

CHANGES, CHANGES

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Reprinted from *Bench & Bar of Minnesota* (January 1989)

1989 will be a year of great change for the Lawyers Board and the professional responsibility system in Minnesota. Some of the changes have already occurred, and others are on the horizon.

Lawyers Board membership has changed more than at any other time in the board's history. John Levine, a board member since 1981 and board chair since 1986, has resigned. The Court has appointed Charles R. Kennedy, of Wadena, as the new chair. He is the first nonmetropolitan-area board chair. Charles Kennedy has been a board member since 1982, and vice-chair since 1986. He was previously a district ethics committee chair. The new vice-chair is St. Paul attorney Gregory Bistram.

The terms of several long-time board members have been completed. They are attorneys George Flynn, Joan Hackel, Elizabeth Norton, and James Schwebel. Public members David Bach, George Ludcke, and Robert Shaw have also completed their service. The board was saddened by the untimely death of public member Darlene Radichel.

New board members are Minneapolis lawyers Gerald Freeman, Steven Goldberg, and Steven Rubin; the Court also appointed attorneys Thomas Gmeinder of St. Paul and Kenneth Hamrum of Morris. Public members appointed were Irvine Dubow, M.D. of Edina, Kathleen Sheran of Mankato, Ronald Snell of Minneapolis, and Gwenyth Jones Spitz of St. Paul.

While the board is changing, the staff in the Director's Office has remained stable. There are 21 employees, as there have been since late 1985. Eighteen of them have been employed in the office for more than two years.

Rules Changes. Effective January 1, 1989, the Court adopted several procedural rule changes in the Rules on Lawyers Professional Responsibility. Rule 8 was amended to provide that complaints of ineffective assistance against court-appointed counsel should first be directed to the court which made the appointment. The court may then refer the matter to the Director's Office. The main reason for this change was to correct the abuse by some criminal defendants of seeking to disqualify appointed public defenders by filing ethics complaints. Rule 13(b) was deleted, so that "conditional admissions" can no longer be made. It appeared unseemly that an attorney could admit an offense like dishonesty, upon the condition that a certain discipline be imposed, but, if the conditional disposition was rejected, later deny the charge under oath. Rule 28, the disability transfer rule, was extensively amended to give the court more discretion in deciding how to treat lawyers who allegedly are disabled. Several other minor Rule amendments were adopted. The Rules were also extensively amended to make their language gender-neutral.

The substantive Rules of Professional Conduct will be subject to petition for several changes. The

Lawyers Board approved proposed amendments, which would have to be adopted by the Court, on several subjects. First, Rule 1.6 would be amended, so that a lawyer could be free to disclose confidential information "necessary to rectify the consequences of a client's criminal or fraudulent act in the furtherance of which the lawyer's services were used." The MSBA approved a similar rule proposal in 1984, but it was not adopted by the Court. Second, the board also approved a proposed amendment to Rule 7.2, "Advertising," which would require legal advertising in Minnesota to include the name of at least one licensed Minnesota attorney. Third, the board approved a proposal for amending Rule 8.4 to codify existing case law by making clear that failure to file tax returns could subject an attorney to discipline.

An MSBA committee is also considering various proposals for a rule against improper harassment. A second MSBA committee is considering whether a rule for automatic notification to the Director's Office of trust account overdrafts should be recommended to the Court.

Several other changes are on the horizon. The board has approved an expansion of the advisory opinion service now offered. This will be described in a future column. The Director's Office will continue to give informal telephone advisory opinions. The board will expand its practice of rendering formal written opinions on subjects of general application for practicing lawyers.

In 1989 the American Bar Association will begin a nationwide examination of the effectiveness of lawyer discipline systems. A prior evaluation, now 20 years old, was of enormous importance for the establishment of lawyer professional responsibility systems in almost every jurisdiction. In 1969 *Clark Report* (named after committee chair and U.S. Supreme Court Justice Tom Clark) began with a conclusion:

After three years of studying lawyer discipline throughout the country, this committee must report the existence of a scandalous situation that requires the immediate attention of the profession. With few exceptions, the prevailing attitude of lawyers toward disciplinary enforcement ranges from apathy to outright hostility. Disciplinary action is practically nonexistent in many jurisdictions; practices and procedures are antiquated; many disciplinary agencies have little power to take effective steps against malefactors.

Many of the *Clark Report's* recommendations were implemented, and there is little doubt that lawyer discipline systems have greatly improved in the last 20 years. Nonetheless, in many locales there continues to be press and public criticism. HALT, which bills itself as "An Organization of Americans for Legal Reform," recently publicized its opinion that most discipline systems were insufficiently tough, prompt, and open. The new ABA committee will be conducting regional hearings, and its conclusions will no doubt be influential in shaping lawyer discipline systems into the next century.

Finally, a look at Minnesota's discipline case statistics for 1988 appears to show that some things do not change very much. The number of complaints received (1,149) is comparable to the average for the period 1984-7 of 1,159. The total number of open discipline files, 358, has declined for the fourth year in a row. The Supreme Court issued 46 disciplinary and reinstatement opinions and orders in 1988, as many as it issued in any previous year. In the silver lining department is the fact that for the first year since 1984 no new large-scale attorney misappropriations were uncovered. Unfortunately, the leading candidate for this year's the-more-things-change-the-more-they-stay-the-same award, is that in 1988 41 percent of all complaints alleged lawyer neglect or failure to communicate. This percentage is almost constant over the 17-year history of the Director's Office. The "honest procrastinator" of the profession has not changed.