

OLD TIMES, NEW RULES

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The '80s. As the '80s began, the Office of Lawyers Professional Responsibility, like many small law offices, processed the written word by Selectric. Use of computers was not yet on the horizon, nor was there an office manager. As the '70s ended, the Director's column noted a "recent upsurge in complaints" but hoped that it would be "of short duration."

Clearly much has changed in the last ten years. Statistics tell part of the story:

	1979	1989
Minnesota Attorneys	10,339	18,629
Complaints	690	1,365
Ratio (complaints/attorneys)	.07	.07
Supreme Court Opinions	15	38

Dramatic changes have also occurred in less quantifiable ways.

George Will recently claimed, principally because of the events in Eastern Europe, that 1989 was the most significant year in history. With a little less bravado, it might be said that the decade of the '80s witnessed the greatest changes in the legal profession ever. The size of the profession nearly doubled. The level of economic competition and variety of economic arrangements among lawyers greatly increased. The pace of change itself quickened. The Code of Professional Responsibility was replaced after only 15 years' use, while its predecessor had lasted many decades. In 1981 and in 1986, review committees recommended major procedural changes in the Rules of Lawyers Professional Responsibility. Lawyer specialization, multistate practice, and the appearance of enormous law firms – home-grown or merged – changed the legal landscape. Most of the great changes in the profession are only marginally regulated.

At the turn of the last decade, three successive *Bench & Bar* columns concerned themselves with regulating economic aspects of the practice of law: fee splitting; failure to pay third parties; and charging interest on attorney fees. Such topics remain within the concerns of professional responsibility, but cases involving integrity issues and questions of disability have taken center stage.

Trust Fund Problems. In the last several years there have been six major cases of attorney misappropriation of client funds: Flanagan, Sampson, Batdorf, Benson, Danna, and O'Hagan. Disbarment and criminal proceedings (and much publicity) swiftly followed the discovery of each theft. The Client Security Board was established and funded, and promptly paid proper client claims of loss. On July 1, 1985 – just before Flanagan's flight – then-Director Michael J. Hoover wrote, "Minnesota has a *serious* problem concerning lawyer trust accounts." Through creation of the Client Security Board, adoption of new trust account rules (see below), and dissemination of a booklet explaining how trust accounts are to be kept, systems for dealing with the problem have been strengthened.

Is more trust fund regulation needed? Must we reconcile ourselves to the idea that every year or so someone will make off with hundreds of thousands of client dollars? If complete *prevention* of lawyer theft is not possible, are there more ways of deterring or detecting such misconduct? The answers to these questions are not easy. MSBA committees have twice examined the feasibility of a random trust account audit program, and concluded that it would be very expensive and not necessarily very effective. Since thefts of client funds can occur without being reflected in the trust account, any program that focuses on the trust account will be of limited effectiveness.

1989. 1989 witnessed an increase in complaints of 18 percent. This would be alarming, if there were a single-year focus. However, there was actually a decline in the number of complaints from 1985 to 1988. The long-term ratio of complaints to attorneys has remained fairly constant in Minnesota, and well below the national average.

Last year's large increase in complaints means that staff additions for the Director's Office will be necessary for the first time since 1985. No increase in the registration fee allocated to the office is expected in the near future.

At the close of the '90s, it may seem desirable to have "only" 1,365 complaints in a single year. By the year 2000, there will be well over a million lawyers in America, and over 25,000 in Minnesota. Even a painstaking review of the Book of Revelation may not reveal the true significance of these millennial numbers.

New Rules. Effective January 1, 1990, the Minnesota Supreme Court amended the Rules of Professional Conduct in several ways. Changes were made to Rule 1.15, "Safekeeping Property," Rule 1.6, "Confidentiality of Information," Rule 7.2, "Advertising," and Rule 8.4, "Misconduct." (*The complete text of the rule changes and comments is printed together with the Court's order in the "Minnesota Supreme Court" section of this issue of Bench & Bar. Ed.*)

Rule 1.15 was extensively amended to establish a program for automatic notification by financial institutions of trust account overdrafts. The structure of the overdraft notice program will be similar to that of the IOLTA (Interest on Lawyer Trust Accounts) program. The amendment contemplates that the Lawyers Board will take various actions to establish the program. At least several months will be required for the structure to be complete. Notice will be given to all lawyers when arrangements have been made for the overdraft notice program. Until then, of course, no action will be taken to enforce the requirement that all lawyers participate in the program.