

**LAWYERS PROFESSIONAL RESPONSIBILITY BOARD
MEETING AGENDA**

Friday, April 14, 2017 –1:00 p.m.
Town & Country Club
St. Paul, Minnesota

1. Approval of Minutes of January 20, 2017, Lawyers Board Meeting (Attachment 1).
2. New Board Member Welcome (Jeanette Boerner, Peter Ivy, Virginia Klevorn and Susan Rhode) and Updated Panel Rosters (Attachment 2).
3. Proposed Budget for Next Biennium (Attachment 3).
4. Committee Updates:
 - a. Rules Committee
 - (i) MSBA Subcommittee on MRPC 5.5.
 - (ii) Letter from Rep. Goodlatte re Lawyer Advertising
 - (iii) Rule 20, RLPR, Potential Change.
 - (iv) Rule 9(j), RLPR, Potential Change.
 - b. Opinions Committee.
 - c. DEC Committee.
 - (i) May 5, 2017 Chairs Symposium.
 - (ii) September 29, 2017 DEC Seminar.
5. Director's Report (Attachment 4).
6. Other Business:
 - a. Next meeting, Friday, June 9, 2017, 1:00 p.m.
 - b. DEC Seminar, Friday, September 29, 2017.
7. Quarterly Board Discussion (closed session).

If you have a disability and anticipate needing an accommodation, please contact Susan Humiston at lhprada@courts.state.mn.us or at 651-296-3952. All requests for accommodation will be given due consideration and may require an interactive process between the requestor and the Office of Lawyers Professional Responsibility to determine the best course of action. If you believe you have been excluded from participating in, or denied benefits of, any Office of Lawyers Professional Responsibility services because of a disability, please visit www.mncourts.gov/ADAAccommodation.aspx for information on how to submit an ADA Grievance form.

**MINUTES OF THE 178TH MEETING OF THE
LAWYERS PROFESSIONAL RESPONSIBILITY BOARD**

January 20, 2017

The 178th meeting of the Lawyers Professional Responsibility Board convened at 1:00 p.m. on Friday, January 20, 2017, at the Town & Country Club, St. Paul, Minnesota. Board members present were: Board Chair Stacy L. Vinberg, Joseph P. Beckman, Timothy Churchwell, James P. Cullen, Roger Gilmore, Christopher A. Grgurich, Nancy L. Helmich, Mary L. Hilfiker, Gary M. Hird, Anne M. Honsa, Shawn Judge, Michael J. Leary, Lisa Radzak, Gail Stremel, Terrie S. Wheeler, Todd A. Wind, and Allan Witz. Present from the Director's Office were Director Susan Humiston, Deputy Director Patrick R. Burns, and Assistant Directors Joshua H. Brand and Amy M. Mahowald.

1. APPROVAL OF MINUTES

The minutes of the September 30, 2016, Board meeting were approved.

2. RETIRING BOARD MEMBERS/RETURNING MEMBERS AND OPENINGS

Stacy Vinberg noted and thanked Board members Todd Wind, Paul Carlson, Tim Churchwell, and Nancy Helmich whose service on the LPRB is coming to an end. She also noted that Board members Joe Beckman, James Cullen, Roger Gilmore, Mary Hilfiker, Bentley Jackson, and Allan Witz are beginning new terms on the Board. She reported that the Supreme Court has not yet appointed replacements for the retiring Board members. The Executive Committee has submitted recommendations to the Court for filling two of the attorney positions. Due to the low number of public member applicants, that opening has been re-posted, together with a posting for the attorney opening resulting from Tim Churchwell's leaving the Board. New Panel assignments will be forthcoming.

3. COMMITTEE UPDATES

Susan Humiston reported for Cheryl Prince on the Rules Committee. She noted that the citizen petition to amend Rule 6(a), Rules on Lawyers Professional Responsibility (RLPR), was denied by the Supreme Court. The LPRB petition to amend Rule 18(c), RLPR, to specify a 10-day period in which to order a transcript of a Panel reinstatement proceeding if a party wishes to contest the findings or conclusions of the Panel was granted by the Court. It was also noted that Justice Stras has asked that Panels ruling on reinstatement petitions remind the parties of the 10-day deadline.

