



PROFESSIONAL RESPONSIBILITY

WHAT WORKS WELL AND WHY

BY KENT GERNANDER AND CHARLES LUNDBERG

Ken Jorgensen recently left the Lawyers Board after 23 years, stepping down as director to accept an appointment to the Washington County District Court bench. This is a milestone event, since Ken has been with the Board for his entire professional career, having begun work for the Board as a law clerk while in law school. His tenure spans a large part of the history of the Board. These have been good years for Ken¹ and for lawyer discipline in Minnesota. His departure is an occasion for reflection on what works well and why.

THE RULES

In 1971, when the first Lawyers Board and director were appointed, Minnesota lawyers' conduct was governed by the canons and ethical considerations contained in the Code of Professional Responsibility. These rules were replaced in 1985 by the Rules of Professional Conduct, which were recently substantially amended effective October 2005. The rules have progressed from broadly stated principles of ethical conduct to a regulatory framework that codifies case law, bar opinion, and treatises on lawyer ethics.² In some respects, lawyers are now held to stricter and more detailed standards of practice and behavior. However, the rules offer clearer guidance to lawyers and clearer standards for enforcement.

THE BOARD

The LPRB consisted initially of a chair and 18 members, three of whom were not lawyers. The Board has since been expanded to a chair and 22 members, including nine nonlawyer members. The

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supervisory and adjudicative functions of the Board have been divided: an executive committee supervises the office, while other members hear complainant appeals from dismissals, and serve on panels that determine probable cause for public discipline and hear admonition appeals and reinstatement petitions. The contributions of nonlawyer members are worthy of particular note; they offer unique and valuable perspectives.

THE DIRECTOR AND STAFF

The first director, R.B. Reavill, took office January 4, 1971. A secretary was hired in February, and an assistant director was hired in May. In 1982, when Ken was hired, the office employed five lawyers. The office now employs nine lawyers and 15 paralegals and other support staff.

One of the remarkable features of the staff is its longevity and continuity. Nine employees, including Ken, First Assistant Director Marty Cole, Senior Assistant Director Betty Shaw, and Administrator Joanne Daubenspeck have more than 20 years of service.

DISTRICT ETHICS COMMITTEES

District ethics committees continue to perform an important role in investigating complaints and recommending discipline or dismissal. Minnesota is in a diminishing minority of jurisdictions that continue to utilize volunteer committees

in the discipline process. Many states have accepted ABA recommendations to assign all investigative functions to professional staff. Minnesota's experience with district committees continues to be positive. More than 327 lawyers and nonlawyers currently serve as committee members, and they contribute valuable time in investigating complaints. Their recommendations are informed by experience and familiarity with local practices, and their participation lends credibility to the discipline system. Board members are often drawn from the ranks of district committee members.

OVERSIGHT

The Supreme Court adopts the disciplinary rules, appoints the director and members of the Board, and administers all public discipline. For many years the Court has appointed one of its justices as a liaison to the Board. The Court has supported the work of the Board, provided needed resources, and given appropriate recognition to the contributions of staff and volunteers.

PROSECUTIONS

The Board and staff continue to devote a majority of their time and energy to prosecuting violations of the Rules. The volume of complaints rose until the late 1990s, when the volume leveled off and declined as a percentage of the number of licensed lawyers. Common complaints continue to involve failures of diligence and communication. A disturbing recent trend is the increase in the most serious infractions — defalcations, deceit, and other criminal acts. Many infractions involve complex financial transactions that absorb staff time and resources. Vigorous and timely prose-

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cution is important to protect the integrity of the profession, and in some cases reduces the losses to be absorbed by the Client Security Fund.

The Board and staff endeavor to be firm but fair in prosecuting violations. The Minnesota bar seems to believe that they are. The organized bar has been supportive, and relations with bar leaders have been cordial. Minnesota has not seen the antagonism observed in many jurisdictions between disciplinary authorities and the practicing bar.

ADVISORY AND EDUCATIONAL FUNCTIONS

One of the striking changes during Ken's tenure with the Board is the increasing emphasis on advisory and educational functions. The Board issues opinions interpreting the Rules and stating its enforcement positions. The staff has prepared and disseminated a computer program for trust account management. The director and other staff lawyers write monthly columns on professional responsibility in *Bench & Bar* and other publications. Staff lawyers are frequent lecturers at continuing legal education programs.

Ken has managed the Board's advisory opinion service for almost 20 years, and during that time it has grown and become a vital and successful part of the Board's work. Advisory opinions are issued by the staff to answer lawyers' questions on ethical issues. A total of 2,042 such opinions were issued last year.³ As the advisory service has developed, the volume of complaints has dropped, and several informed observers believe there is a direct cause and effect relationship.

WEBSITE

A striking change during Ken's tenure — largely his personal effort — is the Lawyers Board web page. A tremendous resource for lawyers interested in legal

ethics issues, the Board's web page contains full searchable text versions of the rules and all the ethics articles ever written for *Bench & Bar* and *Minnesota Lawyer* going back to the mid-1970s. Lawyers who practice regularly in this field regard the Board web page to be one of the best resources of its kind.

CLIENT SECURITY

Ken also served as director of the Minnesota Client Security Board (“CSB”), which repays the victims of lawyer theft. The CSB has been a remarkable success. Since its establishment in 1987, the CSB has paid all allowed claims, while the claim limit has been increased to \$150,000 (one of the highest in the U.S.), the annual assessment has been reduced to the current \$12 per lawyer, and the fund balance has grown to the current \$2.3 million. Ken took pride in publicizing the CSB's activities, for example making sure the press was aware that, even before criminal proceedings against a recently disbarred lawyer were completed, the CSB had repaid all of the lawyer's victims in full (over \$840,000 — a record amount).

CONCLUSION

Since the creation of the Lawyers Professional Responsibility Board, the Court has twice appointed blue ribbon committees to review the functioning of the discipline system and recommend changes.⁴ It is expected that another such committee will be appointed in the near future. The committee should find the discipline system to be functioning well, thanks in large measure to the service of Ken and other dedicated and talented staff and volunteers. □

NOTES

1. See *Kenneth L. Jorgensen, "I've Had a Good Run,"* *Bench & Bar of Minnesota* 62:11 (December 2005) p. 12.
2. See *Kenneth L. Jorgensen and William J. Wernz, "New Directions in Professional Conduct,"* *Bench & Bar of Minnesota* 62:11 (September 2005) p. 14.
3. A total of 2,177 opinion requests were submitted; 135 requests were declined for various reasons.
4. Report of the Supreme Court Advisory Committee on Lawyer Discipline, *April 15, 1985, chaired by Nancy Dreher, commonly referred to as the "Dreher Report";* Report of the Advisory Committee to Review Lawyer Discipline in Minnesota and Evaluate the Recommendations of the American Bar Association, *October 13, 1993, cochaired by Robert F. Henson and Janet M. Dolan, commonly referred to as the "Henson-Dolan Report."*

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