERG
CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD

Lawyers Professional Responsibility Board Members

Charles E. Lundberg, Mpls. – Attorney member; current LPRB Board Chair; term expires 1/31/04; partner in the firm of Bassford, Lockhart, Truesdell & Briggs, P.A.; served 6 years as LPRB Board member, and over 8 years on the Fourth District DEC.

John C. Lervick, Alexandria - Attorney member; MSBA nominee; current LPRB Vice-Chair; term expires 1/31/02; partner with the firm of Swenson, Lervick, Syverson & Anderson, Ltd.; served many years on the Seventh District DEC as a member and Chair.

Kathleen Clark Anderson, Mpls. – Public member; term expires 1/31/03; worked with Hennepin County Bar Association Fee Arbitration Board; served over 8 years as member of the Fourth District DEC.

Larry M. Anderson, Mpls. – Public member; term expires 1/31/04; Arbitration Coordinator/Settlement Conference Administrator for Hennepin County District Court; served 4 years on the Fourth District DEC.

Ann M. Bailly, Mpls. – Public member; serves on LPRB Executive Committee; serves on the LPRB Rules Committee; term expires 1/31/02; recently retired after working in Academic Administration at U of M for 30 years; served on the Fourth District DEC for 11 years.

Charles R. Bateman, Duluth – Attorney member; term expires 1/31/02; serves on the LPRB Opinion Committee; partner with Halverson, Watters, Downs, Reyelts & Bateman; served on the Eleventh District DEC for 11 years, including 5 years as Chair.

Kenneth E. Broin, Robbinsdale – Public member; term expires 1/31/02; recently retired after 57 years with U.S. Bank; served on Fourth District DEC for 12 years.

Regina Chu, Mpls. – Attorney member; MSBA nominee; serves as Chair of the LPRB Opinion Committee; term expires 1/31/04; partner in Regina M. Chu, P.A.; served on Fourth District DEC for 3 years.

Wood R. Foster, Jr. - Mpls. – Attorney member; MSBA nominee; term expires 1/31/03; partner in the firm of Siegel, Brill, Greupner, Duffy & Foster; former member of the Fourth District DEC; past president of Hennepin County Bar Association and the Minnesota State Bar Association.

Timothy J. Gephart, Mpls. – Public member; term expires 1/31/02; works in the area of legal malpractice claims for Minnesota Lawyers Mutual; served on Fourth District DEC from 1991-1998.

Christopher Lake-Smith, St. Paul – Public member; serves on LPRB Executive Committee; serves on the LPRB Opinion Committee; term expires 1/31/04; Director of Information Services for Knotts Camp Snoopy. Served on Second District DEC.

Thomas J. LaVelle, Worthington – Attorney member; serves on the LPRB Opinion Committee; term expires 1/31/02; partner in the firm of LaVelle, Darling & LaVelle; in solo practice since April 1997; served as Chair of the Thirteenth District DEC for 5 years.

Patrick J. McGuigan, St. Paul – Attorney member; term expires 1/31/04; partner in the firm of McGuigan & Holly; served a total of 9 years on Second District DEC, 6 years as Chair.

Katie McWatt, St. Paul - Public member; term expires 1/31/02; served on the Second District Ethics Committee; recently retired from her position as Coordinator of St. Paul Central's Minority Education program.

Neil M. Meyer, Mpls. - Attorney member; term expires 1/31/04; partner in the firm of Meyer & Njus; longtime member of the Fourth District DEC, serving as Vice-Chair; served as volunteer trustee appointed by Minnesota Supreme Court on behalf of the Office of Lawyers Professional Responsibility; named 1999 Lawyers Professional Responsibility Board Volunteer of the Year.

Michael E. Mickelson, Willmar - Public member; term expires 1/31/03; President and CEO of the Willmar Cookie and Nut Company, which he founded in 1953; served on the Twelfth District DEC for 10 years.

Patty Murto, Duluth - Public member; term expires 1/31/03; responsible for development and implementation of a Volunteer Attorney Program.

Timothy M. O'Brien, Mpls. - Attorney member; MSBA nominee; serves as Chair of the LPRB Rules Committee; term expires 1/31/03; partner in the firm of Faegre & Benson; served many years on the Fourth District DEC.