Susan Humiston told the Board that the Panel Manual is going to be re-written and will be presented to them for review, comment, and adoption at a future meeting. Susan also told the Board that amendments to Rule 20, RLPR, which would permit the sharing of information with lawyer assistance programs, are being considered and will be presented to the Rules Committee and the Board for approval and petition to the Court seeking amendment of the rule. She also reported that the MSBA Rules of Professional Conduct Committee is considering possible amendments to Rule 5.5, Minnesota Rules of Professional Conduct, but that no specific proposals have yet been made.

Todd Wind reported that the Opinion Committee does not currently have any opinions under consideration and invited suggestions for opinions to be considered by that committee. Susan Humiston discussed some of the feedback she has received on LPRB Opinion 24. One concern expressed was that the opinion was not circulated for public comment before adoption. She also suggested that an opinion on the appropriate use of availability retainers may be appropriate.

Terrie Wheeler reported on planning for the May 5, 2017, DEC Chairs Symposium and invited suggestions for topics to be considered at the Symposium. It was noted that both the Symposium and the annual DEC Seminar will be held at the Earle Brown Heritage Center in Brooklyn Park.

Susan Humiston discussed DEC statistics and noted that four DEC's need to add public members in order to meet the 20% public membership rule. She also noted that all of the volunteers in the 17th DEC are at the end of their terms and will have to be replaced with new members. She also noted that the number of matters withdrawn from the DEC's in 2016 was higher than normal.

4. DIRECTOR'S REPORT

Susan Humiston asked staff attorneys Josh Brand and Amy Mahowald to introduce themselves to the Board, noting their backgrounds prior to joining the Director's staff. She then presented the year end statistics for consideration by the Board. She noted that the number of public disciplines in 2016 was lower than in 2015, but was still high in light of the long term average number of public disciplines per year. She noted that two public matters resulted in dismissals in 2016. The number of new complaints was roughly the same as in 2015 and the number of pending files open is improving. The total case inventory at year end was below the target of 500 files and the number of year old files was at 108, eight above the target of 100. The number of advisory opinions for 2016 was 1,890. She noted that progress on reducing the case

inventory and year old files is particularly impressive in light of the fact that during much of 2016 the OLPR did not have a full attorney staff.

Susan also reported on organizational changes in the Office, noting that Patrick Burns is now a Deputy Director and Timothy Burke is now a First Assistant Director. This permits a reassignment of supervisory functions in the Office. She also noted that Jennifer Bovitz has been hired as an Assistant Director and will begin her employment on February 6, 2017.

Susan told the Board that, in conjunction with MNCLE, the Office will be conducting a series of seminars this upcoming April – June, focusing on common professional responsibility topics such as trust account basics and conflicts of interest.

Susan noted that the probation department within the Office has been expanded in order to better handle the number of open probations.

Susan reported that phone calls to the OLPR will no longer be answered by identifying the Office as the “Lawyers Board,” and that the phone will be answered with “Lawyer Regulation.”

Susan reported on a security assessment done for the OLPR and discussed changes that will be made to enhance the physical security of the Office. A discussion of cyber-security issues was had and it was noted that the Office relies heavily on Judicial IT for such issues. The Director was asked to further explore this issue with Judicial IT.

Susan reported on a lawyer who says he intends to sue the OLPR for an unspecified 1983 action arising out of his disciplinary proceeding.

5. OTHER BUSINESS

Roger Gilmore expressed appreciation to the Director’s staff for the hard work in reducing the case backlog while maintaining the high quality of work. The Board joined Roger in this.

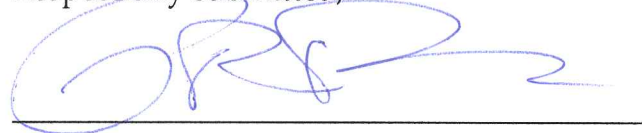
Michael Leary asked whether a rule change could/should be made to permit Panel determinations on respondent admonition appeals to be made without a live hearing. Consideration of this issue was referred to the Rules Committee of the Board.

