

Time is Money

The Minnesota Supreme Court recently approved the budget for the Office of Lawyers Professional Responsibility (Director's Office). The fiscal year (now FY2011) for the Lawyers Board runs from July 1 to June 30. As a part of the end-of-fiscal-year cycle, the Board and Director's Office also must file an annual report outlining the year's activities.¹

The Director's Office now has an anticipated annual budget slightly in excess of \$3 million. The office has a total staff of 26 people,² and approximately two-thirds of the budget is allocated for salaries and benefits. This remains true even though, as employees of the judicial branch, the director's staff have received no merit or ATB increases for two years and are currently not budgeted to receive an increase for the next two years either. Despite the occasional unhappy letter writer's opinion, public sector legal employment is not a path to wealth. Other major expenses for the Director's Office are rent, supplies/equipment/repairs, communications/data processing, and litigation costs (such as court reporters, transcripts, expert witness and referee expenses).

The Director's Office is not dissimilar to any midsize private law firm in many of its operations, except that its operating funds come from the annual lawyer registration fees assessed by the Minnesota Supreme Court,³ and are not generated by fees billed to and collected from private clients. As any private lawyer (or other professional as well) can state, what really is being billed is a lawyer's time—for very clearly in the legal profession time is money.



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Where Does the Time Go?

So, what services are you paying for from the Director's Office? If time is money, then what are the principal time uses for which your money goes? Obviously the major time commitment of any lawyer discipline agency must be the complaint and disciplinary process. From screening complaints every day, to reviewing reports from district ethics committee investigations, to drafting private dispositions or charging documents, to handling major litigation cases for public discipline, to preparing supreme court briefs and oral arguments, the principal activity of a lawyer discipline system is indeed lawyer discipline. Ah, if that were all we did! There are, however, a significant number of other activities, all detailed in the office's annual report, in which our attorneys, paralegals, and support staff engage and that involve an almost equal overall investment of time.

Two of the departments in the Director's Office that are closely related to the discipline function are the overdraft notification program⁴ and overseeing attorneys on probation. Both involve major time commitments, as does the advisory opinion service. Other somewhat less time-intensive departments within the Director's Office include disclosure, judgments and collection, complainant appeals, and professional firms. This office also handles trusteeships and serves as staff to the Client Security Board. Plus there is the important out-of-office participation in many Continuing Legal Education seminars and other speaking engagements.

A quick look at each of these tasks is worthwhile:

■ Probation

In addition to the work of the Director's Office involving discipline matters, monitoring attorneys on probation remains an important function of the office. Along with the overdraft notification program and issuing advisory opinions, it is one of the most time-consuming activities conducted by the Director's Office. There were 93 Minnesota attorneys on probation at some time during 2009, 42 of them public and 51 nonpublic. Attorneys and paralegals together spend approximately 30–35

hours per week on probation.

■ Overdraft Notification

The lawyer trust account overdraft notification reporting program has been in effect since 1990. Since that time, banks wanting to maintain lawyer trust accounts have to be approved to do so and must agree to report all overdrafts on such accounts to the Director's Office. Such reports are not initially treated as disciplinary complaints, but as overdraft inquiries, with the attorney asked to explain the cause of the overdraft and provide three months of trust account books and records, which the lawyer should already have. Only if the lawyer fails to cooperate or the explanation and records indicate problems with the lawyer's recordkeeping is the inquiry turned into a formal disciplinary investigation. Three matters led to public discipline decisions in 2009, all suspensions.⁵ Eighty-one overdraft notices were received in 2009, requiring over 310 hours of attorney and paralegal time combined.

■ Advisory Opinions

The advisory opinion service is technically not a "department" within the Director's Office, but nevertheless is one of its most time-consuming activities, particularly because it is exclusively manned by the most experienced attorneys in the office. In 2009, the Director's Office received 2,282 requests for advisory opinions, which represented a 6 percent increase over the prior year, and the second most requests in any one year to date. Of the advisory opinion requests received, 262 came in writing through the office's website link. Over 360 attorney hours were devoted to providing advisory opinions in 2009.

■ Trusteeships

As indicated in this column recently, the Director's Office has been appointed as trustee over the files and trust accounts of lawyers with increasing frequency in recent years. Lawyers dying, becoming disabled, or being disbarred are common reasons for trusteeships to be commenced. The recent appointment of the director as trustee over the closed files of Centro Legal, Inc. is a new venture for the office. Considerable time is spent annually on inventorying files, notifying former clients

of the lawyer, and facilitating transfer of files or refunding unearned fees. Expense has also been incurred for extra office space and storage space to process the hundreds of files often involved.

■ Disclosure

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 public disciplinary records, information which also is available on the office's website. Press releases are also considered a task of this department. Most of the time involved is that of staff in verifying records.

■ Complainant Appeals

A dissatisfied complainant has the right to appeal most dismissals and all private discipline dispositions. Complainant appeals are reviewed by a Lawyers Board member selected in rotation. There were 246 appeal determinations in 2009. Most of the time the Director's Office devotes to this activity is clerical time, preparing complaint files to be sent to the reviewing board member; limited attorney time is needed.

■ Judgments and Collection

Pursuant to rule, the Director's Office is awarded costs of \$900 in all public discipline matters, and disbursements in some contested cases.⁶ The Director's Office seeks collection, often through payment agreements for monthly payments. Attorneys seeking reinstatement must satisfy this obligation before being reinstated. Notification of public discipline to the National Discipline Data Bank is also a task of this department.

■ Professional Firms

Under the Minnesota Professional Firms Act,⁷ professional firms engaged in the practice of law must file an initial report and annual reports thereafter demonstrating compliance. The Director's Office handles the processing of these reports and collects the required filing fees. This task is largely seasonal with the annual filing period around January 1. Just over 300 hours of paralegal and support staff time are required to perform this task; again, minimal

attorney time is necessary, except for responding to inquiries.

■ Client Security Board

The Director's Office provides staff services to the Client Security Board (CSB) by contract as authorized by rule.⁸ One attorney and one paralegal spend approximately one-quarter time in handling CSB matters.

■ CLEs and Related Education Activities

The Director's Office attorneys (and paralegals on occasion) provide speakers at many Continuing Legal Education seminars and for law schools and other civic organizations. This past year, 68 such appearances were identified in the annual report. Preparation time and out-of-office travel and speaking time certainly average well over ten hours per appearance.

Conclusion

The Director's Office provides a myriad of important services to the lawyers of this state beyond the main function of investigating and prosecuting complaints. Those tasks take a considerable amount of staff time to provide, and time indeed is money. It is important for attorneys to know how their lawyer registration fee is used; it is our hope that they appreciate the high quality service that they receive in return. ▲

Notes

- ¹ Rules 4(c) and 5(b), Rules on Lawyers Professional Responsibility (RLPR). Copies of the annual report are available on the board's and office's website: www.mncourts.gov/lprb.
- ² The office employs 11 attorneys (including the director), six paralegals, an office administrator and eight other support staff.
- ³ Rule 2, Rules of the Supreme Court on Lawyer Registration.
- ⁴ See Rule 1.15(k) – (o), Minnesota Rules of Professional Conduct (MRPC).
- ⁵ *In re Weisberg*, 775 N.W.2d 650 (Minn. 2009); *In re Usumanu*, 766 N.W.2d 701 (Minn. 2009); *In re Harris*, 765 N.W.2d 389 (Minn. 2009).
- ⁶ Rule 24, RLPR.
- ⁷ Minn. Stat. §319B.01 – 319B.12.
- ⁸ Rule 5(d), RLPR.



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