

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

Pursuant to Rules 4(c) and 5(b), Rules on Lawyers Professional Responsibility (RLPR), 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. These reports are hereby jointly made for the period from July 2007 through June 2008. The majority of the statistical information, however, is based upon information from calendar year 2007.

**Review of Discipline System.** On May 19, 2008, the Supreme Court Advisory Committee to Review the Lawyer Discipline System submitted its report to the Minnesota Supreme Court. The Committee was chaired by Minneapolis attorney Allen Saeks and met twelve times from September through May. An executive summary of their findings and recommendations is attached at A. 1.

Overall, the Committee found that Minnesota's lawyer disciplinary system is in good shape and very few material changes were recommended. File aging perhaps generated the most concern to the Committee, and several of their recommendations reflect the desire to ensure that complaints are investigated and resolved promptly. The recommendation most likely to be considered controversial is that the current contested probable cause hearing process should be amended to limit the number of full evidentiary hearings in favor of more "paper" reviews. Only when a panel determines that a specific need for an evidentiary hearing exists would such a hearing be held under the Committee's recommendation. The Committee also recommended that admonitions be expunged after ten years if the attorney has had no further discipline. While this appears less controversial in principal, it would constitute a fundamental change for the system. To date, the Board has not supported either recommended rule change.

The Lawyers Board, through the Executive Committee, will consider the Advisory Committee's recommendations and formally report to the Committee and the Court. Most of the recommendations will be accepted. Written submissions are due to

the Supreme Court by September 12, 2008, with a full hearing on the Report to be held on September 23, 2008 (A. 2).

**Complaint Statistics.** The number of complaints received in 2007 was 1226, almost exactly the same as the previous year's total of 1222. While the number did not increase this past year, these totals for the past two years remain higher than yearly averages for the previous decade. Tables outlining these and related statistics are at A. 3 - A. 7.

Unfortunately, totals for the first four months of 2008 project to a year-end total of 1386, which would represent another 13% increase over the current level. This past year, however, the number of complaints received in the fourth quarter was significantly lower than for the first three quarters, so the current year's trend may yet prove deceptive. A total of 1386 complaints received would create problems for the Director's Office in its efforts to keep up with current complaints while also attacking and resolving the older files, as the Advisory Committee urges.

As noted, the Advisory Committee fairly noted the number of pending files as an issue of concern, and indeed it is of constant attention within the Director's Office. The Advisory Committee indicated that the Director's Office should consider reducing the number of Continuing Legal Education Seminars at which the attorneys in the Director's Office make presentations, or limiting the Advisory Opinion service in some way, in an effort to create additional time for the staff to resolve older complaint files. While the Board will review that portion of the proposal, hopefully some other method of dealing with the perceived backlog of files will be instituted instead of limiting other valuable services.

**Changes to the Board.** The terms of five members of the Lawyers Board ended this past January 2008: Richard Beens, Katie McWatt, Wallace Neal, Cindy Telstad and Kenneth White. All of these departing Board members had served on Panels and Board committees. Their experience and expertise will be greatly missed.

Named to replace these departing members were: attorney members William Donohue, Richard Kyle and Michael Unger; two non-lawyer members also were appointed: Marne Gibbs Hicke and Daniel Wexler.

The members of the Board's Executive Committee remained Kent Gernander, Chair; Vincent Thomas, Vice-Chair, Dianne Ward and public members Anne Maas and Mary Medved. The Board members who act as Panel Chairs for probable cause hearings are now: Robert Bauer, Joseph Ferguson, Wood Foster, Lynn Hummel, David Sasseville and Jan Zender. A complete listing with short biographical information of all Board members is attached at A. 8.

**Lawyers Board Seminar.** In October 2007, the Board and Director's Office hosted the annual professional responsibility seminar at the Four Points Sheraton Metrodome in Minneapolis. This was the second year the seminar was held at this venue, which remained a popular location, despite some inconvenience due to the nearby I-35W bridge collapse. Highlights included presentations previewing the Supreme Court Advisory Committee, cooperation in the disciplinary system and on professionalism. The seminar was honored to have Judges Frank Connolly and Heidi Schellhas lead the professionalism session; they had both been named to the Minnesota Court of Appeals only the day before the seminar! Another annual highlight was the presentation by Justice Helen Meyer of the annual Volunteer(s) of the Year Award to departing public Lawyers Board members Katie McWatt and Wallace Neal.

## **II. NOTEWORTHY PUBLIC DISCIPLINE DECISIONS.**

Thirty-one attorneys were publicly disciplined in calendar year 2007, which with the exception of last year, when over fifty lawyers were publicly disciplined, has been approximately the average number for most recent years (A. 9). Five attorneys were disbarred. Seventeen more attorneys have been publicly disciplined through May of this year, including three more disbarments. The attorneys who were disbarred in 2007 are:

Sergio Andrade  
Francis Giberson  
Mark Pitzele

Bradley Rhodes  
Michael Swenson

Obviously, criminal conduct and misappropriation of client funds remain the most serious violations an attorney can commit, and the most likely to lead to disbarment. Several attorneys received lesser public sanctions for personal conduct, such as a felony DUI conviction or violation of criminal probation following a DUI conviction. Also in early 2008, in a decision that has generated substantial interest, an attorney was publicly disciplined for failing to comply for many years with the reporting requirements for Continuing Legal Education.

There were also seven attorneys reinstated to the practice of law in 2007, while two were denied reinstatement. Contested reinstatement petitions in which a Lawyers Board Panel hears the reinstatement matter and then recommends denial have been fairly rare, and the number of times that the petitioner challenges that recommendation to the Supreme Court is even rarer. In the past few years, however, two disbarred attorneys were reinstated to practice, and it may be that subsequently some attorneys have filed reinstatement petitions who might not otherwise have done so. Thus the Court may face more recommendations to deny reinstatement in the coming year.

### **III. DIRECTOR'S OFFICE**

#### **A. Budget.**

##### **1. FY'08 and FY'09 Budgets.**

Expenditures for the fiscal year ending June 30, 2008, are projected to be \$2,425,693. The FY'09 budget (July 1, 2008 - June 30, 2009), includes anticipated expenditures of \$2,927,684. The FY'09 payroll budget includes a 3.25% across-the-board increase and a 3% merit increase for employees who have not reached the top of their salary range.

The FY'09 budget includes funds to rebuild the Attorney Disciplinary Record System (ADRS) in Microsoft.net. The current system runs on outdated software which is minimally supported.

There appears to be no need for a fee increase in the next three fiscal years due to lower rent costs and increased income paid by inactive lawyers.

**B. Personnel.**

In September 2007, Assistant Director Gregory Torrence resigned due to relocation. In December 2007 Megan Prebelich was hired to fill the vacant Assistant Director position.

The longevity of the staff remains notable. Fifteen employees have worked in the Director's Office for 13 years or more.

The Director's Office currently employs 9 attorneys plus the Director, 4.5 paralegals, 1 administrator, 8 support staff and 1 law clerk (*see* organizational chart at A. 10).

**C. Web Site.**

A new and improved professional responsibility rule index and subject matter index linking professional responsibility topics to articles and other authorities was completed this year. It has received favorable comment from the bar.

Another addition to the Web site includes the complaint brochure and complaint form now available in Spanish. Printed brochures and forms are also available in Hmong, Russian and Somali. It is anticipated that electronic versions in these languages will be added in the near future. In addition, an electronic complaint form that can be completed and filed on line, is expected to be available in the coming year.

The Web site is maintained and updated regularly by the Director's Office. The address is [www.mncourts/lprb](http://www.mncourts/lprb). Attached at A. 11 is the current title page of the Web site's homepage.

**D. Complainant Appeals.**

Under Rule 8(e), RLPR, a dissatisfied complainant has the right to appeal most dismissals and all private discipline dispositions. Complainant appeals are reviewed by a Board member, other than members of the Board's Executive Committee, selected in rotation. During 2007, the Director's Office received 281 complainant appeals, compared to 201 such appeals in 2006. There were 266 complainant appeal determinations made by Board members in 2007 as follows:

		<u>%</u>
Approve Director's disposition	249	93.5
Direct further investigation	16	6
Instruct Director to issue an admonition	0	0
Instruct Director to issue charges	1	.5

A total of 49.5 clerical hours were spent in 2007 processing and routing appeal files. Limited attorney time was expended in reviewing appeal letters and responding to complainants who continued to correspond even after their appeals were decided.

**E. Probation.**

Last year, after years of decline, the number of open probation files increased. From a high of 101 probations in 1999, the number of probations steadily had declined until 2006, when there were only 73 open probation files. In 2007, the number of probations rose to 83. Of those, 31 were new probations. While there is usually not just one type of misconduct that results in a lawyer being placed on probation (i.e., discipline normally results from various acts of misconduct), there are certain categories of misconduct that are more prevalent than others.

As has historically been the case, attorneys failing to provide competent representation to their clients, failing to diligently represent their clients, and failing to adequately communicate with their clients, were among the most common examples of attorney misconduct leading to probation. Of the probation files open in 2007, almost



half involved violations of the rules dealing with competence, diligence and communication.

An even larger number of probations this year involved some type of dishonesty, conduct prejudicial to the administration of justice and in some cases, criminal conduct. Misconduct of this nature was present in 65 of the 83 probations open in 2007. Since this type of misconduct is more serious, those cases were more likely to involve public probation. Of the 31 new probations in 2007, 10 were public.

Another common form of misconduct resulting in probation is trust account irregularities. In 2007, 31 of all probations resulted at least in part from the lawyer's failure to maintain the proper trust account books and records. Of those probations, nearly all (29) required the probationer to provide to the Director on a regular basis, either monthly or quarterly, the lawyer's trust account books and records. The staff of the Director's Office then reviewed those records for completeness, accuracy and compliance with the Rules of Professional Conduct. If the Director noted deficiencies in the records, the Director provided the probationer with a detailed description of the problem and suggestions for correcting it. Over the term of the probation, most probationers acquire the skills necessary to maintain their trust account books in compliance with the Rules of Professional Conduct. If a probationer fails to bring his or her books and records into compliance with the Rules, the Director may seek an extension of probation or a revocation of probation and further discipline.

Chemical dependency and mental health concerns continue to impact Minnesota attorneys. Probations are one way for the Director to address those underlying issues that have contributed to professional misconduct. After opening a record high 12 new

probations addressing chemical dependency or mental health issues in 2006, the number of mental health and chemical dependency probations returned to its historical norm of about one in ten probations. The Director opened eight new probations in 2007 where mental health and chemical dependency were factors in the underlying misconduct. Probationers who raise mental health concerns as mitigation or whose mental status is brought to the Director's attention in a discipline matter, may be required to initiate or continue treatment by a licensed consulting psychologist or other mental health professional and to complete all recommended therapy and provide the Director with authorizations to confirm compliance with treatment recommendations. The Director may also require attorneys to participate in support groups, such as those offered by Lawyers Concerned for Lawyers, or ask supervisors to monitor a probationer's mental status.

In 2007, the Director opened only one new probation requiring random urinalysis testing (UA). Currently, there are four other probationers participating in the Director's random UA program. Probationers in the UA program are required to call the Director's Office every Monday, Wednesday and Friday to learn if they will be required to undergo UA. Probationers are required to appear for testing at their own expense up to six times per month. The Director generally requires random UAs only when addressing serious chemical dependency behavior, often in conjunction with a criminal conviction or prior failure to maintain sobriety. Often a lawyer with chemical dependency issues is required to attend Alcohol Anonymous (AA), Narcotics Anonymous or another twelve-step program. Ten of the probations open in 2007 required weekly or monthly attendance at AA or other support group. When appropriate, the Director may also require completion of a chemical dependency evaluation followed by completion of all recommended treatment including in or out-patient treatment and aftercare or psychotherapy.

The majority of attorneys placed on probation had an experienced volunteer lawyer acting as their probation supervisor. These supervisors work with the probationer on the issues that led to the attorney being disciplined. Often that work involves the supervisor assisting the probationer in developing better office management techniques. In the Director's experience, failure to have good management practices in place can often result in lawyers neglecting files, failing to communicate with clients, and missing deadlines. Assisting the probationer in developing better office management increases the chances of the lawyer avoiding problems after the probation concludes.