6. **QUARTERLY BOARD DISCUSSION**

The Board, in a closed session, conducted its quarterly Board discussion.

Thereafter, the meeting adjourned.

Respectfully submitted,



Patrick R. Burns
Deputy Director

[Minutes are in draft form until approved by the Board at its next Board Meeting.]

LAWYERS BOARD PANELS

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

Rule 4(e), Rules on Lawyers Professional Responsibility, provides,

The Chair shall divide the Board into Panels, each consisting of not less than three Board members and at least one of whom is a nonlawyer, and shall designate a Chair and a Vice-Chair for each Panel.

The following Panels are hereby appointed, effective April 1, 2017. Those with a single asterisk after their names are appointed Chair, and those with a double asterisk are appointed Vice-Chair.

Panel No. 1.

- * Thomas J. Evenson
- ** Peter Ivy
- Norina Jo Dove (p)

Panel No. 2.

- * Joseph P. Beckman
- ** Lisa Radzak
- Shawn Judge (p)

Panel No. 3.

- * Cheryl M. Prince
- ** Michael J. Leary (p)
- Allan Witz

Panel No. 4.

- * James P. Cullen
- ** Gary M. Hird
- Gail Stremel (p)


Panel No. 5.

- * Anne M. Honsa
- ** Jeanette Boerner
- Mary L. Hilfiker (p)

Panel No. 6

- * Christopher Grgurich
- ** Susan C. Rhode
- Virginia Klevorn (p)

Effective April 1, 2017.



Stacy L. Vinberg, Chair
Lawyers Professional
Responsibility Board

* Chair

** Vice Chair

(p) Public member

BOARD MEMBERS REVIEWING COMPLAINANT APPEALS

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

Pursuant to Rule 8(e), Rules on Lawyers Professional Responsibility, the Chair appoints members of the Board, other than Executive Committee members, to review appeals by complainants who are not satisfied with the Director's disposition of complaints.

The reviewing Board members appointed for the period April 1, 2017, through January 31, 2018, are:

JOSEPH P. BECKMAN
JEANETTE M. BOERNER
JAMES P. CULLEN
NORINA JO DOVE
THOMAS J. EVENSON
CHRISTOPHER GRGURICH
MARY L. HILFIKER
GARY M. HIRD
ANNE M. HONSA
PETER IVY
SHAWN JUDGE
VIRGINIA KLEVORN
MICHAEL J. LEARY
CHERYL M. PRINCE
LISA RADZAK
SUSAN C. RHODE
GAIL STREMEL
ALLAN WITZ

If Board members are unavailable for periods of time the Board Chair may instruct the Director not to assign further appeals to such members until they become available.

Effective April 1, 2017.



Stacy L. Vinberg, Chair
Lawyers Professional
Responsibility Board

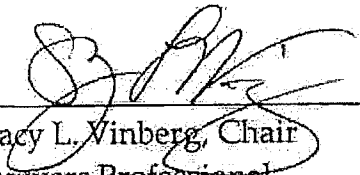
DEC COMMITTEE

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

A Lawyers Board Committee charged with working with the District Ethics Committees (DECs) to facilitate prompt and thorough consideration of complaints assigned to them and to assist the DECs in recruitment and training of volunteers, shall be constituted with the following members:

Terrie S. Wheeler, Chair
Roger Gilmore
Mary L. Hilfiker
Michael J. Leary
Cheryl M. Prince
Robin M. Wolpert

Effective February 1, 2017.



Stacy L. Vinberg, Chair
Lawyers Professional
Responsibility Board

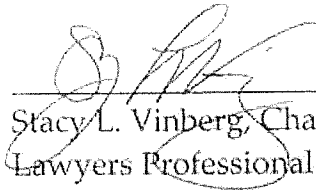
OPINION COMMITTEE

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

A Lawyers Board Committee for making recommendations regarding the Board's issuance of opinions on questions of professional conduct, pursuant to Rule 4(c), Rules on Lawyers Professional Responsibility, shall be constituted with the following members:

Anne M. Honsa, Chair
Joseph Beckman
Norina Jo Dove

Effective April 1, 2017.



