



REFLECTIONS ON BEING DIRECTOR

BY EDWARD J. CLEARY

"At this moment, America's greatest economic need is higher ethical standards — standards enforced by strict laws and upheld by responsible business leaders."

— President George W. Bush,
July 9, 2002

We live in a world where, just in the past few months, best-selling authors have admitted plagiarism, major league ballplayers have admitted steroid use, church officials have admitted the cover-up of child abuse, stockbrokers have admitted conflicts of interest, accountants have admitted fraud and the destruction of documents, and lawyers have admitted standing by while the organizations they represented were destroyed from within.

Closer to home, a former director of the Office of Lawyers Professional Responsibility was publicly disciplined by the Court and a former Lawyers Board member currently faces public charges.

Perhaps America's greatest need, not just its greatest economic need, is higher ethical standards.

THE REPUBLICAN PARTY CASE

From February 1998 until June 2002, the litigation over Canon 5 of the Code of Judicial Conduct, and the parameters of permissible behavior on the part of candidates for judicial office, served as a backdrop for my time spent as director. While our office has refused to enforce the "announce clause" from the beginning due to concerns over its likely unconstitutionality, we did successfully defend challenges to the remaining provisions of Canon 5 under attack. Nevertheless, with the decision of the U.S. Supreme Court in June of this year striking down the announce clause, one thing is certain: the volume on judicial elections has been turned up and the subject matter for discussion has been broadened; whether the electorate is listening or not remains to be seen. Now, more than ever, courage on the part of elected state court judges will be at a premium, particularly when it comes to Bill of Rights rulings, which often can be unpopular and which may provoke election challenges. Time will tell.

A LOOK BACK

By the time you read this article, I will no longer be director of the Office of Lawyers Professional Responsibility. Governor Ventura appointed me to the 2nd District bench on July 1, 2002, effective on or about September 1, 2002.¹ Five years ago, when I began my appointment as director, I wrote the following:

Whether by accident or design, each director appears to be given approximately five to seven years to make his or her imprint on this office. ... [T]urnover in positions of public trust, particularly positions involving the volatile area of professional discipline, is not only appropriate but is in the best interests of all concerned, including the director who is thus allowed to proceed as he or she deems proper, without becoming too wedded to the job.²

My five years are up and I continue to believe that no director should stay in this position for more than three terms (six years). This prevents the occupant of this office from becoming too removed from the daily grind of the practice of law and from becoming too comfortable in this position, while at the same time perhaps avoiding abuses of power. Consistent turnover also allows a new director to reevaluate the professional disciplinary system and build on the improvements put into place by previous directors.

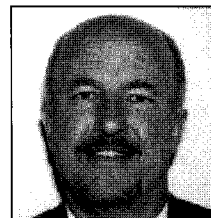
We are at a 12-year low for complaints in Minnesota, and the lawyers in this state have much to be proud of. This decline in complaints has taken place while the number of lawyers has increased by over a quarter. Perhaps the decline is explainable in part by the education and advisory opinions provided by this office. Each year the number of advisory opinions given out by the office increases as do the teaching engagements contributed by the office staff. This isn't to say that we don't have our miscreants within the legal profession in Minnesota. In my time here, David Moskal and Roland Amundson stand out as proof that high income and high position do not prevent personal and professional self-destruction in the legal world. Yet such exploiters of the system remain the excep-

tion, and our judicial branch and the lawyers who practice within are, or should be, the envy of other states. Therein lies the irony of the changed landscape for judicial elections brought about by the federal litigation that started in Minnesota, of all places, and that recently culminated in the U.S. Supreme Court decision.

FINAL THOUGHTS

When you look back on any stage of your career, you often find that your satisfaction with that period is based on the people you met and the people you worked with. I have been very fortunate in this regard, starting with the members of the judicial branch who work in the Minnesota Judicial Center.³ I have enjoyed working with the MSBA (including Tim Groshens, Mary Grau, and Jud Haverkamp) and I have appreciated the chance to speak my mind in these monthly columns; I have met lawyers from all around the state that I might never have met otherwise and I learned their thoughts and concerns; I have had the opportunity to study professional responsibility issues in depth, from multidisciplinary practice to proposed rule changes for the next generation of lawyers, and I have been given the opportunity to teach these same issues in law school courses; I have had the chance to help in a small way as a Lawyers Assistance Program was established, which will hopefully save some careers, and perhaps, lives; and I have had the opportunity to return to the United States Supreme Court on a 1st Amendment case. I am not sure what I expected when I became director, but the wide variety of challenges that I received on a daily basis far exceeded my expectations and ensured that I lived in interesting times.

EDWARD J. CLEARY served from July 1997 until August 2002 as director of the Office of Lawyers' Professional



Responsibility, at which time he was appointed to the bench in the 2nd Judicial District. This is his final column as director.

PROFESSIONAL RESPONSIBILITY

FINAL THANKS

There are so many to thank. I thank the members of the Minnesota Supreme Court, both those who originally appointed me to the position of director, particularly Chief Justice Kathleen Blatz, and those who later joined the Court under whom I have served for the past half decade.⁴ I thank the volunteers within the professional disciplinary system throughout the state, both lawyers and nonlawyers, who have given of their time to help make our profession better and more accountable. I thank all the members of the Lawyers Professional Responsibility Board whom I have worked with, both past and present, particularly the current chair, Chuck Lundberg, who has worked with me for four and a half of my five years. The members of the Board have been, and continue to be, outstanding and a pleasure to work with.

In particular, I thank all the members of the Office of Lawyers Professional Responsibility staff, particularly Ken Jorgensen and Joanne Daubenspeck, all of whom now become (whether they like it or not) members of my extended family. No one could ask for more loyal service or more ceaseless dedication. There is very little turnover in this office for good reason; the members of the staff work as a team in a very difficult environment.

Finally, I want to thank all of the monthly readers of this column. You may not have always found that what I had to say was of interest, or you may not have always agreed with me, but you did me the honor of reading what I had written, and for that I am grateful.

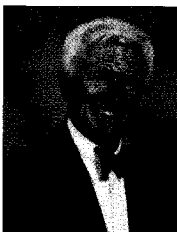
See you in court. □

NOTES

1. *My thanks to the members of the Judicial Selection Commission and to Governor Jesse Ventura for the faith they have shown in my ability to contribute to the judicial branch in a new capacity.*
2. Edward J. Cleary, "A Look Back, A Look Ahead," *Bench & Bar*, October 1997, p. 28.
3. *Commencing on or about September 1, 2002, the Office of Lawyers Professional Responsibility will be moving to new offices on the 15th Floor of Landmark Towers in downtown St. Paul.*
4. *The members of the Court who appointed me in May of 1997 who are no longer with the Court: former Chief Justice Sandy Keith, former Justice Esther Tomljanovich, and former Justice Sandra Gardebring. The members of the Court at the time of my resignation: Chief Justice Kathleen Blatz, Justice Alan Page, Justice Paul Anderson, Justice Edward Stringer, Justice James Gilbert, and Justice Russell Anderson. The member of the Court who departed in June of 2002: former Justice (and now U.S. District Court Judge) Joan Ericksen Lancaster.*



Briggs and Morgan is pleased to announce that EDWARD C. STRINGER will rejoin the firm.



Former Minnesota Supreme Court Justice Stringer retired from the bench on August 31, 2002. Briggs is pleased to welcome him back to the firm where he will chair our Alternative Dispute Resolution practice leading a team of experienced ADR lawyers.

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