During 2007 the Director commenced action to revoke the public probations of three attorneys; Larry Martin Jennings, Bradley C. Rhodes and Scott Selmer. Another public probation, that of attorney John T. Anderson, was extended.<sup>1</sup>

**DISABILITY RELATED PROBATIONS**

Chemical Dependency – existing files on 1/1/07	6	
New files opened during 2007	<u>1</u>	
Total Chemical Dependency Related Files		7
Psychological Disorders – existing files on 1/1/07	12	
New files opened during 2007	<u>7</u>	
Total Psychological Disorder Related Files		<u>19</u>
<b>Total Disability Related Probations</b>		<b>26</b>

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<sup>1</sup> In early 2008, a petition seeking the revocation of the extended probation of John T. Anderson was filed. It was pending as of the date of this Report.

YEAR	TOTAL PROBATIONS OPEN DURING YEAR	NUMBER OF NEW PROBATIONS OPENED REQUIRING:			TOTAL <sup>2</sup>
		AA ATTENDANCE	RANDOM UA	MENTAL HEALTH OR THERAPY	
1992	87	1	0	0	1
1993	100	1	0	0	1
1994	114	2	1	7	10
1995	102	1	1	5	7
1996	96	3	0	2	5
1997	87	0	2	3	5
1998	90	0	0	1	1
1999	101	0	0	5	5
2000	97	3	2	4	9
2001	95	1	2	5	8
2002	81	2	2	6	9
2003	83	3	2	8	10
2004	80	1	1	1	2
2005	76	2	2	6	7
2006	73	6	3	5	14
2007	83	0	1	7	8

**Probation Supervisors.** During 2007, 34 Minnesota attorneys served as volunteer probation supervisors. The supervisors, who had been practicing law from 9 to 29 years, shared their collective knowledge with probationers. Upon closure of a probation, the Director asked supervisors to complete a survey regarding their practice, the probationer's law practice and their supervisory experience. Five probation supervisors (three solo practitioners, one small firm and one large firm attorney), responded to the Director's survey. All of the probationers were in solo practice and had practiced at least six years. The supervisors volunteered an average of 3 hours per month reviewing client inventories and client files, speaking with probationers either during in-person visits or over the phone, and reporting their observations quarterly to

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<sup>2</sup> Since a chemical dependency or mental health probation may require AA attendance, random urinalysis and/or psychological therapy, the totals stated in this report may not balance with the totals set out above under Disability Related Probations.

the Director. The primary focus of most probations was maintaining and documenting client communications, calendar and docket control systems, file organization and closure and law office management skills. However, it is not unusual for a supervisor's efforts to go beyond office management issues and focus on people skills. One supervisor emphasized continued therapy regarding anger management. Another supervisor focused on workload management to reduce stress.

**PROBATION STATISTICS**

**TOTAL PROBATION FILES OPEN DURING 2007**

Public Supervised Probation Files (30.1%)	25	
Public Unsupervised Probation Files (14.5)	<u>12</u>	
Total Public Probation Files (44.6%)		37
Private Supervised Probation Files (27.7%)	23	
Private Unsupervised Probation Files (27.7%)	<u>23</u>	
Total Private Probation Files (55.4%)		<u>46</u>
<b>Total Probation Files Open During 2007</b>		<b>83</b>

**TOTAL PROBATION FILES**

Total probation files as of 1/1/07	52
Probation files opened during 2007	30
Public probation extended during 2007	1
Probation files closed during 2007	<u>(19)</u>
<b>Total Open Probation files as of 12/31/07</b>	<b>64</b>

**PROBATIONS OPENED IN 2007**

**Public Probation Files**

Court-ordered Probation Files		
Supervised	2	
Unsupervised	<u>4</u>	
		6
<b>Reinstatements</b>		
Supervised	4	
Unsupervised	<u>0</u>	
		<u>4</u>
<b>Total Public Probation Files</b>		<b>10</b>

<b>Private Probation Files</b>		
Supervised	12	
Unsupervised	<u>9</u>	
Total Private Probation Files		<u>21</u>
<b>Total New Probation Files in 2007</b>		<b>31</b>

**PROBATIONS OPENED IN 2007 INVOLVING:**

Client Related Violations	6
Non-Client Related Violations	13
Both Client & Non-Client Violations	<u>12</u>
<b>Total New Probation Files in 2007</b>	<b>31</b>

**PROBATION FILES CLOSED IN 2007**

Probations Successfully Completed	15
Probation Revocations	3
Probations Extensions	<u>1</u>
<b>Total Probation Files Closed in 2007</b>	<b>19</b>

**AREAS OF MISCONDUCT**

As reflected in 83 open files during 2007<sup>3</sup>

Competence (Violation of Rules 1.1 and 1.2, MRPC)	14
Neglect & Non-Communication (Violation of Rules 1.3 and 1.4, MRPC)	73
Breach of Confidentiality (Violation of Rule 1.6, MRPC)	2
Conflict of Interest (Violation of Rules 1.7 and 1.8, MRPC)	4
Fees (Violation of Rules 1.5(b) and 1.15(c), MRPC)	6
Trust Account Books and Records (Violation of Rule 1.15, MRPC)	21
Termination of Representation (Violation of Rule 1.16, MRPC)	6
Unauthorized Practice of Law (Violation of Rule 5.5, MRPC)	5
Taxes	4
Supervision on Non-Lawyer Assistants. (Violation of Rule 5.3, MRPC)	6
Non-Cooperation (Violation of Rule 8.1, MRPC)	16
Criminal Conduct (Violation of Rule 8.4(b), MRPC)	14
Misrepresentations (Violation of Rule 8.4(c), MRPC)	20
Conduct Prejudicial to the Administration of Justice (Violation of Rule 8.4(d), MRPC)	29
Misappropriation	1

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<sup>3</sup> A file may involve more than one area of misconduct.

**Probation Department.** During 2007 Senior Assistant Director Craig Klausing and Assistant Director Gregory Torrence, with the assistance of two paralegals, monitored all probations. After Gregory Torrence resigned from the Director's Office in early September 2007, Assistant Director Robin J. Crabb, who commenced employment with the Office in February 2006, began assisting Craig Klausing in monitoring probations.

<b>TIME BY PROBATION DEPT. STAFF (hrs./wk.)</b>	
Attorney 1	12
Attorney 2	2
Paralegal 1	8
Paralegal 2	<u>4</u>
<b>TOTAL PROBATION STAFF TIME PER WEEK</b>	<b>26</b>

**F. Advisory Opinions.**

The number of advisory opinions requested by Minnesota lawyers and judges decreased slightly in 2007, the first such decline in 10 years. In 2007 the Director's Office received 2,223 requests for advisory opinions, compared to 2307 in 2006. This represents a 4 percent decrease over last year.

Attorneys submitted 190 advisory opinion requests via the e-mail link on the OLPR Web site in 2007, compared to 91 requests received in 2006. This represents more than a 50 percent increase over last year. Like telephone advisory requests, inquiries from the Web site are responded to by telephone.

In addition to the Web link, advisory opinions are available to all licensed Minnesota lawyers and judges and are obtained by calling the Director's Office at (651) 296-3952. Advisory opinions are limited to prospective conduct. Questions or inquiries relating to past conduct, third-party conduct (*i.e.* conduct of another lawyer), questions of substantive law or advertising and solicitation are not answered. Advisory opinions are the personal opinion of the staff lawyer issuing the opinion and are not binding

upon the Lawyers Board or the Supreme Court. Nevertheless, if the facts provided by the lawyer requesting the opinion are accurate and complete, compliance with the opinion would likely constitute evidence of a good faith attempt to comply with the professional regulations.

Set forth below is a statistical summary of advisory opinions for the period 1990 through 2007:

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%)	1106 (86%)	186 (14%)	1292
1992	1201 (86%)	15 (1%)	1216 (87%)	182 (13%)	1398
1993	1410 (87%)	16 (1%)	1426 (88%)	201 (12%)	1627
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	1600 (90%)**	28 (2%)	1628 (92%)**	142 ( 8%)	1770*
2001	1682 (92%)	9 (.5%)	1691 (93%)	133 ( 7%)	1824
2002	1695 (93%)	15 (.8%)	1710 (94%)	115 ( 6%)	1825
2003	1758 (93%)	9 (.5%)	1767 (94%)	122 ( 6%)**	1889
2004	1840 (93%)	3 (.2%)	1843 (93%)	131 ( 7%)	1974
2005	2041 (94%)	1 (.5%)	2042 (94%)	135 ( 6%)	2177
2006	2119 (92%)	2 (.8%)	2121 (92%)	186 ( 8%)	2307
2007	2080 (94%)	2 (.9%)	2082 (94%)	141 (6%)	2223

\* 2000 totals revised to reflect additional AO's that were not previously included.

\*\* Percentage amount corrected.

In 2007 the Director's Office expended 378 assistant director hours in issuing advisory opinions. This compares with 426 hours in 2006. Dissolution/Custody was the most frequently inquired about area of law. Conflicts of interest with former clients was the most frequent area of specific inquiry.



### **G. Overdraft Notification.**

The lawyer trust account overdraft reporting program provided for by Rule 1.15(j) – (o), MRPC, has been in effect since 1990. Since that time, Minnesota banks wishing to maintain lawyer trust accounts have had to be “approved” to do so, by agreeing to report all overdrafts on such accounts to the Director’s Office. When the Director receives notice of an overdraft on a lawyer trust account, the Director writes to the account-holder and requests an explanation for the cause of the overdraft, together with three months of the lawyer’s trust account books and records, *i.e.*, bank statements, checkbook register, client subsidiary ledgers, trial balances and reconciliations. The purposes of requesting these books and records are to (1) interpret and verify the account-holder’s overdraft explanation, and (2) educate the account-holder regarding the trust account books and records requirements and assist him/her in conforming his/her trust account books and records to those requirements.

The number of overdraft notices reported to the Director’s Office in 2007 (82) was substantially less than those reported in 2006 (112). The number of overdraft inquiries closed by the Director’s Office in 2007 decreased by an even greater amount (from 102 to 61). Not surprisingly, the Director’s Office time requirements likewise decreased by 20%. (The decrease in the time requirements was partially offset by the additional time required to update the bank agreements as discussed below.) The number of closings taking the form of conversions to disciplinary matters remained fairly constant from 2006 to 2007 (from 14 to 13). Given the decrease in the total number of closings, however, the number of conversions to disciplinary matters constituted a greater percentage of the total closings (15% as opposed to 11%). Again, most of these conversions were necessitated by the discovery of shortages in the trust account. At the end of 2007, 18 discipline files based, at least in part, on trust account overdrafts, remained open.

During 2007, the Director’s Office revised the trust account overdraft reporting agreement to include the new requirements regarding interest to be paid on IOLTA accounts and mailed revised agreements to all of the banks appearing on its approved institution list.

Overdrafts Reported by Banks

2006	112
2007	82

Closed Inquiries During 2007

• Closed Without Need for Disciplinary Investigation	72
• Inquiry Converted to Disciplinary Investigation	13
Total Trust Account Inquiries Closed	85

Public Discipline Related to Trust Account Overdraft Inquiry

- *In re Sundby*, 733 N.W.2d 116 (Minn. 2007) (suspension)
- *In re Pitzele*, 740 N.W.2d 355 (Minn. 2007) (disbarment)
- *In re Tigue*, File No. A07-1936, October 25, 2007 (public reprimand/probation)
- *In re Hottinger*, 731 N.W.2d 827 (Minn. 2007) (suspension)
- *In re Berg*, 741 N.W.2d 600 (Minn. 2007) (suspension)
- *In re Kiefer*, 739 N.W.2d 411 (Minn. 2007) (suspension)

In 50 (or 69%) of the inquiries terminated without a disciplinary investigation, the Director recommended changes or improvements to the lawyer’s trust account books, records and/or practices. (This is a 9% increase from 2006.) The most common deficiencies discovered in lawyers’ trust account books and records were again the lack of client subsidiary ledgers and a failure to properly reconcile the trust account.