Stacy L. Vinberg, Chair
Lawyers Professional
Responsibility Board

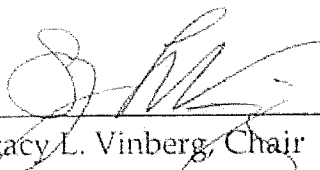
RULES COMMITTEE

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

A Lawyers Board Committee for making recommendations regarding the Board's positions on possible amendments to the Minnesota Rules of Professional Conduct and the Minnesota Rules on Lawyers Professional Responsibility, shall be constituted with the following members:

Cheryl M. Prince, Chair
James P. Cullen
Gail Stremel
Gary M. Hird
Bentley R. Jackson

Effective April 1, 2017.



Stacy L. Vinberg, Chair
Lawyers Professional
Responsibility Board

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FY18/19 Budget Request

MN Board of Lawyers Professional Responsibility

Appropriation: J650LPR

Account	FY14 Actual	FY15 Actual	FY16 Actual	FY17 Budget ¹	FY17 Projected	FY18 Projected	FY19 Projected
	a	b	c	d	e	f	g
Reserve Balance In	3,451,450	3,636,585	3,445,582	3,386,941	3,386,941	3,159,348	2,203,648
Revenue:*							
Law Prof Resp Attorny Judgmnts	512416	21,447	27,421	57,757	24,037	26,900	27,700
Other Agency Deposits	514213	15,568	19,931	22,355	20,152	25,700	26,500
Law Prof Resp Misc	553093	61,158	52,596	57,462	50,307	30,300	31,200
Attorney's Registration	634112	3,078,630	3,079,194	3,163,603	3,052,684	3,090,292	3,125,000
Law Prof Resp Bd Prof Corp	634113	77,075	80,950	89,800	89,300	69,100	71,200
Subtotal Revenue	3,253,878	3,260,093	3,390,977	3,236,480	3,242,292	3,281,600	3,293,600
Expenditures:	3,068,743	3,451,096	3,449,618	4,175,000	3,469,885	4,237,300	3,997,000
Reserve Balance Out (Ending Cash Balance)	3,636,585	3,445,582	3,386,941	2,448,421	3,159,348	2,203,648	1,500,248

Notes:

¹ The expenditure budget was adjusted for carry forward. The original budget was \$3,895,000.

(\$200,000 to account 41130 and \$80,000 to account 47160)

* Revenue assumptions FY18 3% over FY17 projected amounts (excluding Atty. Reg.)

Atty. Reg. Assumptions: FY18 29,000 (22,233 @ \$122; 3,830 @ \$83; 2,937 @ \$26; 800 @ \$18)

FY19 29,150 (22,290 @ \$122; 3,880 @ \$83; 2,980 @ \$26; 800 @ \$18)

FY18/19 Budget Request

MN Board of Lawyers Professional Responsibility

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Appropriation: J650LPR
Findept. ID: J653500B

