

By MARTIN COLE

## Great Volunteers

In the July issue of *Bench & Bar of Minnesota*, you will be introduced to the new MSBA president, Richard Kyle. As with incoming presidents each year, his portrait is expected to grace the cover of the July issue. In January of this year, Mr. Kyle completed his second term (for a total of six years) as a member of the Lawyers Professional Responsibility Board. The incoming president-elect of the MSBA will be Michael Unger. He too completed his second term in January on the Lawyers Board, for which he was vice chair. Also part of the MSBA leadership hierarchy is Robin Wolpert, who is currently MSBA secretary; she also is a member of the Lawyers Board and serves on the board's executive committee. Starting to see a pattern here?

The lawyer discipline system in Minnesota has always been blessed with outstanding volunteer members,<sup>1</sup> both lawyer and nonlawyer. So it's certainly not fair to assume that our most recent crop of volunteers is the best ever<sup>2</sup>—but wow, we're on a pretty good roll, folks! People who choose to serve in the lawyer discipline system, either on the Lawyers Board or at the district ethics committee (DEC) level, are frequently bar and civic leaders already, and just as often, go on to become or take on additional bar and civic leadership positions when they leave the board.

It's a remarkable statement about how valued and respected the lawyer discipline system in Minnesota has become that such active leaders want to be a part of it, or recognize participation in the discipline system as excellent training for future leadership endeavors.

### Current Board Members

The Lawyers Board consists of

23 members appointed by the Minnesota Supreme Court. Fourteen are lawyers: the board chair and seven others are appointed directly by the court, the remaining six are nominated by the MSBA (subject to court acceptance). Nine public, or nonlawyer, members are appointed by the court as well. Five of the board members, three lawyers and two of the public members, serve as the executive committee to oversee operations of the Director's Office. The other 18 members are then divided into six, three-person panels to hear reinstatement petitions, contested probable cause matters, and *de novo* appeals of private admonitions issued to attorneys. These members also review appeals from complainants of dismissed complaints and private discipline. Board members come from throughout the state; the lawyer members come from varying areas of practice.

St. Paul attorney Judith Rush is currently the Lawyers Board chair, having been appointed in 2010. The chair is appointed by the court for one, six-year term (which can be over and above any service on the board previously); other board members can be appointed for up to two, three-year terms. Ms. Rush is director of mentor externship at the University of St. Thomas Law School and maintains a limited private practice. She served six years on the board before her appointment as chair. The other members of the executive committee presently are Minneapolis attorney Nancy Zalusky Berg, who is the board vice chair, and St. Paul attorney Robin Wolpert, as noted above. The two nonlawyer members of the executive committee are Carol Cummins, a Golden Valley consultant in law firm management, HR and employee benefits; and Daniel Malmgren, from Marine on St. Croix, who is a peace officer and adjunct faculty at several colleges in criminal law.

The six current panel chairs are Minneapolis attorneys Cassandra Ward Brown, Kenneth Engel, Richard Lareau, and Todd Wind; Mankato attorney Christopher Cain, and Granite Falls attorney Stacy Vinberg. The remaining members of the board are public members Norina Jo Dove, Minneapolis;

Roger Gilmore, Brooklyn Park; Nancy Helmich, Minneapolis; Mary Hilfiker, St. Paul; Bentley Jackson, St. Paul; Michael Leary, Burnsville, and Terrie Wheeler, Rush City. The other attorney members are Joseph Beckman, Edina; Paul Carlson, Wadena; James Cullen, Minneapolis; Anne Honsa, Minneapolis, and Cheryl Prince, Duluth. A complete listing of the current board members, accompanied by partial biographies, can be found on the Lawyers Board website at <http://tinyurl.com/lclwn69>, and reveals an impressive group currently tasked with overseeing the lawyer discipline system. The tradition of quality Lawyers Board members continues.

### DEC Experience

The overwhelming majority of Lawyers Board members are appointed based in part upon having served as volunteer investigators for their local DEC's. There are 21 DEC's, corresponding to the state's district bar associations. Each DEC has a chair<sup>3</sup> and investigators, 20 percent of whom are to be public members. This is where the real, grassroots work is done. Volunteer investigators review the complaint and the attorney's response, follow-up with the complainant, often contact additional fact witnesses, and review documents or court files. Then they write up a report of their findings and make a recommendation as to discipline. This represents peer review at its finest! Many of the DEC's have regular meetings at which reports are presented and discussed, although this may not be practicable for DEC's serving some territorially larger outstate districts. In recent years, the board has established a SharePoint site where DEC members can distribute and share reports among themselves to help overcome such difficulties. This work is all in addition to these volunteers' "real" jobs, of course. It can be a labor of love, but an essential one to maintain the integrity of the profession and to let consumers and the general public know how seriously the legal profession takes its ethical responsibilities.

The volunteers who participate in the local DEC's are just as likely as Lawyers Board members to be their area's community and bar leaders,



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## Professional Responsibility

which helps to maintain the board's high quality when these now-seasoned investigators apply to fill a board opening. Of course, many of these leaders are the same volunteers upon whom so many civic organizations and local bar associations depend. Thus, the need for more quality volunteers exists. Several of the DEC's have occasionally struggled to recruit new members or to maintain the required 20 percent nonlawyer participation. If this column finds you considering joining your local DEC or encouraging a civic-minded nonlawyer you know to do so, please follow through on it. The system needs you and you will learn and benefit from the experience as well.

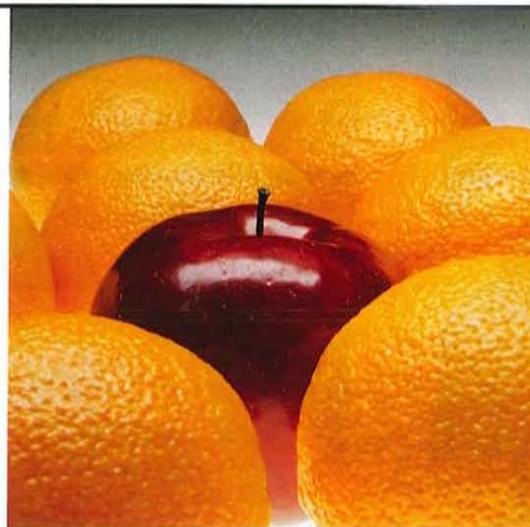
### Conclusion

Many in the legal field have questioned the use of local volunteer investigators to conduct preliminary investigations of complaints, for fear of poor quality or some level of bias. I've never understood this concern. In any event, here in Minnesota this approach works because we continue to be blessed with great volunteers who are thorough and objective—not surprising since, as we know, we are “all above average” here. As a result, both at the local level and on the Lawyers Board, the bar and the public can be assured that the lawyer discipline system will continue to be administered by the state's best. ▲

### Notes

- <sup>1</sup> All board members serve without compensation, except for reasonable and necessary expenses incurred in the performance of their duties. Rule 4(b), Rules on Lawyers Professional Responsibility.
- <sup>2</sup> For example, Winona lawyer Kent Gernander is the most recent past board chair; he was MSBA president in 2000. Duluth lawyer John Nys and Minneapolis lawyer Wood Foster were both state bar presidents and are former Lawyers Board members. It's appropriate to add to that list of bar leaders who have been affiliated with the discipline system former OLPR Director (and now chief judge of the Minnesota Court of Appeals) Ed Cleary, who was Ramsey County Bar president, and Eric Cooperstein, a former staff attorney at OLPR, who is current Hennepin County Bar president.
- <sup>3</sup> A favorite former board member consistently pronounced the initials DEC as “deck.” I still chuckle when I recall being introduced to a local “deck chair.”

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