In 2007 the causes of trust account overdrafts that were closed without a disciplinary investigation were as follows:

<b>Overdraft Cause</b>	<b>No. of Closings</b>
Mathematical/clerical error	15
Bank error	11
Check written in error on TA	8
Service or check charges	7
Bank hold on funds drawn	7
Improper/lacking endorsement	7
Third party check bounced	4
Deposit to wrong account	4
Late deposit	4
Reporting error	3
Other	2

#### Disciplinary File Openings

The Director will initiate a disciplinary investigation based on an overdraft inquiry if the lawyer fails to respond to the overdraft inquiry, the lawyer's response does not adequately explain the overdraft or significant problems are identified in reviewing the trust account books and records. During 2007, overdraft inquiries were converted into disciplinary investigations for the following reasons:

<u>Reason for Investigation</u>	
Shortages	5
Commingling	3
Response fails to explain OD	3
Other	2
<b>Total</b>	<u>13</u>

#### Time Requirements

The Director's Office time requirements to administer the overdraft notification program are as follows:

	<u>1/06-12/06</u>	<u>1/07-12/07</u>
Attorney	194.50	150 hrs
Paralegal and other staff	<u>287.25</u>	<u>230 hrs</u>
<b>Total</b>	<b>481.75</b>	<b>380 hrs</b>

## H. Judgments and Collections.

In 2007 judgments were entered in 28 disciplinary matters totaling \$25,282. The Director's Office collected a total of \$32,077.78 from judgments entered during or prior to 2007. Although in 2007 there were just over half as many judgments entered when compared to 2006 statistics, the total amount of money collected by the Director in 2007 was nearly as much as collected in 2006.<sup>45</sup>

A summary of the 2007 statistics and how they compare to 2006 is presented below:

	2007	2006
Number of judgments entered:	28	51
Dollar value of judgments entered:	\$25,282.00	\$57,604.42
Total amount collected:	\$32,077.78	\$33,703.20
Portion attributable to current year's judgment:	\$12,300.00	\$29,922.46
Portion attributable to judgments of prior years:	\$19,777.78	\$3,780.74

## I. 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 authorization from the affected attorney. In addition, the Director's Office responds to telephone requests for attorney public discipline records. Public discipline information is also available through the OLPR website. The telephone requests and responses are not tabulated.

Requests from large law firms for annual disciplinary history checks and disclosure began last year. To date, such large-scale requests have been handled within the normal office function. The Board will continue to monitor the volume of such

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<sup>4</sup> The Director's Office received \$660 toward outstanding judgments from the revenue recapture program operated by the Minnesota Department of Revenue.

<sup>5</sup> The total amount of all outstanding judgments as of January 1, 2008, was \$283,669.16.

requests to determine whether a fee for this service should be requested, or if firms will need to be scheduled to avoid overloading staff in some months.

2. Source and Number of Written Requests for Disclosure.  
Calendar Year 2007.

	<u># of Requests</u>	<u># of Attorneys</u>	<u>Discipline Imposed</u>	<u>Open Files</u>
A. National Conference of Bar Examiners	86	86	5	2
B. Individual Attorneys	298	298	20	2
C. Local Referral Services				
1. RCBA	16	54	1	0
2. Hennepin County	2	204	11	1
D. Governor's Office	15	63	2	0
E. Other State Discipline Counsels/State Bars or Federal Jurisdiction	55	58	0	3
F. F.B.I.	21	23	0	0
G. MSBA: Specialist Certification Program	5	14	1	0
H. Miscellaneous Requests	29	202	5	3
<b>TOTAL</b>	<b>527</b>	<b>1002</b>	<b>45</b>	<b>11</b>
(2006 Totals)	(571)	(1068)	(38)	(4)

3. Press Releases.

The disclosure department also handles the issuance of press releases, which are issued upon the filing of contested public petitions seeking suspension or disbarment, and again with every Supreme Court public disciplinary decision. Last year, the Office began issuing releases by email to most regular media outlets, in the hope of being more timely and newsworthy. No significant change in press coverage has been seen, except where the respondent was already a prominent public figure.

## **J. Trusteeships.**

Pursuant to Rule 27, RLPR, the Court periodically appoints the Director's Office as trustee to inventory files and, when necessary, trust accounts of disabled, disappeared, deceased, suspended, disbarred or resigned lawyers. Two trusteeships commenced in previous years were completed in 2007.

In February 2008, the Director was appointed trustee of the files of deceased attorney Charles O. Amdahl. The Director took possession of approximately 527 client files. To date 131 files have been returned or destroyed pursuant to the client's direction.

The Director's Office continues to retain:

- 81 files from the Jane E. Brooks trusteeship which are eligible for expunction in November 2008;
- 6 files from the Alfred Edwall trusteeship which are eligible for expunction in December 2013; and
- 103 files from the Michael W. Coopet trusteeship – expunction date pending.

## **K. Professional Firms.**

Under the Minnesota Professional Firms Act, Minn. Stat. § 319B.01 to 319B.12, professional firms engaged in the practice of law must file an initial report and annual reports thereafter demonstrating compliance with the Act. The Director's Office has handled the reporting requirements under statute since 1973. Annual reports are sought from all known legal professional firms, which include professional corporations, professional limited liability corporations and professional limited liability partnerships. The filing requirements for professional firms are described on the Lawyers Board's Web site.

Professional firms pay a filing fee of \$100 for the first report and a \$25 filing fee each year thereafter. In reporting year 2006-2007 there were 129 new professional firm

filings. Fees collected from professional firm filings are included in the Board's annual budget. As of April 30, 2008, the Director's Office received \$51,200 in professional firm filing fees. The Director's Office received \$57,425 during fiscal year 2007. As of April 30, 2008, there were 78 new professional firm filings for reporting year 2007-2008.

An Assistant Director, paralegal, and file clerk staff the professional firms department in the Director's Office. The total attorney work time for overseeing the professional firms department was 11 hours. The total non-attorney work time was 250 hours.

#### **IV. DISTRICT ETHICS COMMITTEES**

Minnesota is one of a few jurisdictions that exclusively use local district ethics committees (DEC) to conduct the preliminary investigation of the majority of ethics complaints. Although the recent Advisory Committee considered the continued vitality of the DEC system, the committee determined that the Minnesota system continues to work well.

Initial review of complaints by practitioners in their own area and by non-lawyers is valuable in reinforcing confidence in the system. The quantity and quality of the DEC investigative reports remain high. For calendar year 2007, the Director's Office followed DEC recommendations in more than 90 percent of investigated matters. Many of the matters in which the recommendation was not followed involved situations in which the Director's Office sought greater discipline than recommended, usually attorneys with substantial prior relevant discipline that was not considered by the DEC in making its recommendation.

In 2007 the monthly average number of files under DEC consideration was 155, fluctuating between a low of 127 and a high of 173. The year-to-date average for 2008 is 146 as of April 30.

Rule 7(c), RLPR, provides a 90-day goal for completing the DEC portion of investigations. The DEC's came close to meeting the goal. For the calendar year 2007,

the DEC's completed 510 investigations, taking an average of 4 months to complete each investigation. The Hennepin DEC was assigned 227 of these investigations, taking an average of 4.3 months per investigation (*see* A. 12, DEC Investigation Summary).

The Hennepin DEC, the state's largest district, uses a two-tiered complaint review process not employed by other DEC's. The Hennepin statistics are separately monitored to reflect file aging at the two decision points in the process. The Hennepin process involves investigator presentation to a screening committee. If the screening committee recommends dismissal, the complaint is returned to the Director's Office for disposition. If the screening committee concludes a violation occurred or that additional investigation is necessary, an Investigative Review Committee (IRC), made up of one of three Hennepin DEC panels, reviews the matter. Both the complainant and the respondent are invited to attend personally and address the committee at the IRC hearing.

In calendar year 2007, 171 matters were referred back to the Director's Office after screening without an IRC hearing; it took an average of 3.9 months to complete the DEC investigation of these matters. There were 39 matters referred to an IRC panel before being sent back to the Director's Office, which took an average of 5.8 months to complete. 17 matters were withdrawn.

For calendar year 2007, of the completed DEC investigations there resulted the following dispositions:

Determination discipline not warranted	367
Admonition	57
Private probation	10

The annual seminar for DEC members, hosted by the Office and the Board, will be held on Friday, September 19, 2008. All DEC members, plus select members of the bench and bar with some connection to the discipline system, are involved. The



Sheraton 4-Points Metrodome hosted the seminar for the first time in 2006, and proved a popular choice. The seminar will return to the Sheraton again this year.

The Board and the Office remain committed to the support and training of ethics committee volunteers, both lawyer members and public members. In addition, the Hennepin DEC holds training/orientation seminars at least twice a year for its new members. The Director's Office continues to provide support to all of the DEC's through liaisons assigned to each district.

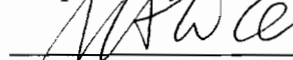
#### V. FY'08 GOALS AND OBJECTIVES.

Review of and response to the Supreme Court Advisory Committee report will highlight the upcoming year, with the likelihood of some procedural changes being approved, which will require some adjustments in how complaints are processed. Careful planning for the resource allocation to accomplish the review and any period of adjustment will be necessary.

With the Director's Office remaining at full staff, it is hoped that the Office will keep pace with the growing number of complaints and its caseload and be able to "attack" the perceived backlog of older cases. Maintaining requests for advisory opinions and Continuing Legal Education speakers will require effort and commitment from many individuals. Prosecution of those serious cases must remain the system's focus to ensure continued protection of the public.

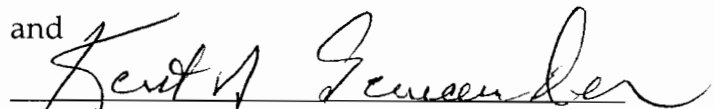
Dated: July 1, 2008.

Respectfully submitted,



MARTIN A. COLE  
DIRECTOR OF THE OFFICE OF LAWYERS  
PROFESSIONAL RESPONSIBILITY

and



KENT A. GERNANDER  
CHAIR, LAWYERS PROFESSIONAL  
RESPONSIBILITY BOARD

**REPORT OF  
THE SUPREME COURT ADVISORY COMMITTEE  
TO REVIEW THE LAWYER DISCIPLINE SYSTEM**

ADM07-8001

May 19, 2008

Allen I. Saeks, Chair

Hon. James Broberg  
Eric T. Cooperstein  
Roger W. Gilmore  
Karen Brown Kepler  
Geri L. Krueger  
Eric D. Larson  
John C. Lervick  
Charles E. Lundberg

Michael J. McCartney  
Judith M. Rush  
Murray Shabsis  
Thomas Vasaly  
James E. Wilkinson  
Bruce R. Williams  
Todd A. Wind

Hon. Helen M. Meyer  
Supreme Court Liaison

Frederick K. Grittner  
Clerk of the Appellate Courts  
Staff

## **EXECUTIVE SUMMARY**

### **INTRODUCTION AND OVERVIEW**

The Committee was charged with reviewing and assessing the process, procedures, and operations of the Lawyers Professional Responsibility Board (“LPRB”) and the Office of Lawyers Professional Responsibility (“OLPR”) in administering the attorney discipline system in Minnesota.

On the whole, the lawyer discipline system in Minnesota is “healthy” and working well. The LPRB and the OLPR are doing, in general, a very good job of handling legal ethics complaints and the subsequent disciplinary processes. The LPRB is perceived as fair and is generally well respected by the Bar in the state. Employee morale at the OLPR is high and there are no major problems that are impeding the effectiveness of the discipline system.

### **FINDINGS AND RECOMMENDATIONS**

The Committee explored 11 major topics and has made 12 Findings and accompanying Recommendations.

1. **ACCESS TO THE DISCIPLINE SYSTEM.** The Committee considered the adequacy of access to the lawyer discipline system by individuals with limited English proficiency (LEP) or with disabilities. The OLPR is aware of and responsive to these issues. Although the Director’s Office does not have formal policies in place addressing access issues it does respond to LEP and disability circumstances as they arise.