Steven J. Olson, Osakis - Attorney member; serves on LPRB Executive Committee; term expires 1/31/02; recently retired as General Counsel for Ceridian Corporation.

Mary Alice Richardson, Rochester - Attorney member; serves on the LPRB Rules Committee; term expires 1/31/04; solo practitioner in the areas of family law, probate and real estate; served over 6 years on the Third District DEC and volunteered as a probation supervisor.

Judith M. Rush, Roseville - Attorney member; MSBA nominee; term expires 1/31/04; solo practitioner in the areas of family and appellate law; served 6 years as member of the Second District DEC.

Cindy K. Telstad - Winona - Attorney member; MSBA nominee; term expires 1/31/02; partner in the firm of Streater & Murphy; served on the Third District DEC for the past 6 years and as Chair of that Committee since 1998.

E. George Widseth, Mpls. - Attorney member; serves on the LPRB Rules Committee; term expires 1/31/03; serves as a prosecutor in the Hennepin County Attorney's office.

Office of Lawyers Professional Responsibility

2000 Summary of Public Matters Decided

43 DECISIONS

<u>Supreme Court Reprimand</u>	<u>2 files</u>	<u>2 attorneys</u>	<u>Supreme Court Suspension</u>	<u>47 files</u>	<u>16 attorneys</u>
Bidjou, Brent Viscount	CX-00-138	1	Callahan, Kelly P.	C4-00-1608	1
McLoone, John H., IV	C4-00-622	1	Carpenter, Gregory Allen	C8-99-969	4
			Carroll, Kevin P.	C7-00-274	4
			Day, Richard G.	C7-00-1117	4
			Eichhorn-Hicks, Tracy R.	C9-00-373	1
			Flatten, Gary A.	C0-99-2182	1
			Gant, Jesse, III	C8-99-2060	15
			Gomsrud, Richard G.	C2-99-742	1
			Hanvik, James T.	C3-99-815	1
			Indritz, Richard N.	C7-99-1627	3
			Klein, Harlan P.	C5-88-1968	3
			Leino, Stanley James	C4-99-1827	2
			Miera, Alberto O., Jr.	C3-97-2009	1
			Peterson, Brian J.	CX-00-2049	1
			Ylitalo, Ronald O.	C1-85-1550	2
			Zatz, Peter Bruce	C9-98-209	3

<u>Supreme Court Reprimand</u>	<u>14 files</u>	<u>10 attorneys</u>	<u>Supreme Court Disability</u>	<u>3 files</u>	<u>2 attorneys</u>
<u>and Probation</u>			Jambois, Patricia	C5-00-1455	1
Anderson, Thornton P.	C6-92-1241	1	Shaughnessy, Stephen W.	C0-90-95	2
Appleget, Steven Thomas	C9-99-2181	1			
Begeske, Matthew K.	C5-99-2128	1			
Bosse, Richard Edward	C4-99-1889	1			
Frauenshuh, Ronald R., Jr.	C3-00-62	1			
Holker, Kenneth M.	C5-99-1061	1			
Paul, William D.	C9-00-311	2			
Quinn, Michael J.	C2-00-67	1			
Schumack, Barrie S.	C6-99-1781	4			
Stanbury, Alfred Milton	CX-96-859	1			

Office of Lawyers Professional Responsibility

2000 Summary of Public Matters Decided

43 DECISIONS

<u>Supreme Court Disbarment</u>	<u>11 files</u>	<u>6 attorneys</u>	<u>Reinstatement</u>	<u>3 files</u>	<u>3 attorneys</u>
Dygert, Robert W.	C4-00-409	4	Clayton, Charles	C4-00-1009	1
Graham, Chester C.	C4-86-1715	2	Durenberger, David F.	C8-91-33	1
Heinemann, Loren L.	C2-99-384	1	Ranum, Karl Matthew	CX-00-351	1
Koss, Lewis M.	C2-96-2024	1			
Ray, Harry N.	CX-81-1120	2			
Singer, Michael G.	C7-93-318	1			

Supreme Court Admonition Affirmed 1 file 1 attorney
In Re Panel File No. 99-5 C5-99-1464 1



Minnesota Lawyers Professional Responsibility Board & Office of Lawyers Professional Responsibility

What's New?

