Professional Responsibility
By Martin Cole

If It Ain’t Broke ...

In exactly equal numbers, the Min-
nesota Supreme Court and the di-
rectors of the Office of Lawyers Pro-
fessional Responsibility and the
Client Security Board from within and
from outside the Director’s Office. In
recent memory, the Court promoted Bill
Wern, and Ken Jorgensen from within
to be director, while it hired Marcia
Johnson and Ed Cleary from outside
practice. This varied approach has
ensured that Minnesota’s disciplinary sys-
tem enjoys both the benefit of experi-
ence and occasional renewed vitality.

I have recently been appointed as
director to replace Ken Jorgensen, fol-
lowing his appointment to the 10th Dis-
trict Court bench. I wish to thank
the Supreme Court, the Lawyers Board,
and the Client Security Board for their con-
fidence in me and for the opportunity I
have received. I become part of the
internal promotion group, having most
recently served as assistant director.
I hope that, after 21 years in the discipli-
nary and client protection systems, I
will be able to maintain the position’s high
level of experience and ethics knowledge.

For biographical purposes, I was born
and mostly raised right here in Minneso-
ta, and am an alumna of the University
of Minnesota, the University of North
Dakota, and the University of North
Dakota Law School.

After briefly practicing with a
Minneapolis law firm, I have been
employed in the lawyer disciplinary sys-
tem for over 21 years. Many of you already
are familiar with me from having talked
with me during one of the over 600 tele-
phone advisory opinions I have given
over the years, or from attending
Continuing Legal Education present-
ations or tables at one of the area’s law
schools, or from serving as a commit-
tee’s work. A few know me from hav-
ing sat on the opposite side of the
courtroom during a discipli-
nary prosecution. I’ve met several more
of you at recent district bar association
meetings. The upcoming state bar con-
vention offers yet another opportunity
for me to meet Minnesota lawyers and
judges.

We have solid systems to be proud of
that well serve and continually improve
our ability to provide public information.
Thus, my appointment is truly reflective of an
"If it ain’t broke, don’t fix it" approach
by the Court towards Minnesota’s lawyer
disciplinary system. An unbroken sys-
tem isn’t just an accident; it is the prod-
cut of many years of effort by an interest-
ed and involved Supreme Court, state
and local bar associations that are sup-
portive of professional responsibility
issues, and a handful of volunteer lawyers
and nondlawyers who have served on the
Lawyers Board, the Client Security
Board, the Ethics committees, or bar
committees. It is also the result of the
hand-working attorneys, paralegals and
support staff at the Supreme Court.

Finally, I am keenly aware that the discipli-
nary system owes a great debt to the
most immediate predecessors, Ed Cleary
and Ken Jorgensen, who have raised the
visibility and credibility of the Director’s
Office to new heights.

... Don’t Fix It?

So, can we simply sit back and
assume that our system will remain
excellent? Are there areas in which we
cannot improve? The answers are
obvious no matter how good something
is; there is always room for improvement.

The core function of a lawyer disci-
plinary office is, and must be, investment
in complaints and prosecution of those
who warrant discipline. The attorneys
in our office are, first and foremost,
trial lawyers (prosecutors). We
must give priority to the cases that may
result in disbarment or suspension, and
promptly bring these to conclusion, if
protection of the public is truly our pri-
mary purpose. Many of these cases are
complicated and time-consuming.
Nevertheless, we can improve and better
execute some of these matters. We will
also strive to achieve consistent results 
with our external partners and within our
equal core function. Teaching at CLEs,
providing telephone advisory opinions, writing articles for newsletters and other publi-
cations, speaking to civic organizations,
and participating in bar association
activities compete with prosecuting dis-
ciplinary cases for our staff’s limited time.

Our staff and usernames staff also han-
dl several administrative duties, includ-
ing providing staff services to the Client
Security Board, and acting as professional
firms’ filing monitors, certifying attorneys
who are on probation, and answering disci-
niplinary requests concerning lawyers’ dis-
iplinary history.

Minnesota’s telephone advisory opin-
ion service is truly special. To be able
to call the Director’s Office when faced
with an ethically complex issue, talk with one of
the staff attorneys — almost always that
day — and to receive real advice on
how to proceed is indeed remarkable,
so remarkable that we may be in danger.
of becoming victims of our own success.

The number of advisory opinion calls has continued to increase in recent years to over 2,000 cases per year.

This is a good thing, we believe, since we perceive a correlation between the number of advisory opinions issued and the fact that complaints have not increased in recent years. Only attorneys experienced in the Director's Office provide advisory opinions, and a thorough familiarity with the Rules of Professional Conduct is required to handle such calls promptly. These are, of course, the same senior attorneys who handle many of the most complex litigation matters. If the need of more advisory opinion calls continues, one or the other of our core functions could suffer. That cannot be allowed to occur.

The Director's Office and the Lawyers Board therefore will be exploring ways to increase our ability to handle advisory opinion requests without considering considerably more resources to do so. Some or all the callers now receiving a face-to-face response seek only basic information about a particular rule, which does not require an in-depth discussion. Perhaps a larger amount of such basic information can be made available on the Office's website, www.courts.state.mn.us, so that lawyers (and the public) will be able to "build their own advisory opinions" without the need of an actual call. A sampling of frequently asked questions could be prepared. Possibilities will be explored, so we can continue to fulfill the increased expectations of the bar in this area, without sacrificing our disciplinary core function.

More Discipline

In April, Minnesota Public Radio reported that this year there has been an increase in the number of lawyers publicly disciplined by the Supreme Court. Since the overall number of complaints has remained comparatively constant in recent years, perhaps this is just a statistical oddity. It would reflect that the percentage of complaints involving serious misconduct has increased.

If that is so, it is troubling. Certain types of misconduct will always exist; the "harm per unit" of our trade. Lack of diligence, failure to communicate with a client, or failure to