

## COMPLAINTS AGAINST LAWYERS DECLINE

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Reprinted from *Bench & Bar of Minnesota* (January/February 1988)

Writing your own headlines is the chief perquisite associated with submitting regular *Bench & Bar* columns. The media have been furnished a copy of this article, but whether a decline in complaints against lawyers is newsworthy is not yet known. In any event, 1987 witnessed a decline of over 10 percent in complaints against lawyers, from 1,233 in 1986 to 1,091. The longer history of complaints can be seen in the table below.

Year	New Files
1978	632
1979	690
1980	919
1981	927
1982	1,013
1983	921
1984	1,069
1985	1,244
1986	1,233
1987	1,091

Why are complaints against lawyers decreasing? Maybe lawyers have become better people. To a skeptic, this would seem only marginally more likely than that clients have lowered their expectations. Perhaps the question is premature as in the past there have been other declines, followed by large increases in complaints. There are several factors that may help explain the decline.

One procedural change in the director's office may be relevant to the decline in complaints. When a complaint is received that is difficult or impossible to understand, and no clear allegation of a rule violation is made, no file is opened initially. Instead, a letter is sent to the complainant asking specific questions designed to elicit more information. If the complainant does not reply, no complaint file is opened. Past practice was to open files and summarily dismiss at least some such complaints. This administrative change was occasioned by a 1986 amendment to Rule 8(a), Rules of Professional Responsibility, authorizing investigations by the director "upon a reasonable belief that professional misconduct may have occurred." A portion of the decline in complaints stems from no longer counting certain unintelligible letters as complaints.

A possible factor in the decline has been the decrease in the overall number of open files from about 600-800 in the period 1980-84 to about 400 in the last three years. The reduced backlog has meant that new complaints can be handled much more quickly. An attorney who generates multiple complaints can correct problems and avoid more complaints (or, in serious cases, be suspended) if the professional responsibility system is able to respond promptly. The accumulation of a large number of files over a period of time relating to a single attorney may become less likely, as the period between the first complaint and discipline is shortened.

Other possible factors in the decline of complaints would include continuing legal education and the resumption of the advisory opinion service. Also, brochures are now sent to prospective complainants along with complaint forms. Some brochure information (for example that routine fee disputes are not investigated) may prevent or redirect certain complaints. A marginally relevant factor would be the 1986 amendment to Rule 8(a), Rules of Professional Responsibility, requiring the executive committee to authorize opening investigations which are otherwise on the director's sole initiative.

Because of the decline in complaints, budget and staff increases for the Professional Responsibility Board have not been fully implemented. No staff increase has occurred for two years, although the director's office now also performs staff services for the Client Security Board. The 1987 *ABA Survey on Lawyer Discipline Systems* reports a Minnesota budget allocation per lawyer for professional responsibility of \$6 less than the national average. The same survey indicated that the ratio of complaints received to licensed lawyers in Minnesota was slightly less than the national average in 1986. The 1987 decline in complaints should place Minnesota significantly below the national average in next year's survey.

One of the steadiest complaint statistics is generated by the so-called "honest procrastinators" of our profession. In 1987, as in every previous year, complaints of neglect and noncommunication by lawyers represented 40 to 45 percent of total complaints. Another steady (but by no means correlated) set of statistics is that lawyers in family law receive the most complaints (24 percent), followed distantly by those in general litigation (16 percent), criminal law (12 percent), probate (9 percent), personal injury (8 percent), real estate (8 percent), and miscellaneous commercial (5 percent).

No statistics are kept correlating discipline with areas of law, but many disciplinary proceedings are only incidentally related to a practice area — Mark Sampson stole with equal abandon from estates, family law clients, and real estate clients. The overall percentage of dismissed complaints has remained at about 80 percent for several years. In 1987 the percentages of dispositions by category were: dismissals (79 percent); private admonitions (9 percent) private probations (2 percent); Court discipline (9 percent).

How can complaints best be avoided? First, by communicating regularly with the client and proceeding promptly. Second, by establishing a clear written understanding of what services will be provided and the fees that will be charged. Of course, some complaints simply cannot be avoided because it is in the nature or interest of some people to complain.

What should an attorney do when notified of an ethics complaint against him or her? If the complaint is at all serious, or the attorney is burdened with chemical or psychological problems, counsel should be retained. Respond to the investigative request. If the request is thought to be unreasonable, specify what is unreasonable and why. Rule 25, Rules on Lawyers Professional Responsibility, requires responses to reasonable requests and provides procedures for testing whether requests are reasonable.

How can Supreme Court discipline best be avoided? A survey of cases indicates that the answers are fairly simple: be honest; if you are burdened with chemical dependency or mental illness, get help and make arrangements for your work; file tax returns when due; keep trust account records straight; don't neglect several clients' affairs; don't obstruct the legal system; be especially careful in fiduciary matters and with vulnerable people; and obey the criminal laws. Thirty-six attorneys were disciplined publicly by the Supreme Court in 1987 for falling short of one or more of these basic prescriptions. The Court also reinstated three suspended lawyers, conditionally reinstated one disbarred lawyer, and denied reinstatement to one disbarred lawyer.

Statistics tell only a small part of any story, including that of lawyers' professional responsibility in Minnesota. The small story they have told for 1987 is largely encouraging news, especially so in light of the bad publicity generated by a small number of lawyers involved in very serious misconduct.