

The OLPR turns 50!

As I mentioned last month, this year is the 50th anniversary of the creation of the Office of Lawyers Professional Responsibility. In 1971, the Minnesota Supreme Court appointed the first administrative director of the Office, Richey Reavill of Duluth, having created the Lawyers Professional Responsibility Board in 1970. The first meeting of the Board also occurred in early 1971. With half a century of experience, let's take a look at what has changed and what remains the same.

Before the Board and Office

Prior to 1971, the Board of Law Examiners functioned as the bar's primary disciplinary body. This responsibility was shared with the Practice of Law Committee of the Minnesota State Bar Association.¹ Interestingly, BLE also included judicial ethics in its purview until the Minnesota Legislature created the Board of Judicial Standards in 1972. Starting up separate organizations responsible for different aspects of lawyer regulation was largely the byproduct of a seminal 1970 publication from the American Bar Association known

as the Clark Report² and the passage in 1969 of the ABA Model Code of Professional Responsibility.

The Clark Report was very critical of existing efforts by states to discipline attorneys, pointing out large disparities in the handling of discipline from jurisdiction to jurisdiction and within jurisdictions. The report identified 36 separate and significant problems that each state

was encouraged to address in its attorney discipline system. Thereafter, many states, including Minnesota, put in place professional staff tasked with discipline and gave thoughtful consideration to the issues raised in the Clark Report and the Model Code.

The beginning

The Office started with a staff of three and received, directly or through the district ethics committees, 400 complaints that first year. At the time, there were approximately 5,000 members of the bar. In that first year the Board held seven panel proceedings involving 10 lawyers, and provided significant support to the various district ethics committees.³ Approximately 12 percent of complaints resulted in some level of discipline, whether by a district ethics committee—which then could impose discipline—or the Board, which could also impose discipline, or the Court. The primary area of concern raised in complaints was neglect. One of the first orders of business for the Board, it appears, was to recommend a rule change to add public members to the Board. The Court accepted this recommendation and thereafter added three public members, beginning Minnesota's long tradition of active public participation in the attorney discipline process.

The first 10 years of the OLPR saw a quick succession of directors—four in all—until 1979, when that succession slowed down. During that first decade, the Board continued to expand the public's role in the process, implementing the rule—still in effect today—that 20 percent of ethics committee members be nonlawyers. The Rules on Lawyers Professional Responsibility were also changed in 1977 to remove dispositional authority from the district ethics committees, modifying their role to consist of a report and recommendation process that remains in place today.⁴ In 1977, the Office first started advertising to the bar the availability of free ethics advice on an informal basis just by phoning us.⁵ Then as now, the advice was to review

the rules first, but when in doubt, call. We continue to offer this valuable service to all members of the bar.

The '80s and '90s

The 1980s and '90s were decades of expansion. The early '80s saw growth in the Office staff as well as the number of licensed lawyers (approximately 13,000 by 1982) and complaints (up to approximately 1,200 a year), and produced the first signs of a backlog in case processing. By 1989, the Office had grown to a staff of 20 and a budget of \$1 million. The attorney population was also rising during this time, as were the services of the Office. The Director was appointed to serve as the director of the newly formed Client Security Board in 1987, and the trust account overdraft program was launched in 1990.

The '80s also saw significant changes in the applicable rules. In 1985, the Court adopted the Minnesota Rules of Professional Conduct, replacing the Code of Professional Conduct. With modest amendments over time, the rules comprising the MRPC have largely stood the test of time, and are the ones we still apply today. The '80s also saw a change in the Rules of Lawyers Professional Responsibility (RLPR)—specifically, a change to require that any investigation initiated by the Director without a complaint receive approval from the Board's executive committee (another rule that remains in place today).

The '90s saw continued growth in the number of attorneys, exceeding more than 20,000 by the end of the decade, an approximately four-fold increase in the first 25 years of the Office's history. The early '90s also saw the appointment of the first woman director, Marcia Johnson, who served from 1992-1997. In a very interesting twist of fate, Ms. Johnson was a Nebraskan, and a products liability lawyer who worked at a large firm.⁶ Nineteen years later, I would become the second woman director, and also happened to be originally from Nebraska, and a products liability lawyer from a large firm!



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The '90s remain the decade that yielded the most disbarments: 75.

2000 to the present

The last two decades have seen much slower growth in the number of licensed attorneys than during the first half of the Office's existence. The current number of active lawyers is around 25,000, out of approximately 30,000 licensed lawyers. These numbers have remained remarkable steady for much of the last decade. The Office spent 20 years at one location, its longest period of time in one space, before its recent move at the end of December 2020.

The last two decades have been active ones in terms of discipline. From 2000-2009, 327 lawyers were publicly disciplined, an average of 33 a year (from a low of 19 in 2004 to a high of 48 in 2006). From 2010-2019, a total of 403 attorneys were publicly disciplined, an average of approximately 40 per year. During the most recent decade, the annual number of publicly disciplined lawyers ranged from a low of 26 (in 2010 and 2011) to a high of 65 in 2015. Total complaints throughout this period varied

by year but were very similar to the average number of complaints received in the 1980s and 1990s (1,100 - 1,200).

Throughout these decades, the Board remained the same size (23 members, with nine public members) and maintained its same structure, sitting in six disciplinary panels. The Office staff grew modestly, from the full time equivalent of 24 in 1999 to the current full time equivalent of 30 in 2021. We have also maintained a robust district ethics committee structure, with strong public participation in each of the 21 district ethics committees.

The last two decades also saw the largest number of claims paid out in one year by the Client Security Board (67 in fiscal year 2017) as well as two years in which payouts exceeded \$750,000 in a single fiscal year (2004 and 2017).

Conclusion

This is a very general overview of the last 50 years. But I hope it gives you a sense of how much has changed and how much remains the same. If you have questions about what we do and how we do it, please let me know. More

importantly, if you have suggestions for improvement, please let me know that as well. And, remember, we are available to answer your ethics questions: 651-296-3952—a phone number that we have had since the earliest days of the Office, save for an area code change. ▲

Notes

¹ *For the Record, 150 Years of Law and Lawyers in Minnesota, An Illustrated History*, Minnesota State Bar Association, June 1999.

² American Bar Association Special Committee on Evaluation of Discipline Enforcement, June 1970 (the "Clark Report").

³ Professional Responsibility and Discipline, Progress Report, R.B. Reavill, *Bench & Bar* (Feb. 1972).

⁴ Cleary, Edward J. and Wernz, William J. (1999) "Ethics and Enforcement," *William Mitchell Law Review*: Vol. 25: Iss. 1, Article 14. Available at: <http://open.mitchellhamline.edu/wmlr/vol25/iss1/14>.

⁵ R. Walter Bachman, Jr, "Check with Lawyers Professional Responsibility Board Staff on Legal Ethics Question," *Bench & Bar* (Dec. 1977).

⁶ Marcia A. Johnson, "Changes at the Board," *Bench & Bar* (Dec. 1992).