**RECOMMENDATION:** The Committee recommends that the OLPR be directed to consult with the Minnesota State Council on Disability, with state councils (or their equivalent) whose constituents include persons with limited English proficiency, and with other interested parties, for purposes of drafting and proposing for adoption by the OLPR and the LPRB amendments to the Policies and Procedure Manual, and to the Panel Manual so they will reflect a formal policy addressing access issues.

2. **CASE MANAGEMENT—AGING FILES.** As a result of a review of the LPRB 2007 Annual Report, the Committee focused upon the statistics reported regarding the length of time disciplinary files have remained open. These statistics reflected

that the number of cases at least one-year-old had increased significantly since 2002. The Committee also received anecdotal reports from some attorneys who frequently represent Respondent lawyers that they had matters before the OLPR in which there had been no activity in over a year. The upward trend in the aging of files began well before Director Cole's tenure. Director Cole indicated that this trend likely would be reversed after the staff was up to its full complement and had additional experience in handling cases.

**RECOMMENDATIONS:** The Committee recommends: (1) That there be better reporting of statistics on individual Respondent files over one-year-old; Revising the "old file" category in the Annual Report to reflect items such as cases "on hold" pending the outcome of litigation in other forums, cases held in a District Ethics Committee ("DEC") for a set period of time, or cases awaiting charges etc.; (2) The application of differentiated case management methods in which files are designated, within a relatively short time after they are received (such as within 90 or 120 days) as either "complex" or as presumptively candidates only for private discipline; (3) The Director should reallocate resources from lower priority functions such as, for example, presentation of CLEs and providing advisory opinions, to the investigation and prosecution of violations of the Minnesota Rules of Professional Conduct ("MRPC") by attorneys; and, (5) The LPRB Executive Committee should hold whoever is serving as Director accountable for the aging of files both through annual performance reviews and through a quarterly review of file aging statistics.

3. **PROBABLE CAUSE HEARINGS.** A majority of the Committee concluded that several changes to the probable cause process are necessary in order to address issues of delay and inefficiency, and to ensure that the system reflects an appropriate balance between the goal of treating the Respondent lawyer fairly and the goal of protecting the public. The Committee found that there did not exist a convincing rationale for giving the Respondent a right to two separate evidentiary hearings on probable cause when that right is not required by due process, is not necessary to ensure the fairness of the proceeding, is not available to other citizens of this state in criminal legal proceedings, and is not available to lawyer Respondents in other states.

**RECOMMENDATION:** A majority of the Committee recommends that in most cases the probable cause determination should be made by a Lawyers Board panel based on the Director's and the Respondent's written submissions without a

formal evidentiary hearing. The panel would, however, have the discretion to conduct an adversarial evidentiary hearing if it determined that special circumstances required such a hearing, such as, *e.g.*, the need for a credibility determination. Accordingly, the Committee proposes that Rules 9, 10, and 15 of the Rules on Lawyers Professional Responsibility (RLPR) be amended to accommodate these changes.

4. **PANEL MANUAL.** The Lawyers Board Panel Manual was originally adopted in 1989 by the LPRB. It was intended to promote consistency among the hearing panels, to make the board panel procedure more open to the bar and to the public, and to assist *pro se* Respondent lawyers, and those lawyers who represent Respondents only infrequently, to make a more effective appearance before a panel. The Manual has been revised or updated only occasionally since then, with some substantive revisions appearing to have been made in 1995 and 1998. There have been no revisions or updating of the Manual in any respect since 2000.

**RECOMMENDATION:** The Committee recommends that the Panel Manual be updated promptly to bring it up to date to reflect case law and other pertinent developments over the past eight or more years. Once the Manual has been updated, the Committee further recommends that the Director develop an ongoing process whereby each new case or other development suggesting a change to the Panel Manual be incorporated promptly into the Manual. Finally, the Committee recommends that the updated Panel Manual should be posted to the LPRB website for easy access by all concerned persons, as well as the public in general.

5. **PRIVATE DISCIPLINE.** The Committee looked at the use of private admonition and private probation as forms of discipline. It revisited the issue of whether private discipline was effective in educating a Respondent lawyer and deterring future misconduct. The Committee also examined the issue of whether it was ever appropriate to use private discipline in situations where the discipline might better be public so as to avoid harm to future clients who would otherwise be unaware of “serial offenders.” The Committee also considered whether or not private discipline should be eliminated from the panoply of sanctions. In addition, the Committee reviewed whether lawyers are inappropriately receiving multiple private admonitions owing to the lack of a clear interpretation of the “isolated and non-serious” standard set out in Rule 8(d)(2), RLPR.

RECOMMENDATION: The Committee concluded that private disciplinary options serve a valid purpose in the circumstances for which they were intended. As to the meaning of “isolated and non-serious,” the LPRB should consider incorporating the ABA definition, or other guidance, in the Panel Manual to assist panels in determining whether or not a private admonition is appropriate.

- 6. PUBLIC REPORTING OF PRIVATE DISPOSITIONS.** The Committee considered the methods used to report discipline to the public and to the bar. Currently, only public discipline cases and admonition appeals are publicly reported. The Committee considered the benefit of systematically reporting private dispositions so that they could be used as precedent for future cases. Because many dispositions result from negotiations, or are decided by panels, or are settled because of the particular facts or the quality or quantity of available evidence, the individual cases providing for private dispositions often are of little benefit as precedent.

RECOMMENDATION: The Director’s Office should not be required systematically to report private dispositions. However, the Committee recommends that the Director be encouraged to publish on the OLPR web page and elsewhere, annually or even more frequently, commentary describing private dispositions of note, including statistics or other information that would be of assistance both to the practicing bar and to Respondent attorneys.

- 7. REACHING IMPAIRED LAWYERS IN THE DISCIPLINE SYSTEM.** The Committee looked at the extent to which the current disciplinary system is able to make referrals out to assist Respondents, or otherwise to communicate to impaired lawyers, the resources available to them from the court-funded Lawyer Assistance Program (LAP). Lawyers who fail to respond in any way to proceedings brought by the OLPR very likely could have some serious substance abuse or mental health problems in addition to their professional ethics issues. This situation has prompted other state disciplinary authorities to adopt procedures for contacting their state’s comparable LAP in those circumstances.

RECOMMENDATIONS: The Committee recommends that the OLPR implement procedures to (1) routinely provide information regarding the LAP to Respondent attorneys and attorneys involved in the work of the disciplinary system including attorneys who represent Respondents; (2) to assist the LAP by providing petitions

and other public information to the LAP; and, (3) to ensure that OLPR staff and Board, DEC and probation volunteers receive information about the resources of the LAP along with suggestions as to how best to disseminate that information.

- 8. COMMUNICATION BY DIRECTOR WITH DEC'S AND COMPLAINANTS.** The Committee examined two communications issues relating to the Director's Office. First, the Committee looked at whether the Director's Office could improve its training and communications to the bar association DEC's in two areas: (a) providing training and guidance to the DEC members, particularly those who are inexperienced, and (b) providing adequate explanations to the DEC's when the Director's Office does not follow the DEC recommendations as to discipline. Second, the Committee reviewed whether the Director's Office could improve its communications to Complainants when a complaint is dismissed.

**RECOMMENDATIONS:** The Committee recommends that: (1) The Director periodically meet with, and review the activities of, each of the OLPR liaisons to the DEC's to make sure that communications with each DEC are adequate; (2) When the liaison meets with DEC's, the liaison should discuss the reasons for past departures by the OLPR from the DEC recommendations and should encourage the DEC members to contact the Chair, the liaison, or the Assistant Director who is responsible for the file, when the investigator wants to know the reasons for departures from the DEC's disciplinary recommendations; (3) Changes should be made to the forms and memoranda dismissing complaints to improve communications with Complainants; and, (4) Language should be added to the Notice of Complainant's Right to Appeal paragraph in dismissal notices to more clearly inform the Complainant that an appeal is unlikely to be successful unless the Complainant provides compelling reasons or offers strong evidence why the complaint should not be dismissed.

- 9. PROBATION.** The Committee looked at the ABA statistics which showed that the number of public probations imposed in Minnesota is slightly above the average in other states. Issues explored included the effectiveness of probation and the appropriateness of probation where chemical dependency or mental health issues were involved.

RECOMMENDATION: The Committee concluded that the present probation system was working well and that no changes needed to be recommended.

10. **EDUCATING LAWYERS THROUGH DISCIPLINE.** The Committee examined whether various forms of education could be used to a greater extent with lawyers who are disciplined. The Board's published articles and written advisory opinions, CLE seminars, and advisory opinion service do serve to educate the profession in this regard. However, the Committee found that these good efforts should be further extended by incorporating them into the disciplinary system itself.

RECOMMENDATIONS: The Committee recommends that the LPRB reference the availability of the advisory opinion section of its website in all its decisions. The LPRB should highlight these website resources and encourage their use. In addition, the Committee recommends that in appropriate cases disciplined lawyers be directed to read specified articles or attend specific CLE seminars germane to the rules found to have been violated by the lawyer and that these assignments be part and parcel of the discipline meted out.

11. **LAWYER RECIDIVISM.** The Committee used statistical data to look at questions regarding the effectiveness of private discipline in educating lawyers regarding "low-level ethics violations," correcting that improper conduct, and deterring future misconduct. One notable finding is that the time between disciplines is short for lawyers with multiple disciplines and that few lawyers receive discipline more than 10 years after an initial discipline.

RECOMMENDATIONS: The Supreme Court should consider adopting a rule expunging private admonitions if the lawyer has had no discipline for 10 years after the last admonition. Such a policy would be consistent with the rehabilitative goals of the discipline system and have a negligible impact on efforts to protect the public. Moreover, it would provide a significant incentive for lawyers to avoid future misconduct. Second, the LPRB and OLPR should consider modifying their approaches to enforcement based on the relatively brief time that elapses, on average, between a lawyer's disciplines.

12. **PERIODIC REVIEW OF THE LAWYER DISCIPLINE SYSTEM.** The Committee found the process of reviewing the lawyer discipline system in Minnesota to be a productive and worthwhile endeavor.



RECOMMENDATION: The Committee recommends that the lawyer discipline system be reviewed at least every 10 years. Objective reviews serve to strengthen the trust and confidence of the public and the Bar in the lawyer discipline system. Periodic reviews also help the LPRB and the OLPR in assessing the structure, rules, and day-to-day workings of the discipline system.

The Committee thanks Frederick K. Grittner, Clerk of the Appellate Courts, for his skilled and professional assistance to the Committee and work on this Report.

STATE OF MINNESOTA

IN SUPREME COURT

ADM07-8001

OFFICE OF  
APPELLATE COURTS

MAY 27 2008

FILED

**ORDER FOR HEARING TO CONSIDER  
PROPOSED AMENDMENTS TO THE RULES  
ON LAWYERS PROFESSIONAL RESPONSIBILITY**

IT IS HEREBY ORDERED that a hearing be held before this court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on September 23, 2008, at 2:00 p.m., to consider a report filed on May 19, 2008 by the Supreme Court Advisory Committee to Review the Lawyer Discipline System, recommending amendments to the Rules on Lawyers Professional Responsibility. A copy of the report is annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King, Jr. Boulevard, St. Paul, Minnesota 55155, on or before September 12, 2008; and
2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the aforesaid Clerk together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before September 12, 2008.

