Professional Responsibility

BY MARTIN COLE

Hello, Goodbye

"You say goodbye and I say hello. I don't know why you say goodbye, I say hello."

— Lennon & McCartney

Most of the popular songs I grew up with in the late 1960s probably had hidden meanings that I didn't completely understand, maybe even the lyrics above penned by Paul McCartney. In my youthful naiveté I considered this to be generally a simple optimistic song about looking forward rather than backwards. Music historians seem to prefer that it be considered simply as utter nonsense. As another of my icons of the era, Kurt Vonnegut Jr., said, "so it goes."

That's the extent of my nostalgia trip for the days of long ago. Rather, I intend to look forward to a good 2008 and maintain my optimism. Still, a quick look back to review the prior year's activities can be helpful, and the lawyer disciplinary system is no different in that regard. An equally quick look ahead should follow.

**Goodbye 2007: The Year in Review**

In calendar year 2007, the total number of attorneys publicly disciplined was lower than the previous year. Only five attorneys were disbarred: Sergio Andrade, Francis Giberson, Mark Pittele, Bradley Rhodes, and Michael Swensen. As in other years, there was not just one path to disbarment. Andrade was disbarred after being criminally convicted of theft by swindle; Giberson failed to pay child support and was convicted of a crime; Pittele misappropriated funds from his trust account; Rhodes failed to cooperate with a prior probation and neglected several more files; and Swensen participated in a fraudulent real estate scheme. Giberson and Rhodes previously had been publicly disciplined, which aggravated their more current misconduct; the others had not. Giberson was admitted to practice in 1976 and Rhodes in 1984, while Swensen, Pittele and Andrade were more recent admits from 1991, 1993 and 1995. Their practice areas also were diverse.

In addition, 21 lawyers were suspended this past year, and five lawyers were publicly reprimanded and either placed on probation or had their existing probation extended.

Supreme Court decisions of note included lengthy suspensions for misappropriation or other trust-account-related misconduct, and shorter suspensions for patterns of multiple acts of misconduct; these last featured in particular misrepresentations to clients, courts or the disciplinary authority. There were also five reinstatement proceedings this year, with three of the attorneys being reinstated to probation while the other two attorneys' petitions were denied. All of the attorneys involved in this past year were seeking reinstatement from suspension; there were no petitions seeking reinstatement from disbarment as in recent years.

Twenty public matters were pending at the end of the calendar year, as were ten additional petitions for reinstatement, one of which is from disbarment. Six of the 20 matters were already set for oral argument before the Supreme Court as part of their January and February calendars. Another eight sets of charges of unprofessional conduct are pending before panels of the Lawyers Board to determine whether probable cause for filing a public petition exists. The total number of public discipline matters in 2008 seems headed towards exceeding that of 2007.

It had been feared that the number of complaints received by the Director's Office was headed for another sizeable jump this past year. Ultimately that didn't occur. A November-December stagnation in the number of complaints filed meant that the total for the year was 1,226, only one more than in 2006. That 2006 total was an increase from the approximately 1,150 per year that had been fairly constant for several previous years. There's always the fear that a "New Year's Resolution" influx of complaints in January will make up for the lower-than-normal November-December total.

That end-of-year lull in complaints received allowed our office to close more files than were opened during this final period of 2007, such that the overall number of files open at the end of 2007 was 500, exactly the target guideline for open files established by the Lawyers Board. With a full complement of staff attorneys again in place, it should be possible to continue to meet this goal. More difficult, however, is maintaining the office's other target guideline of having no more than 100 open files that are more than one year old (from date of opening the investigation file). When an experienced attorney departs, to be replaced by a less experienced attorney, the new attorney usually can help keep up with the new complaints and less serious matters, even while gaining expertise. Already pending cases are more difficult to reassign and resolve, and often age.

It had been feared that the number of complaints received by the Director's Office was headed for another sizeable jump this past year. Ultimately that didn't occur.
to beyond the one-year goal. These
target numbers matter because the
Director's Office is funded by a por-
tion of the annual lawyer registra-
tion fee; if additional resources or
staff prove necessary to handle the
office's workload, all Minnesota
lawyers can be affected.

Finally, although various proposals
for changes to either the Rules of
Professional Conduct or Rules on
Lawyers Professional Responsibility
have been put forward, and are being
studied by the Lawyers Board or
MSBA's Rules of Professional Con-
duct Committee, no amendments to
the rules were adopted this past year
by the Court.

Hello 2008:
The Year Ahead

The Supreme Court Committee to
Review the Lawyer Disciplinary Sys-
tem, chaired by Minneapolis attorney
Allen Saeks, met several times in the
latter portion of 2007 and now is
nearing the end of their preliminary
review. Their report is scheduled for
completion and submission to the
Supreme Court in April 2008. Any
suggestions for change made by that
committee likely will be topics of dis-
cussion and action during this com-
ing year. In the past, several positive
changes emerged following these
reviews. To date, issues such as the
procedures used by District Ethics
committees to conduct their prelimi-
nary investigations of complaints,
revision of the Lawyers Board Panel
Manual, and the file aging noted
above have been discussed by the
review committee.

One technology development of
the new year already is noteworthy.
As many of you already are aware, all
of these columns are posted on the
website maintained by the Director's
Office and the Lawyers Board, along
with articles written by staff attor-
ey's that appear in other periodicals. They
are word-searchable and there is a
subject index with links to the arti-
cles. It has long been a goal to revise
this index to more closely match
researchers' needs. That revision
recently has been completed and
should be available online by the time
this column is published. The index
now has both a completely new sub-
ject matter/topic index and also an
index by Rule of Professional Con-
duct. As before, all articles that dis-
cuss a particular topic or rule are list-
ed and linked. This has been a major
undertaking, but a worthwhile one.
We hope the change will constitute a
significant improvement, and urge
interested individuals to try the new
indexes and let us know your views.

The Director's Office staff con-
tinues to balance its educational func-
tion, presenting at Continuing Legal
Education seminars and providing
advisory opinions, with its prosecu-
torial obligation. We look forward in
2008 to protecting the public while
also serving the bar.

Notes
1 Vonnegut first used his catch phrase in Slaughterhouse
Five.
2 Citations to the Supreme Court decisions discussed in this article are
not provided. Copies of all lawyer disciplinary decisions can be found
on the Lawyers Board website using the lawyer public discipline search
function. Copies of the petition for the case and any stipulation for
discipline also are included. www.mncourts.gov/lpbd/SearchLawyer.aspx
3 Not all petitions for reinstatement result in Court decisions. Some
petitions are withdrawn during the investigation stage in response to
concerns raised by the Director's Office.
4 The MSBA also archives past issues of Bench & Bar of Minnesota at
http://www2.mnbar.org/benchandbar_perms/archive_index.htm.

www.mnbar.org