- [Frequently Asked Trust Account Questions](#)
- [Most Recent Ethics Articles from Minnesota Lawyer](#)
- [Most Recent Bench & Bar Professional Responsibility Columns](#)

The Lawyers Professional Responsibility Board

- [About the Lawyers Professional Responsibility Board](#)
- [Board Member Directory](#)

The Office of Lawyers Professional Responsibility

- [About the Office of Lawyers Professional Responsibility](#)
- [Hours and Staff Directory](#)

Filing a Complaint Against a Lawyer

- [Complaints and Investigations Procedures Brochure](#)
- [Directions for Filing a Complaint](#)
- [Complaint Form for Filing a Complaint](#)

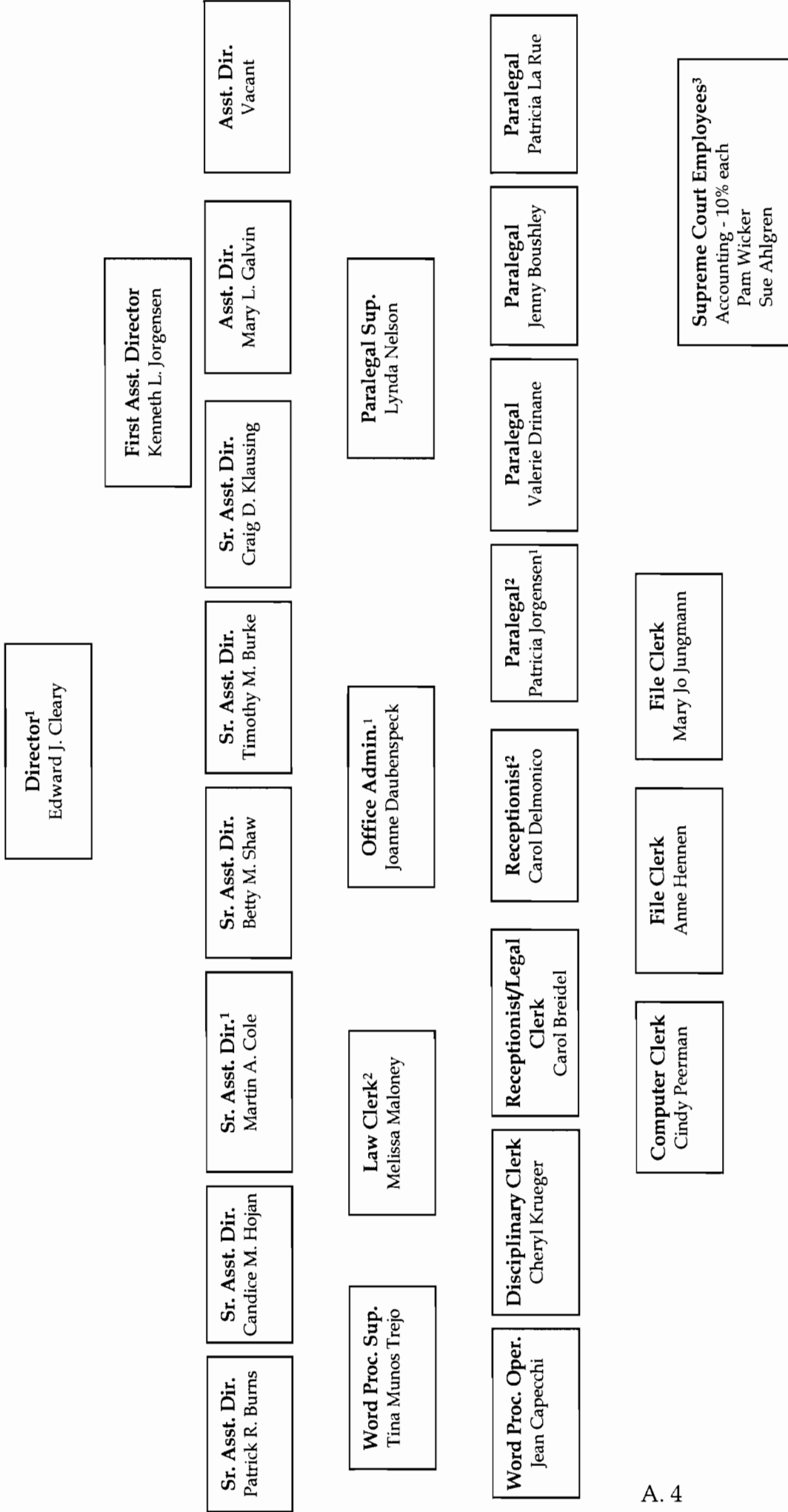
Rules Governing Minnesota Lawyer Discipline System