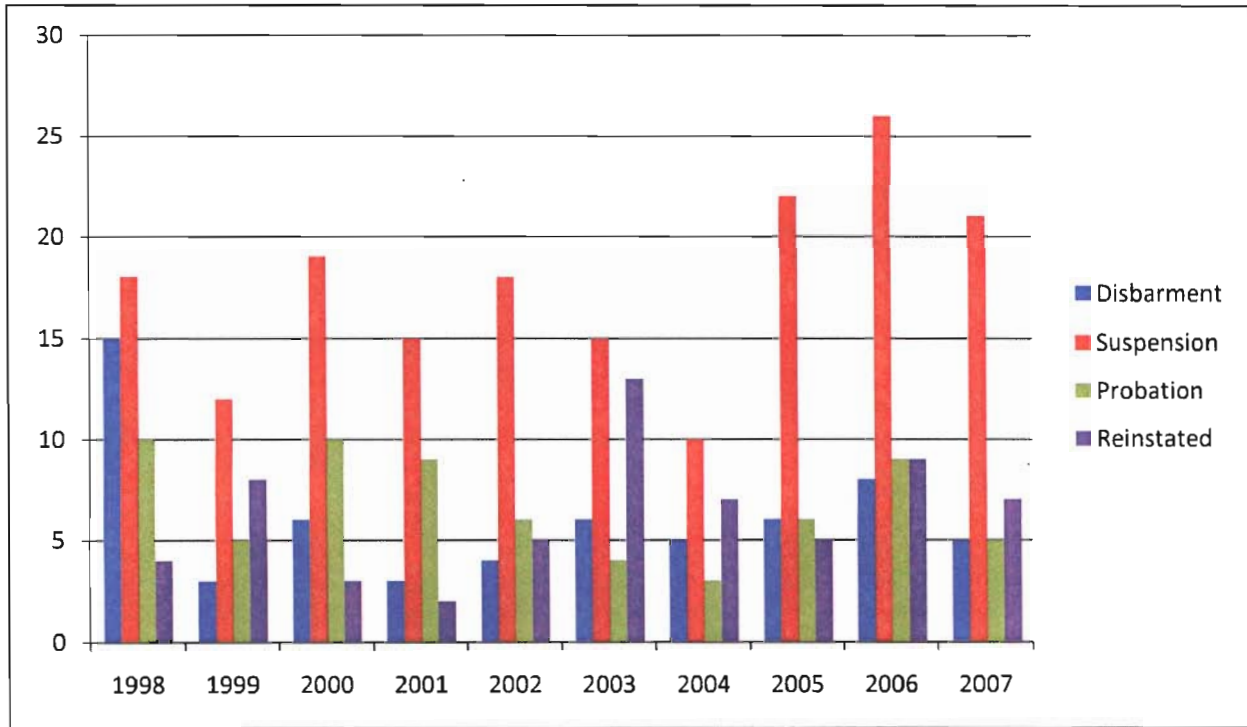
Dated: May <sup>27</sup>27, 2008

BY THE COURT:



Russell A. Anderson  
Chief Justice

The graph below shows the number of disbarment, suspension, probation and reinstatements ordered by the Supreme Court over the last ten years. Clearly, these are the four largest public professional responsibility categories handled by the Director's Office and reviewed by the Court. The table below the graph indicates the variety of matters and exact number of Supreme Court dispositions and reinstatements since 1998.



**TABLE I**  
**Supreme Court Dispositions and Reinstatements 1998-2007**  
**Number of Lawyers**

	Disbar.	Susp.	Probation	Reprimand	Dismissal	Reinstated	Reinstate Denied	Disability	SC AD/Aff	Other	Total
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
2001	3	15	9	2	0	2	0	2	0	1*	34
2002	4	18	6	1	1	5	0	4	0	1**	40
2003	6	15	4	-	-	13	1	3	-	-	42
2004	5	10	3	1	-	7	1	1	-	-	28
2005	6	22	6	1	-	5	-	2	-	-	42
2006	8	26	9	5	-	9	-	2	-	7****	66
2007	5	21	5	-	-	7	2	-	-	-	40

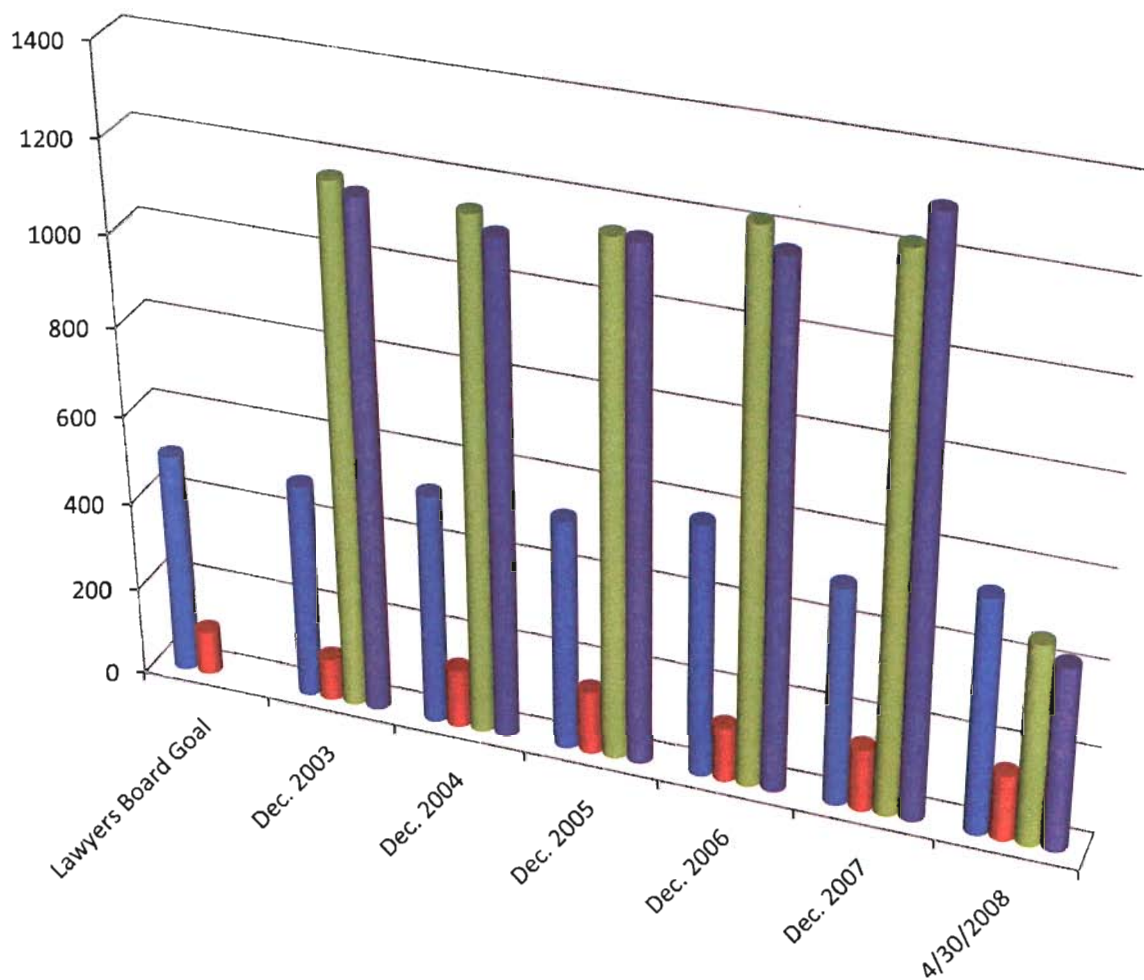
\* Supreme Court admonition reversed.

\*\* Supreme Court stay.

\*\*\* 1 Supreme Court private admonition ordered, and 1 Supreme Court stay.

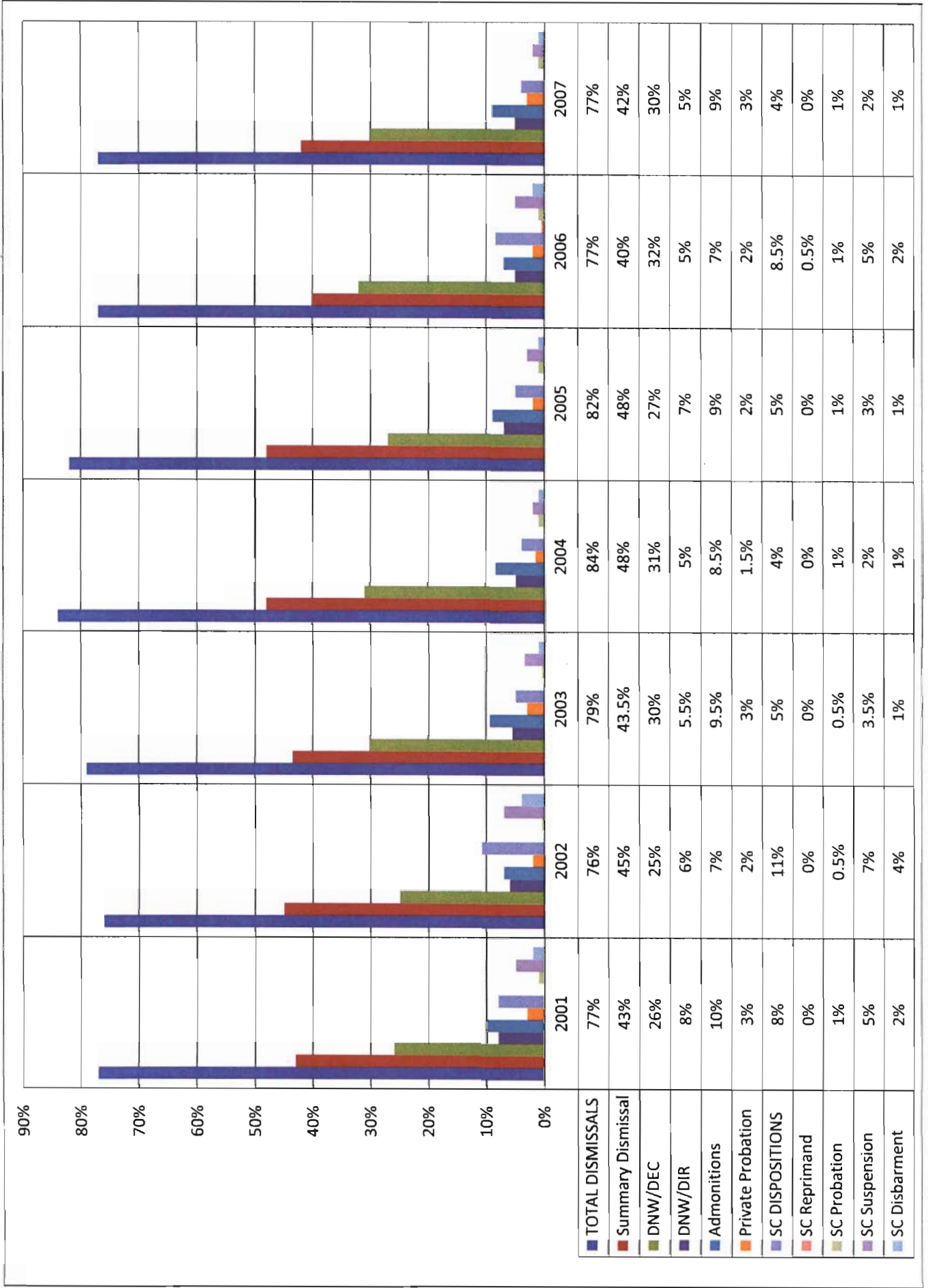
\*\*\*\* 4 Supreme Court stays, 2 reinstated to retired status, 1 conditional reinstatement pending.

