

## e-Advice

By

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Reprinted from *Bench & Bar of Minnesota* (July 2006)

It is a constant challenge for any lawyer to keep up with the changing technologies available today. Added to the concerns of clients, courts, billing and even office politics, lawyers now must worry as well about metadata, encryption, and electronic discovery. The Lawyers Professional Responsibility Board (LPRB) and Office of Lawyers Professional Responsibility (OLPR) have sometimes lagged behind the private bar in implementing new technologies. We have been catching up as rapidly as possible, however, and now have a large amount of information available to lawyers and the public through various electronic sources.

The most recent addition to the OLPR-LPRB website ([www.courts.state.mn.us/lprb](http://www.courts.state.mn.us/lprb)) is the capacity for Minnesota lawyers to submit requests for advisory opinions electronically. Up until now, a licensed Minnesota attorney has had to call the Director's Office to request an advisory opinion, and then, if the attorney assigned to handle advisory opinions on that day is immediately available, discuss their question and, in most instances, get an opinion. If the attorney is not available, then the caller is called back as soon as possible, almost always on the same day.

Now, an attorney can submit a written inquiry electronically by completing a form on the OLPR website as an alternative to calling. The sender simply fills in the necessary factual information and the question on which advice is sought. Certain information is required, including an attorney's registration identification number, since the service remains available only to currently licensed Minnesota attorneys. We have been assured that the connection will be secure.

An attorney who feels the need or desire for an opinion in the evening or on a weekend now can submit the request immediately while the question is fresh in mind. Then it is waiting for the advisory attorney first thing the next business day. The advisory attorney has the advantage of knowing what the question is even before returning the call and may have partially formulated a response or done some advance research on the issue if necessary. Note that the response to electronically submitted written advisory opinion requests will be by phone, as with telephone inquiries, and not in writing or by email. Additional factual information may still prove necessary to formulate an advisory opinion, and will be handled as before in the telephone conversation. Overall, it is our hope that adding this option will make

the service more convenient and save time for those requesting an advisory opinion.

The same limitations on the advice offered apply to both written and telephoned requests: opinions are provided only as to the calling attorney's prospective conduct (not as to third party or past conduct) and can be based only upon the information provided. If the facts are different than provided, the opinion might not be valid. A record of the request and information concerning the question and answer is maintained in the OLPR's advisory opinion database and is considered confidential.

A further goal in our development of the e-advice service will be to allow individuals to "build their own advisory opinion" on the OLPR website through a series of links that will connect the user to all applicable articles, rules and an FAQ section dealing with a particular topic. The process of upgrading the website to allow such advisory opinion building will take some time yet, but once available, this technology will allow lawyers and the public to readily access general professional responsibility information.

### **Ongoing Process**

The new e-advisory opinion form is part of an ongoing process by the Lawyers Board and the Director's Office to make our website as useful as possible to lawyers and the public. Considerable information already is available. Obviously, the Rules of Professional Conduct, Rules on Lawyers Professional Responsibility, and Lawyers Board Opinions are available. All of the articles written by the director and the director's staff for publications such as *Bench & Bar of Minnesota* and *Minnesota Lawyer*, plus some related articles written by Board members or others, are available on the website. An index of those articles is also available. Within the next year we plan to revise this index in an effort to make it even more useful. The index and website are fully searchable. Information on professional firms filing, required trust account records, financial institutions approved for IOLTA accounts, and cross-border practice rules are among the other information available on the site.

Earlier this year, another new feature was added to the OLPR website: a searchable attorney database which provides access to an attorney's complete public disciplinary history with links to copies of the public discipline orders. Also included are the lawyer's full name, license number, year of admission, city where the attorney is located, and whether the attorney is currently authorized to practice.

Finally, another minor technological initiative recently undertaken by the Director's Office is to issue press releases electronically. Lawyers Board policy has long been to issue a press release upon the filing of all contested public disciplinary petitions seeking disbarment or suspension, unless such petition is accompanied by a stipulation simultaneously authorizing an agreed upon discipline. The Director's Office again issues a press release upon the issuance by the Supreme Court of all public discipline decisions. Previously, releases were issued by mail to major local media and to local newspapers associated with a respondent's practice location. Upon inquiry, it was determined that most media now prefer to receive press releases by email, which makes them considerably more timely and the information more newsworthy. Whether this will immediately result in greater coverage of disciplinary activities is not

assured, but protection of and notice to the public demands we attempt it.

### **What's Next?**

Some electronic advances are being considered, but may be a ways off before becoming reality. For example, a recent study by HALT, a self-proclaimed legal reform organization, praised and criticized the Minnesota lawyer disciplinary system. Minnesota appropriately received high marks for its extensive use of nonlawyers throughout the disciplinary system. Some of the study's information, however, was faulty: it praised Minnesota inaccurately for using a "preponderance of the evidence" standard, when in fact the standard for imposing lawyer discipline has always been by "clear and convincing" evidence. Another issue upon which the study incorrectly praised our system was the supposed ability of complainants to file complaints online. In fact, complaints at present must be received in writing, with only some limited exceptions made to accommodate disabled individuals. Since it has never been a requirement that complaints be signed and notarized, electronically filed complaints may indeed be feasible. How soon such a change will be considered would certainly depend upon the instruction of the Lawyers Board as a whole, or upon whether an anticipated review commission recommends such a change.

It was only ten years ago that OLPR staff attorneys worked with no desktop computers, no email, limited computerized research, and no website. We have made rapid technological progress. The Director's Office will continue to look for ways to improve our ability to better serve the public and the bar through more modern technology.