- [Minnesota Rules of Professional Conduct \(including amendments through 7/1/00\)](#)
- [Minnesota Rules on Lawyers Professional Responsibility \(Procedure Rules\)](#)
- [Lawyers Professional Responsibility Board Opinions \(1 through 19\)](#)

Other Resources

- [Index of *Bench & Bar* articles concerning Minnesota Professional Responsibility Issues](#)
 - [List of Disbarred and Currently Suspended Lawyers](#)
 - [List of Approved Financial Institutions for MN Lawyer Trust Accounts](#)
 - [Professional Firms](#)
 - [Annual Report and Statistics](#)
-

Office of Lawyers Professional Responsibility FY'01 Organizational Chart



¹Also Client Security Board Staff

²Part-time position

³Not administratively subject to Director's Office.
Office pays percentage of their salary

DEC INVESTIGATION SUMMARY		
DEC	Number of Files	Average Investigation Duration (Months)
1	22	5
2	69	3.7
3	13	1.7
4	207	3.5
5	8	2.1
6	4	3
7	28	3.2
8	10	3.3
9	1	4
10	3	4
11	14	4.1
12	11	3.2
13	1	3
14	6	2.7
15	35	2.6
16	0	0
17	1	5
18	10	3.4
19	18	2.9
20	9	2.1
21	25	3.3
Totals	495	3.4
(non 4th)	(288)	(3.3)

**Office of Lawyers Professional Responsibility
Speaking Engagements and Seminars July 2000 - June 2001**

7/26/00	Lawyers Concerned for Lawyers		
8/15/00	Ethics for Government Lawyers	St. Paul	Revisor's Office & Senate Counsel
9/11/00	Ethics for Paralegals	Hamline University	
9/19/00	Controllers Group Meeting (Rider Bennett)	Minneapolis	
9/20/00	Elimination of Bias	St. Paul	Revisor's Office & Senate Counsel
9/25/00	Bankruptcy Institute		
10/4/00	William Mitchell Probation Seminar	St. Paul	
10/5/00	Advertising Law	Minneapolis	MILE
10/19/00	Reinstatement		MILE
10/23/00	Sandy Keith's Judicial Process Class	Hamline Law School	
10/24/00	Larkin Hoffman Seminar	Bloomington	
11/2/00	Foreclosure Seminar	Minneapolis	MILE
11/10/00	Real Estate Institute	St. Paul	MCLE
11/10/00	Hennepin Cty. Public Defender Seminar	Hinckley	HCPD
11/13/00	All Dist. Legal Education Seminar	Bloomington	
11/15/00	Ramsey County Bar <i>Quicken</i> Seminar	St. Paul	RCBA
11/16/00	Ramsey County Judicial Training Seminar	St. Paul	MSBA
12/7/00	Ethics Seminar - Dorsey & Whitney	Minneapolis	
12/13/00	Ethical Issues in Investigations	Brooklyn Center	MILE
12/15/00	Olmsted County	Rochester	MCLE
1/11/01	Third District Young Lawyers	Rochester	
1/18/01	Nuts and Bolts	Minneapolis	MCLE
1/23/01	Hiring & Firing Seminar	Brooklyn Center	MILE
1/26/01	Attorney General's Seminar	St. Paul	MCLE
1/30/01	Employment Law	Brooklyn Center	MILE
1/31/01	Rule Changes	Minneapolis	MILE
1/31/01	Ethics in Forming New Corporate Entities	Minneapolis	Lorman
2/5/01	Ethics for Paralegals	Hamline University	
2/6/01	Judicial Elections		MILE
2/10/01	City Attorney Seminar	Bloomington	
2/21/01	In-House Counsel Seminar	Minneapolis	MCLE