**TABLE II**

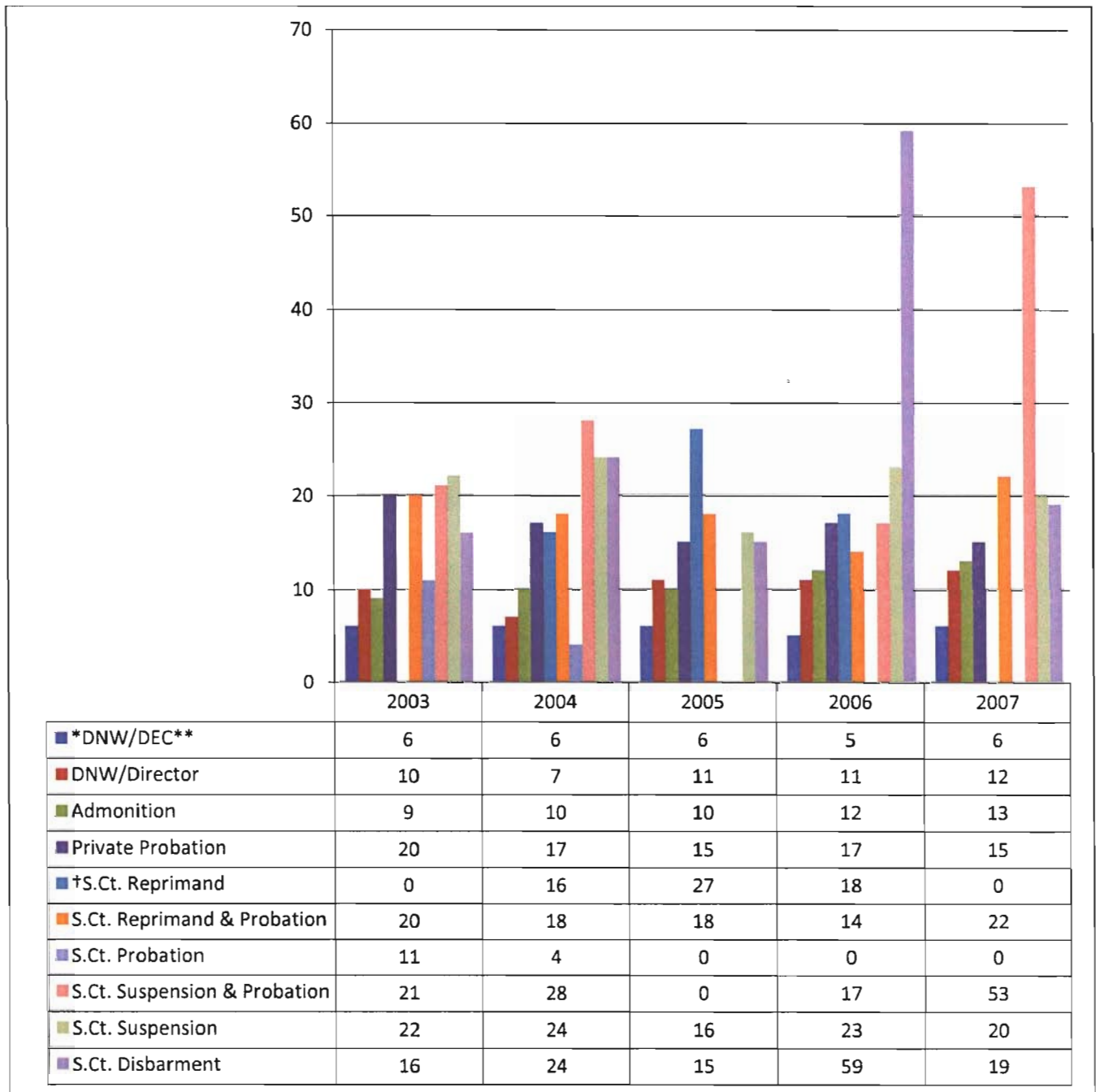


	Lawyers Board Goal	Dec. 2003	Dec. 2004	Dec. 2005	Dec. 2006	Dec. 2007	4/30/2008
■ Total Open Files	500	487	525	527	578	500	540
■ Cases at Least One Year Old	100	97	134	147	128	143	150
■ Complaints Received YTD		1,168	1,147	1,150	1,222	1,226	462
■ Files Closed YTD		1,143	1,109	1,148	1,171	1,304	422

**TABLE III**  
**Percentage of Files Closed**

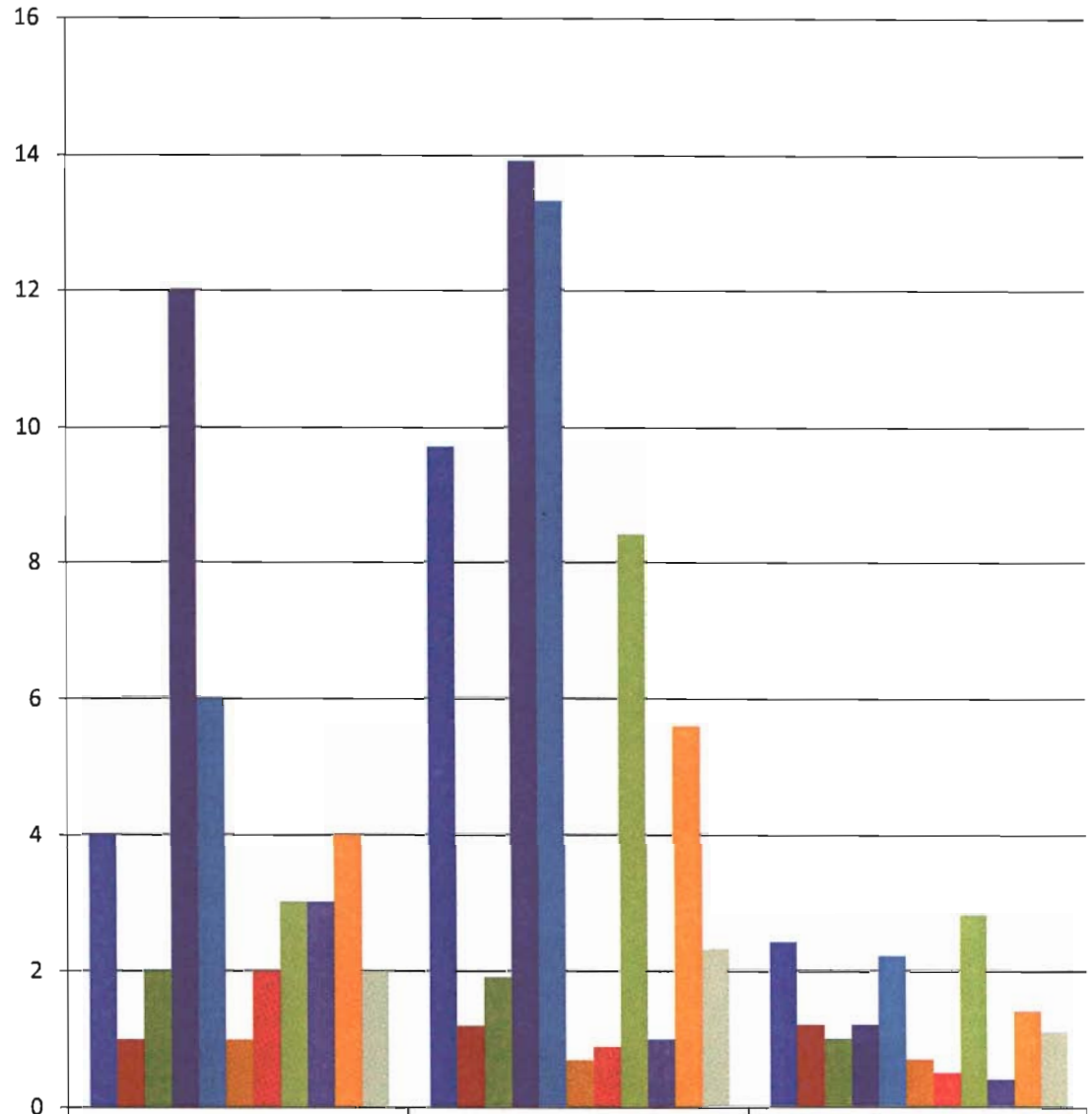


**TABLE IV**  
Number of Months File was Open at Disposition



\*Discipline Not Warranted  
 \*\*District Ethics Committee  
 †Supreme Court

**TABLE V**  
**Average Time Cases Under Advisement by Supreme Court – 2007**



	No. of Matters	Actual Total Mos.	Average Mos.
■ Reprimand & Probation (Stip)	4	9.7	2.4
■ Probation Extended (Stip)	1	1.2	1.2
■ Suspension & Probation (Stip)	2	1.9	1
■ Suspension (Stip)	12	13.9	1.2
■ Suspension	6	13.3	2.2
■ Suspension Stayed & Prob (Stip)	1	0.7	0.7
■ Disbarment (Stip)	2	0.9	0.5
■ Disbarment	3	8.4	2.8
■ Reinstatement	3	1	0.4
■ Reinstatement & Probation	4	5.6	1.4
■ Reinstatement Denied	2	2.3	1.1

**Total Decisions**

**40**

## **Lawyers Professional Responsibility Board Members**

**Kent A. Gernander, Winona.** – Attorney member; current LPRB Board Chair; term expires January 31, 2010; partner in the firm of Streater & Murphy, P.A.; former member and Chair of Third DEC. Areas of expertise: business and commercial law; nonprofit organizations; civil litigation.

**Kathleen Clarke Anderson, Mpls.** – Public member; term expires 1/31/09; worked with Hennepin County Bar Association Fee Arbitration Board; served over 8 years as member of the Fourth DEC. Areas of expertise: public policy, political process and governance.

**Mark R. Anway, Anoka** – Public member; term expires 1/31/09; Assistant Vice-President, Credit and Compliance, Wells Fargo Equipment Finance, Inc.; served on 21<sup>st</sup> DEC for 5 years.

**Robert B. Bauer, Apple Valley** – Attorney member; term expires 1/31/10; served on First DEC for 3 years. Attorney and shareholder in the Apple Valley law firm of Severson, Sheldon, Dougherty & Molenda, P.A. Areas of expertise: civil litigation, real estate (a MSBA certified real property specialist), municipal and estate planning.

**William P. Donohue, Mpls** – Attorney member; term expires 1/31/11; Deputy General Counsel and instructor at the University of Minnesota. Served on Second DEC for 7 years.

**Joseph V. Ferguson III, Duluth.** – Attorney member; term expires 1/31/08; partner in the firm of Johnson, Killen & Seiler, P.A.; served on Eleventh DEC for 12 years, including 6 years as Chair. Areas of expertise: business law/bankruptcy/admiralty.

**Wood R. Foster, Jr. - Mpls.** – Attorney member; MSBA nominee; term expires 1/31/09; serves on LPRB Rules Committee; partner in the firm of Siegel, Brill, Greupner, Duffy & Foster; former member of the Fourth DEC; past president of Hennepin County Bar Association and the Minnesota State Bar Association. Areas of expertise: commercial litigation. as well as class action litigation.

**Susan C. Goldstein, Wayzata** – Public member; term expires 1/31/10. Currently a paralegal at Sklar Law Offices in Minnetonka. Areas of expertise: class action and complex litigation.

**Sherri D. Hawley, Mpls.** – Attorney member; term expires 1/31/10; solo practitioner. Areas of expertise: juvenile law, family law, and appeals.

**Marne Gibbs Hicke, Mpls** – Public member; term expires 1/31/11; Currently a Senior Paralegal at Barna, Guzy & Steffen, Ltd. in Coon Rapids.. Served on 21st DEC for 7 years. Areas of expertise: criminal law/Prosecution.

**Lynn J. Hummel, Detroit Lakes** - Attorney member; term expires 1/31/10; served 9 years on Seventh DEC, 3 years as Chair. Areas of expertise: civil litigation, employment law, general practice, mediation.

**Geri L. Krueger, Glenwood** – Public member; term expires 1/31/09; sole proprietor of Geri's Paralegal Service. Areas of expertise: civil and family mediation, guardianship, conservatorship and probate.



**Richard H. Kyle, Jr., Mpls** – Attorney member; MSBA nominee; term expires 1/31/11; Shareholder in the law firm of Fredrikson & Byron in Minneapolis. Served on Second DEC for 9 years. Areas of expertise: white collar criminal defense.

**Ann E. Maas, Brooklyn Park** - Public member; term expires 1/31/08; serves on LPRB Executive Committee; served on the Fourth DEC for 4 years; self-employed as a mental health consultant. Areas of expertise: health care evaluation, law office management, standards and compliance, performance improvement.

**Mary L. Medved, St. Paul** – Public member; term expires 1/31/10; serves on LPRB Executive Committee; serves as personnel liaison to Director's Office; served 2 terms (6 years) on the Second DEC; President, Medved Companies. Areas of expertise: Human Resource Generalist, Employment, Benefits, Compensation.

**David L. Sasseville - Mpls.** – Attorney member; MSBA nominee; term expires 1/31/09; serves as Chair of the LPRB Rules Committee; partner in the firm of Lindquist & Vennum; served on Fourth DEC for 6 years. Adjunct Professor of Law, Wm. Mitchell College of Law – Professional Responsibility. Areas of expertise: commercial litigation, regulated industries, and administrative law.

