

LAWYERS BOARD PANEL MANUAL

By
William J. Wernz, Director
Minnesota Office of Lawyers Professional Responsibility

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

The Lawyers Board has approved for use in connection with its panel hearing procedures a "Panel Manual." The manual will be a helpful working set of guidelines for all involved in the panel attorney discipline hearing process.

The Lawyers Board has six three-member panels that conduct hearings on several sorts of discipline matters. Charges of unprofessional conduct are screened by panels, in something like grand jury fashion, to determine whether there is "probable cause" to believe public discipline is warranted. Panels also conduct public evidentiary hearings on reinstatement petitions by suspended or disbarred attorneys. Panels also consider appeals by lawyers from admonitions issued by the director for "isolated and nonserious misconduct."

The procedures followed by the panels are set out in the Rules on Lawyers Professional Responsibility, adopted by the Minnesota Supreme Court. The new manual states how the rules have been applied by panels over the years, and how the rules generally are expected to be applied in the future.

The manual is one of the board's ways of implementing the recommendation of the Supreme Court Advisory Committee in 1985 for adoption of "procedures that will promote greater uniformity and consistency in the disposition of cases by the district committees and board panels."

The Panel Manual is one of several important steps the board has taken to promote consistency in professional responsibility matters. In 1986, the board adopted "summary dismissal guidelines," for use by the Director's Office. These guidelines have been applied by the Director's Office so that several regular kinds of complaints are generally not investigated by the Director's Office. The board has sought to increase consistency in disciplinary sanctions and reasoning by referring to the ABA *Standards for Imposing Lawyer Sanctions*. The board also sought to improve consistency, and efficiency, by proposing for the Court's adoption, Rule 10(d), Rules on Lawyers Professional Responsibility. This rule was adopted, and identifies certain classes of serious cases which may, upon motion, be referred to the Court by a panel chair without a full panel hearing.

The Panel Manual is meant to promote consistency among the hearing panels, and to promote other important goals as well. The manual should make the procedures of board panels more open to the bar and the public. The manual will also enable *pro se* respondent lawyers, and lawyers who represent respondents only infrequently, to achieve more effective representation before a panel. Notice of the existence and availability of the Panel Manual will be incorporated into the form Notice of Panel Hearing sent by the Director's Office.

The approval of the Panel Manual by the board comes at a particularly suitable time in the board's history. At the time of the manual's adoption, in January 1989, the board was a veteran group with all members having at least one year's experience. Three board members were first appointed in 1982, and six others were first appointed in 1983. Because of the board's great experience in panel matters, and because several board members were about to complete their service, it was fitting that the board summarize the way certain panel matters have been handled in recent years, and state the guidelines for how certain matters should be handled.

The contents of the Panel Manual are meant to be summaries and guidelines, not hard and fast rules. The board does have authority under Rule 23, R. Law. Prof. Resp., to "adopt rules and regulations, not inconsistent with these rules, governing the conduct of business and performance of . . . duties." However, the Panel Manual is not meant to be a set of determinative rules. Statements in the Panel Manual are generally statements of how things have been done and how things ought to be done, for the most part.

The manual is divided into sections describing procedures before, during, and after panel hearings. Some of the topics are of substantive law, such as definitions of probable cause and application of the probable cause standard. Other topics include practical descriptions of unwritten practices, such as that for motions to the panel chair, "it has been customary to conduct telephone conference hearings." Supreme Court comment on panel proceedings is noted where appropriate, *e.g.*, ". . . continuances of panel hearings are rarely given." *Matter of Peters*, 332 N.W.2d 10, 15-16 (Minn. 1983).

Copies of the Panel Manual will be available to all interested attorneys and others. Copies will be distributed to law libraries, and a copy will be available in the Director's Office. Individual copies may be purchased for \$15 through the office administrator. Any applicant for reinstatement and any attorney charged with unprofessional conduct will be notified of the availability of the manual.

The Panel Manual has been a major project of the Lawyers Board for over a year. It is part of an increased educational effort by the board and the Director's Office. A brochure describing in plain language the operation of the professional responsibility system has also been developed and distributed. Another brochure will soon be mailed to all attorneys, describing and illustrating the proper operation of trust accounts. The board will also soon be issuing formal, written opinions on general questions of professional conduct.

Professional responsibility matters are to be "disposed of with fairness and justice." The Panel Manual, by promoting openness and consistency, should also promote and enhance fairness and justice in the professional responsibility hearing process.