

By MARTIN COLE

## Lawyers Board Annual Report

Attorneys, especially litigators, endeavor to arrange their schedules to allow time for the various steps in the process: discovery/depositions, motion practice, trial prep and ultimately trial itself, perhaps followed by post-trial motions and appeal—and that's just for one case. Busy trial lawyers try their best to distribute their trial schedules in a way that allows for it all to get done and also an occasional moment to step back and breathe. Unfortunately, even one "hiccup" in the process can throw off the best-laid plans and suddenly an attorney can be stacked up with matters, all of which require immediate attention.

I'm not sure whether that sets up a particularly useful segue for discussing the highlights of the Lawyers Board's recently filed Annual Report.<sup>1</sup> How it perhaps connects in that the board's annual report is part of the "rhythm" of the year of regularly scheduled events for this office and the board: welcoming and training new board members (and honoring departing members) every January; preparing and submitting the annual budget in May (a process that starts much earlier); then meeting with the court to present the budget in June; preparing the annual report for filing in July; planning and presenting the annual seminar hosted by the OLPR in October (sometimes late September)—and so it

goes. Scheduling time to compose these monthly columns also is part of my own regular list of "to do's"—and as is true for all busy lawyers as noted above, one "hiccup" and I may get out of rhythm and behind schedule.

### Annual Report

I have occasionally been asked why the Lawyers Board's annual report is submitted in July

and not earlier. The most obvious reason is that it coincides with the Judicial Branch's fiscal year, which runs from July 1 through June 30 each year. Thus filing the report in July seems reasonable. In fact, the reason is less obvious, since most of the statistical reports included in the annual report track for the preceding calendar year that ended six months before the report is prepared. My understanding is that the supreme court's boards<sup>2</sup> traditionally were asked to submit their annual reports at this time to facilitate the chief justice in his/her preparation for the "State of the Judiciary" speech to the MSBA's annual convention in June—thus, the report used to be required by approximately June 1.

The chief justice's presentation is not one of dry statistical information these days, if indeed it ever was. [See *Chief Justice Gilda's remarks to this year's MSBA gathering, reproduced at page 18 of this issue*. Ed.] Thus, while perhaps a brief anecdote about [one of] the court's boards may be a part of the presentation to the bar convention, other more overarching topics are far more likely. And besides, in today's age of the Internet and websites (including both the court's and the OLPR's), documents such as an annual report are accessible to the public and the bar to an immensely greater degree than in years past. Interested individuals can read the statistical information for themselves at their leisure; it need not be presented in a speech. Still, the tradition of a mid-summer filing remains intact, pushed back just slightly into July now.

### Highlights

So, what is there to report regarding this past year, be it calendar year or fiscal year? First, for those "dry" statistics: The OLPR opened 1,253 files in 2013, and closed 1,279 files, thus just slightly keeping ahead and minimally reducing any backlog. A breakdown of the file closing numbers looks like this:

Complaints dismissed without investigation	552 (43%)
Complaints dismissed after investigation	372 (29%)
Admonitions (number of files)	144 (11%)
Private Probations (number of files)	18 (1%)
Public Discipline (number of files)	107 (9%)

The balance of closed files (86) consisted of resignations, reinstatements, transfers to disability inactive status, trusteeships, and complaints against two attorneys, each of whom died with an open investigation file pending. "Dismissed after investigation" means either investigation by a District Ethics Committee (DEC), or by the Director's Office without referral to a DEC or after further investigation.

Another area highlighted in the annual report was the work of the DEC's and the Lawyers Board's recent efforts to assist the DEC's in recruiting new members, especially nonlawyer members. Minnesota remains one of only a few states that use local volunteers to conduct preliminary investigations into complaints, rather than having the professional staff at the state office handle all complaints. This process continues to work in Minnesota, due to the high quality of our volunteers, both lawyers and nonlawyers. But the board recognizes that improvements can still be made.

Among the steps taken to improve the process in the past year were two symposiums for DEC chairs, each held in St. Cloud, at which recruitment, training, and the meaningful participation of all members was discussed. Most Lawyers Board members come from the ranks of the DEC's, so the board's committee is uniquely able to understand and, we hope, improve the DEC's. Upon the board's recommendation, our office this past year also created a new position for a DEC volunteer coordinator to further assist the DEC's in their work.

### Departments

The LPRB-OLPR annual report also details the work of the many departments (as we refer to them) within the Director's Office. These include the handling of complainant appeals, supervising attorneys on disciplinary



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In 2013 the LPRB office collected just over \$40,000 from judgments entered against publicly disciplined attorneys. If you are not aware, in all public discipline cases, the Director's Office is awarded \$900 for costs plus any actual disbursements that are chargeable against the respondent attorney.

probation, giving advisory opinions, and answering disclosure requests. Other such tasks that our office performs include the trust account overdraft notification program; overseeing professional firms' filing requirements, judgments and collections; handling trusteeships; and answering discipline disclosure requests (for judicial candidates, applicants for admission to other jurisdictions, etc.). Many of these programs have been highlighted in this column before.

Statistics abound in the report for each department, but a few are worthy of special mention. For example, there were 2,116 requests for advisory opinions in 2013, the ninth consecutive year that the total has exceeded 2,000. Two hundred forty-four of the requests were submitted via the office's website, an increasingly popular alternative to calling in with a question. Advisory attorneys in this office still respond to such requests by telephone, but by having the opportunity to consider the question in advance may be able to provide an even more in-depth response. The advisory opinion service provided by the attorneys at the OLPR remains a remarkable bargain.

Another noteworthy number is that in 2013 the office collected just over \$40,000 from judgments entered against publicly disciplined attorneys. If you are not aware, in all public discipline cases, the Director's Office is awarded \$900 for costs plus any actual disbursements that are chargeable against the respondent attorney.<sup>3</sup> Attorneys who are reprimanded and those suspended attorneys seeking prompt reinstatement will usually pay in full, but collecting against disbarred attorneys is not always as fruitful. Judgments are obtained and maintained in those situations. While these collections do not represent a major portion of the OLPR's annual revenues, seeking payment from publicly disciplined attorneys is an important part of the entire discipline process.

A final departmental statistic relates to the trust account overdraft notification program.<sup>4</sup> Since 1990, overdraft reporting has been required of all financial institutions that hold lawyer trust accounts. Reported overdrafts are investigated, although not considered to be disciplinary investigations unless actual problems are revealed (such as failure to properly maintain trust account books and records or intentional mishandling of client funds) or the attorney fails to cooperate. In 2013, 84 overdrafts were reported, a small increase over the previous year's total. Only 18 of those reports resulted in disciplinary actions, three of which were public disciplinary matters.

#### Conclusion

Preparing and publicly filing an annual report (and also an annual budget) is part of the transparency required of any public agency, allowing the public and the lawyers whose annual registration fees support the lawyer discipline system to judge how the system is operating and assess its success and value. We certainly believe that anyone who takes the time to look at our annual report will see that the system continues to provide quality services to the public and the bar of Minnesota. ▲

#### Notes

<sup>1</sup> Copy available at: <http://lprb.mncourts.gov/AboutUs/Pages/AnnualReports.aspx>.

<sup>2</sup> The Lawyers Professional Responsibility Board (LPRB), Client Security Board (CSB), Board of Law Examiners (BLE), Board of Continuing Legal Education (CLE) and Board of Legal Certification (BLC).

<sup>3</sup> Rule 24, Rules on Lawyers Professional Responsibility.

<sup>4</sup> Rule 1.15(j) – (o), Minnesota Rules of Professional Conduct.

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