**Vincent A. Thomas, Minneapolis** – Attorney member; MSBA nominee; term expires 1/31/10; Lawyers Board Vice-Chair; Assistant Dean for Students and Multicultural Affairs and Adjunct Professor of Law, University of St. Thomas School of Law.

**Debbie Toberman, Plymouth** - Public member; term expires 1/31/08; served on the Fourth DEC for 12 years; claim supervisor for Minnesota Lawyers Mutual Ins. Co. Area of expertise: legal malpractice.

**Michael W. Unger, Mpls** – Attorney member; MSBA nominee; term expires 1/31/11; Solo practitioner at Unger Law Office Minneapolis. Served on Fourth DEC for 6 years. Areas of expertise: civil litigation (a MSBA certified civil trial specialist), mainly plaintiff personal injury and medical malpractice. Experience in employment, labor, and class action (consumer fraud, antitrust ad ERISA)..

**Dianne A. Ward, St. Paul** – Attorney member; term expires 1/31/09; serves on LPRB Executive Committee; Assistant Director in the Office of the Ramsey County Attorney; served on the Second DEC for 3 years. Areas of expertise: public law – criminal, juvenile, child support and public policy.

**Daniel R. Wexler, Maple Grove** – Public member; term expires 1/31/11; Currently employed as Project Coordinator at Ameriprise Financial in Minneapolis. Background in domestic and international casino marketing, customer service training, communications and event planning.

**Stuart T. Williams, Mpls.** – Attorney member; MSBA nominee; term expires 1/31/10; served on the Fourth DEC for 7 years. Attorney and shareholder with the firm of Henson and Efron in Minneapolis. Areas of expertise: commercial litigation, environmental law, and toxic torts

**Jan M. Zender, St. James** – Attorney member; term expires 1/31/08; served on the Sixth DEC for 6 years; partner in law firm of Sunder, Olson, Bircher and Zender. Areas of expertise: real estate and estate planning.

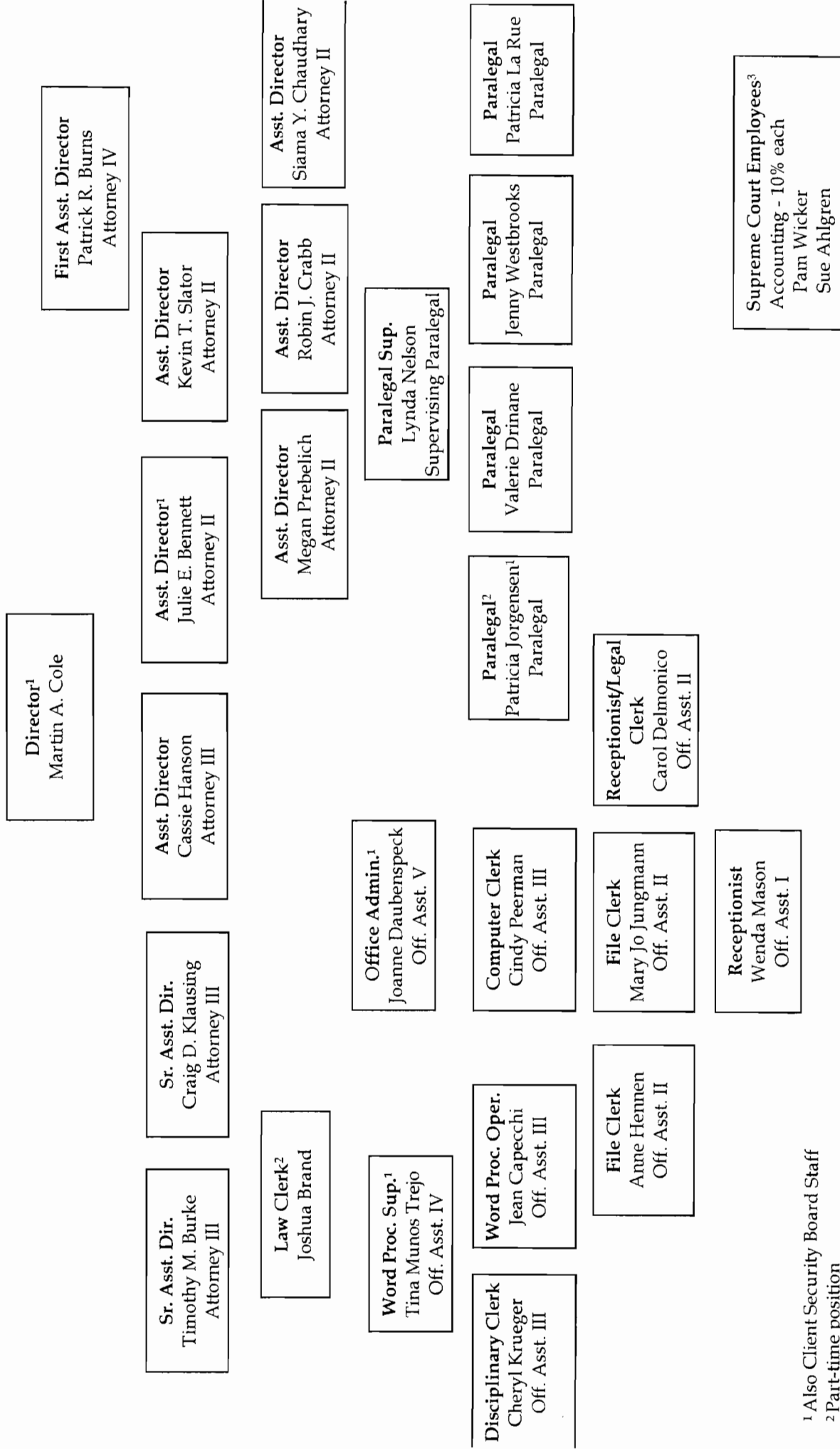
## 2007 OLPR Summary of Public Matters Decided

### 40 Decisions Involving 63 Files

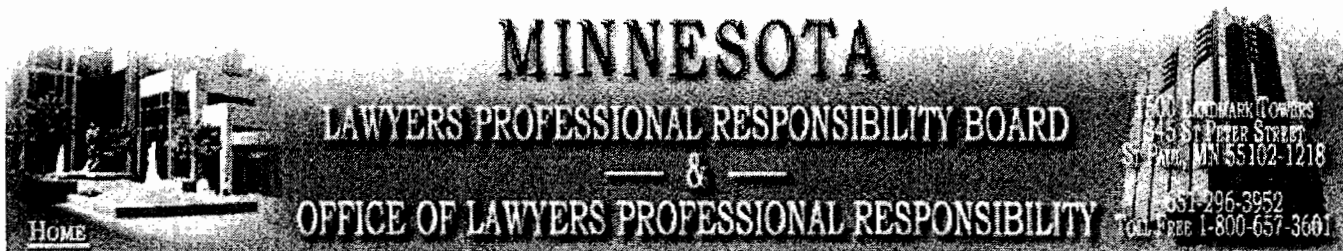
<b>Disbarment</b>	<b>15 files</b>	<b>5 attorneys</b>	
ANDRADE, SERGIO ROBERTO	A06-426	1	SUNDBY, ELIZABETH JANE C5-02-1203 2
GIBERSON, FRANCIS E	A07-1338	1	WARD, THOMAS ROBERT A06-1992 2
PITZELE, MARK DAVID	A07-158	1	<b>Suspension Stayed &amp; Probation</b> 1 files 1 attorneys
RHODES, BRADLEY C	A04-2252	11	DAVIS, WILLIE HERMAN JR. A07-1855 1
SWENSEN, MICHAEL F	A07-1131	1	<b>Probation Extended</b> 1 files 1 attorneys
<b>Suspension &amp; Probation</b>	<b>3 files</b>	<b>2 attorneys</b>	ANDERSON, JOHN T JR. A05-335 1
HALVERSON, CAROLE JEAN	A07-275	1	<b>Reprimand &amp; Probation</b> 5 files 4 attorneys
KOPESKA, RONALD L	A07-2152	2	GERRARD, CHRISTOPHER DECKER A06-1164 1
<b>Suspension</b>	<b>29 files</b>	<b>18 attorneys</b>	INGEBRITSON, RUSSELL A A07-2031 1
AAKRE, STEVEN K	A07-68	1	MATTOS, PATRICIA G A06-1931 2
BERG, JAMES L	A07-563	6	TIGUE, RANDALL D A07-1936 1
BLOCK, TIMOTHY MICHAEL	A07-1867	1	<b>Reinstatement</b> 3 files 3 attorneys
BULLIS, JAMES ROBERT	A07-1107	1	BLOCK, TIMOTHY MICHAEL A07-1867 1
CRANDALL, ERIC LEIGHTON	A07-2214	1	BULLIS, JAMES ROBERT A07-1107 1
FRANKLIN, JOEL ANTHONY	A06-1457	3	HUGHES, LAURENCE B A07-1854 1
HARTIGAN, SETH PATRICK	A05-1308	1	<b>Reinstatement &amp; Probation</b> 4 files 4 attorneys
HOLKER, KENNETH M	A06-896	2	HAEFELE, RICHARD J A06-951 1
HOTTINGER, JOHN C	A07-264	1	JELLINGER, RICHARD T A05-2091 1
HUGHES, LAURENCE B	A07-1854	1	NORA, WENDY ALISON A06-1292 1
JONES, WILLIAM F	A06-1056	1	ROONEY, EDWARD F A07-832 1
KIEFER, MICHAEL L	A07-1806	1	<b>Reinstatement Denied</b> 2 files 2 attorneys
KITCHEN, CRAIG VICTOR	A05-841	1	MOULTON, DANIEL J A05-1865 1
MCCORMICK, DAVID LAWRENCE	A06-2420	1	SINGER, DAVID A A05-1136 1
NEAL, KENNETH ANTHONY	A07-891	1	
NELSON, DEWEY M	A06-1370	2	

# Office of Lawyers Professional Responsibility

## FY'08 Organizational Chart



<sup>1</sup> Also Client Security Board Staff  
<sup>2</sup> Part-time position  
<sup>3</sup> Not administratively subject to Director's Office. Office pays percentage of their salary  
<sup>4</sup> Not administratively subject to Director's Office. Hired to assist retired referees.


[SEARCH](#)

[ABOUT LAWYERS BOARD & THE OFFICE OF LAWYERS PROFESSIONAL RESPONSIBILITY](#)
[PROFESSIONAL RESPONSIBILITY ARTICLES AND SUBJECT INDEX](#)
[FILING A COMPLAINT AGAINST A LAWYER](#)
[LAWYER SEARCH- PUBLIC DISCIPLINE RECORD](#)
[RULES GOVERNING MINNESOTA LAWYER DISCIPLINE SYSTEM](#)
[TRUST ACCOUNTS](#)
[CROSS BORDER PRACTICE RULES](#)
[ATTORNEYS ONLY: ADVISORY OPINION SERVICE](#)
[OTHER RESOURCES](#)
[RELATED LINKS](#)

## Minnesota Ethics Articles

### **Avoiding Conflicts in the Sale of Title Insurance to Clients**

Attorneys who sell title insurance need to be aware of the conflicts of interest inherent in the transaction and comply with the applicable Rules of Professional Conduct. [more](#)

Reprinted from *Minnesota Lawyer* (June 2, 2008).

[Index to Minnesota Lawyer Ethics Articles](#)

### **Growing Old Together**

More lawyers are practicing longer without retiring or scaling back their practices. Therein lie a host of potential problems for individual lawyers, law firms, and the profession as a whole. [more](#)

Reprinted from *Bench & Bar* (April 2008).

