

## JUDGING THE PROFESSIONAL RESPONSIBILITY SYSTEM

By

William J. Wernz, Director

Minnesota Office of Lawyers Professional Responsibility

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Lawyer discipline systems in Minnesota and nationwide have been the subjects of exceptional attention by the press recently. The *National Law Journal*, *Minnesota Law Journal*, *Minnesota Lawyer*, *ABA Bar Leader*, and the Gannett newspapers have all offered their assessments. Gannett's headlines reflected its judgment of systems nationwide, "Beyond the Law . . . Lenient Discipline Erodes Public's Lawyer Confidence."

The general approach of most of these articles was to describe the worst reported attorney misconduct and feature the most lenient discipline imposed. Using this method, several writers concluded that the "discipline pendulum" has swung away from vigorous enforcement. Most of the articles were responsible in tone, except Gannett's, which feasted on the sensational.

The approach of focusing on a handful of cases in each jurisdiction is inadequate to judge the overall operation of a professional responsibility system. Any assessment of how the professional responsibility system is working must consider overall performance in many cases. Statistics, as well as a handful of prominent cases, are necessary to tell the full story. Besides statistics and representative cases, other factors must also be examined, including the adequacy of financing, the timeliness and fairness of the process, and the people involved in the system. Judged by this broad set of standards, the Minnesota professional responsibility system clearly continues its vigorous history.

The numbers of lawyers and ethics complaints have nearly tripled in the last 15 years in Minnesota, and elsewhere. The numbers of lawyers and complaints made are closely correlated. The percentage of complaints dismissed (about 82 percent) and the percentage involving some discipline (about 18 percent) have also remained nearly constant over the years.

While the quantity of discipline has remained relatively uniform, the quality of discipline has changed in some ways. As the table below indicates, public discipline is imposed more commonly than in the past. In the last three years there have been about 100 Minnesota attorneys publicly disciplined by the Minnesota Supreme Court. This equals the number disciplined in the previous *eight* years. Suspension and disbarment appear to be more frequent in the mid-'80s than the early '80s, but (adjusted for lawyer population increase) comparable to the late '70s. Short suspensions have been ordered more frequently of late, as have probations. Mitigating circumstances, such as alcoholism and mental illness, are more regularly taken into account, but the requirements for proving these circumstances have been tightened. The patterns of discipline have changed somewhat, but there is no overall weakening.

Gannett's view is that, "... The bar seems unwilling to correct disciplinary shortcomings, which one day may cost the profession its prized self-regulation." Reference is made to the fact that the California Legislature nearly succeeded in creating a new, independent state agency for lawyer discipline. In Minnesota, too, there have over the years been some legislative rumblings. However, Minnesota attorneys have generally supported a strong professional responsibility system and control of the system has remained with the judiciary.



Lawyers

S. Ct.            4        1        6        6        1        3        6        4        3        4        8

Disbarment

No. of

Lawyers

\*Public discipline includes censure by the Supreme Court, Supreme Court reprimand, Supreme Court probation, Supreme Court suspension, and Supreme Court disbarment.