[Index to Bench & Bar Ethics Articles](#)

## What's New

### **Lawyer Ethics Articles by Subject and Rule**

Use our **revised** Subject Matter Index and **new Rule Index** to research our archive of ethics articles from *Minnesota Bench & Bar* and *Minnesota Lawyer*. [more](#)

### **Katie McWatt and Wallace Neal named Lawyers Professional Responsibility**

**Volunteers of the Year.** [more](#)

### **2007 Annual Report -**

Of the Lawyers Professional Responsibility Board and Office of Lawyers Professional Responsibility [more](#)

### **Effective July 1, 2007, amendment to Rule 1.15, MRPC, regarding**

**interest paid on IOLTA trust accounts.** [more](#)

### **For Attorneys Only: Advisory Opinion Service Now Available On Line**

Minnesota attorneys may now submit electronic

requests for an advisory opinion to the Office of Lawyers Professional Responsibility. [Click here for details and request form.](#)

### **Minnesota Lawyer Public Discipline Search Now Available**

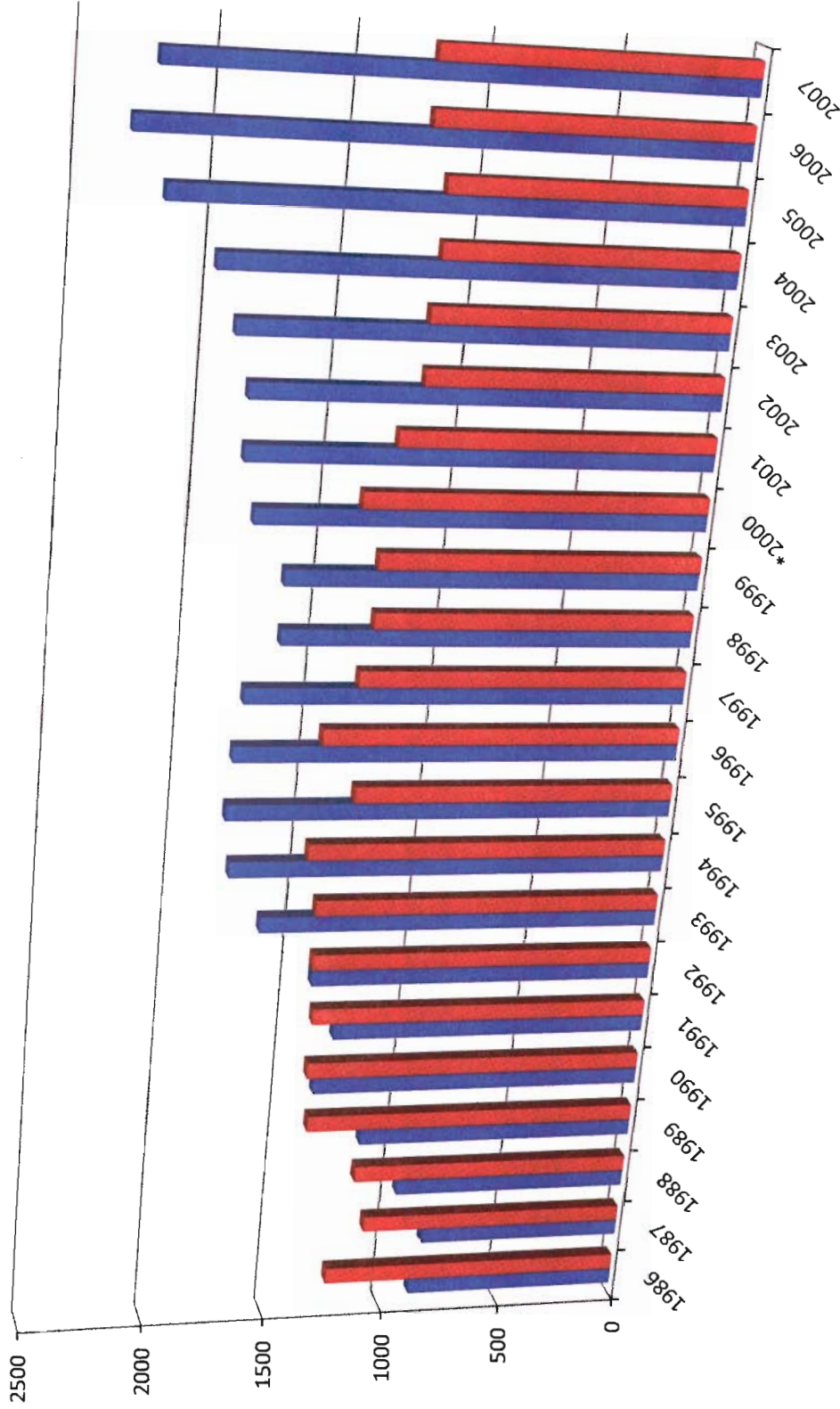
Click the link on the menu to the left entitled "Lawyer Search: Public Discipline Record." Enter a lawyer's last name. A list of lawyers will appear showing whether or not they are authorized to practice in Minnesota and if they have public discipline. If they are not authorized, it will state the reason. Click on the lawyer you are inquiring about. If the lawyer has public discipline, there should be a link to the Supreme Court order or opinion.

### **Appendix 1 to Minnesota Rules of Professional Conduct (MRPC)**

Pursuant to Rule 1.15(i), MRPC, the Lawyers Professional Responsibility Board, is required to publish annually the books and records required by Rule 1.15(h), MRPC. [more](#)

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**Advisory Opinion Requests Received  
and  
Number of Complaints Opened  
1986 - 2007**



■ Advisory Opinions Received	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	*2000	2001	2002	2003	2004	2005	2006	2007
■ Complaints Opened	1233	1091	1149	1365	1384	1380	1399	1405	1456	1290	1438	1314	1275	1278	1362	1246	1825	1889	1974	2177	2307	2223

\* 2000 total advisory opinions (AO) received was revised to reflect additional AO's not previously included.

DEC INVESTIGATION SUMMARY		
2007		
DEC	Number of Files	Average Investigation Duration (Months)
1	22	4.5
2	89	3.7
3	7	3.3
4	227	4.3
5	4	4.3
6	4	3.3
7	38	4.1
8	12	5.3
9	1	1
10	3	3.7
11	20	4.5
12	5	2.2
13	1	4
14	6	4
15	12	3.4
16	7	2.6
17	5	5.4
18	11	4.4
19	11	3.2
20	3	2.7
21	22	2.5
<b>Totals</b>	<b>510</b>	<b>4</b>
<b>(non 4<sup>th</sup>)</b>	<b>(283)</b>	<b>(3.8)</b>

**Office of Lawyers Professional Responsibility  
Speaking Engagements and Seminars July 2007 – June 2008**

<b>Date</b>	<b>Topic</b>	<b>Location</b>	<b>Organization</b>
7/10/07	Preventing Malpractice 2007 Update	St. Cloud	MLM
7/13/07	Ethical Problems in the Enforcement & Prosecution of DWIs	St. Paul	MN Attorney General & Assn. County Prosecutors
7/14/07	Criminal Law Practice Issues	Minneapolis	MN Society of Criminal Justice
7/18/07	Ethics for Paralegals	Brooklyn Center	MN School of Business
8/9/07	7 <sup>th</sup> DEC Training	Ottertail	7 <sup>th</sup> District
8/20/07	E-mail Confidentiality/Privilege	Minneapolis	MNCLE
8/21/07	Moderating Online Version CLE	Minneapolis	MNCLE
8/24/07	Confidentiality in Immigration	St. Paul	E. Metro Immigration Services
8/27/07	Criminal Justice Institute	Bloomington	MNCLE
9/5/07	Life and Law: Stress (webcast)	Minneapolis	MNCLE
9/11/07	Ethics for Support Staff	Minneapolis	TCLEEA
9/20/07	Arbitration Ethics (webcast)		MNCLE
9/20/07	Ethics for Paralegals	Winona	Winona State
9/22/07	Ethics for Non-Lawyers	Anoka	NALS
9/26/07	4 <sup>th</sup> DEC Training	Minneapolis	HCBA
10/3/07	4 <sup>th</sup> DEC Training	Minneapolis	HCBA
10/5/07	OLPR Annual Professional Responsibility Seminar	Minneapolis	
10/10/07	Estate Planners	Duluth	
10/11/07	Name that Ethics Rule	Alexandra	MLSC
10/19/07	Eminent Domain CLE International	Minneapolis	
10/19/07	Arbitration Ethics	Minneapolis	MNCLE
10/31/07	Real World Ethics	Minneapolis	MNCLE
11/10/07	Collaborative Law & Unbundling	Minneapolis	HCBA
11/10/07	Real Estate Institute	St. Paul	MNCLE
11/19/07	Hamline Law School	St. Paul	Hamline U.
11/27/07	Ethics for Paralegals	Richfield	MN School of Business
11/28/07	Common Ethics Dilemmas	Eagan	Clarion
12/5/07	Ethics for Paralegals	Minneapolis S	MPA Litigation Sectional
12/7/07	Child Custody & Shared Parenting	Bloomington	NBI
12/17/07	The Ethical Duty Owed to Your Vulnerable Client	Minneapolis	MNCLE
1/16/08	Ethics for School Attorneys	Minneapolis	COSA
1/17/08	Real Property Special Exam Review	Minneapolis	MNCLE
1/24/08	Solo & Small Firm Section re Trust Accounts	St. Paul	RCBA
2/5/08	Ethics for Paralegals	Richfield	MN School of Business
2/11/08	Solo & Small Firm Practice: Ethics Issues & Answers	Minneapolis	MNCLE



**Office of Lawyers Professional Responsibility  
Speaking Engagements and Seminars July 2007 – June 2008**

<b>Date</b>	<b>Topic</b>	<b>Location</b>	<b>Organization</b>
2/11/08	Maintaining Diverse Legal Workplace	Minneapolis	MNCLE
2/20/08	Ethics for Paralegals	Minneapolis	Meagher, Geer
2/25/08	Ethics for Paralegals	Minneapolis	NHCC
3/7/08	District Judges	Willmar	MSBA
3/12/08	Crimes, Causes and Clarence Darrow	St. Paul	
3/13/08	Moderate video seminar	Minneapolis	HCBA
3/19/08	Unbundling Seminar	Apple Valley	
3/20/08	2 <sup>nd</sup> DEC Training	St. Paul	RCBA
3/18/08	Elimination of Bias	Minneapolis	Guthrie
3/25/08	Elimination of Bias (repeat of 3/18)	Minneapolis	Guthrie
3/31/08	Family Law Institute	St. Paul	
4/1/08	Pro Bono	Minneapolis	MSBA
4/3/08	Hamline Mock Trial	St. Paul	Hamline
4/3/08	Overview of Discipline System	St. Paul	Wm Mitchell
4/8/08	PR Class	St. Paul	Hamline
4/10/08	Ethics & Family Law	Minneapolis	VLN
4/18/08	23 <sup>rd</sup> Annual Workers' Comp. Seminar	Minneapolis	MNCLE
5/5/08	Current Issues in MN Legal Ethics	Carver City	
5/5/08			8 <sup>th</sup> DEC Bar Assn.
5/8/08	Aba Equal Justice Conference	Minneapolis	ABA
5/8/08	Probate & Trust Section		1 <sup>st</sup> Bank
5/9/08	Emerging Issues in Hotlines	Minneapolis	ABA/NLDA
5/10/08	Family Law Section	Minneapolis	MSBA
5/10/08	Pro Bono Ethics	Minneapolis	NFPA
5/12/08	In-house Counsel	Minneapolis	MNCLE
5/19/08	The Ethics of Referrals, Referral Fees, & Co-Counsel Agreements	Minneapolis	MNAJ
5/20/08	Pro Bono Ethics	Minneapolis	Chrysalis
5/21/08	Happy Healthy Practice	St. Paul	RCBA
5/27/08	Ethics and the Law	Minneapolis	Northern Star Counsel
5/29/08	Midwest Employment Seminar	St. Paul	
6/3/08	Unbundling	St. Paul	RCBA
6/5/08	Paraletal Ethics	Bloomington	MN Paralegal Assn
6/11/08	Ethics Panel Current Dilemmas	Rochester	MLM
6/11/08	Communication Forum	Minneapolis	MILE
6/23/08	2008 Legal Update for MN Attorneys	Mankato	MNCLE
6/22/08	Ethical Problems in the Enforcement & Prosecution of DWIs		MN Attorney General & Assn. County Prosecutors
6/30/08	Webcast: Recent Discipline Decisions	Minneapolis	MNCLE