Account		FY14 Actual Expenditures	FY15 Actual Expenditures	FY16 Actual Expenditures	FY17 Budget Expenditures ¹	FY17 Projected Expenditures	FY18 Projected Expenditures	FY19 Projected Expenditures
		a	b	c	d	e	f	g
Full Time	41000	2,226,589	2,596,318	2,636,719	2,855,000	2,453,000	2,835,000	2,827,000
PT, Seasonal, Labor Svc	41030	201,580	210,045	199,065	200,000	228,000	256,000	282,000
OT Pay	41050	877	1,977	2,851	1,000	85	2,000	2,000
Other Benefits	41070	8,029	7,818	44,334	50,000	12,500	130,000	25,000
PERSONNEL		2,437,075	2,816,157	2,882,969	3,106,000	2,693,585	3,223,000	3,136,000
Space Rental, Maint., Utility	41100	333,094	327,274	323,882	339,000	339,000	339,000	346,000
Printing, Advertising	41110	6,536	8,143	17,401	14,000	7,500	11,600	12,300
Prof/Tech Services Out Ven	41130	34,494	25,195	28,516	39,000	35,400	35,500	40,800
IT Prof/Tech Services	41145	81,131	58,119	26,748	300,000	197,000	350,000	230,000
Computer & System Svc	41150	5,259	15,652	6,161	100,000	1,900	2,000	2,500
Communications	41155	34,064	39,446	19,176	38,000	20,000	29,000	29,900
Travel, Subsistence In-St	41160	10,161	11,931	14,624	12,000	8,500	12,700	13,500
Travel, Subsistence Out-St	41170	10,581	7,623	10,270	22,000	14,000	24,000	26,400
Employee Dev't	41180	9,507	9,879	13,027	10,000	15,600	13,200	14,500
Agency Prov. Prof/Tech Svc	41190	294	(545)	-	-	-	-	-
Claims Paid to Claimants	41200	3,787	-	-	-	-	-	-
Supplies	41300	39,303	52,572	57,597	42,000	62,000	48,300	55,500
Equipment Rental	41400			2,714	20,000	3,000	3,000	3,000
Repairs, Alterations, Maint	41500	10,142	9,243	8,052	12,000	7,500	10,000	10,600
State Agency Reimb.	42030	90	-	-	-	-	-	-
Other Operating Costs	43000	28,821	27,357	29,925	41,000	39,400	46,000	31,000
Equipment Capital	47060	2,859	-	-	-	-	10,000	35,000
Equipment-Non Capital	47160	21,545	43,051	8,556	80,000	25,500	80,000	10,000
Reverse 1099 Expenditure	49890	-	-	-	-	-	-	-
OPERATING		631,668	634,939	566,649	1,069,000	776,300	1,014,300	861,000
TOTAL		3,068,743	3,451,096	3,449,618	4,175,000	3,469,885	4,237,300	3,997,000

Notes:

¹ The expenditure budget was adjusted for carry forward. The original budget was \$3,895,000.
(\$200,000 to account 41130 and \$80,000 to account 47160)

Salaries

- FY14 - Insurance increased by 10%.
- FY15 - FY'15 insurance increased by 10%. High due to: a) 3.84% insurance increase 1/1/15-6/30/15;
b) Employer retirement contribution increase.005% on 7/1/14; c) two additional Attorney II positions; and
d) one paralegal and one support staff.
- FY16 - Increased by 11%, including 4% Merit and 7% for insurance. One additional paralegal position.
- FY17 - Increased 9.8%, including 3.5% Merit and 6.3% for insurance. No staff increases anticipated.
- FY18 - Increased 12.3%, including 3.5% Merit and 8.8% for insurance. Anticipated retirement payout for two professional staff.
No staff increases anticipated.
- FY19 - Increased 10.05%, including 3.5% Merit and 6.55% for insurance. No staff increases anticipated.

Lease renegotiated effective 8/08. Rental rates at Landmark Towers decreased significantly.

FY'14 - \$24.80 sq ft for 1 mo. Office lease ends 7/31/13.

FY14 - New lease effective 8/1/13 through 2020. Reduction in square footage costs for 6 years of 7 year lease.

\$21.00 sq ft for 11 mos. @ 11,158 sq. ft + \$47,502 parking + \$19,940 for courtroom, \$2,400 garage storage +
\$18.65 sq ft for 11 mos. @ 1057 sq. ft for 12th floor office and storage.

FY15 - 7/14 - \$21.00 sq. ft @ 11,158 sq. ft + \$18.65 sq. ft @ 1057 sq. ft for 12th floor office and storage + \$259.52 garage storage +
11 mos. - \$21.42 sq. ft @ 11,158 sq. ft + \$18.65 sq ft @ 1057 sq. ft for 12th floor office and storage + \$2,855 for garage storage +
\$43,120 parking + \$19,940 for courtroom.

FY16 - 7/15 - \$21.42 sq ft @ 11,158 sq. ft + \$18.65 sq. ft @ 1057 sq. ft for 12th floor office and storage + \$259.52 garage storage +
11 mos. - \$21.85 sq ft @ 11,158 sq. ft + \$18.65 sq ft @ 1057 sq. ft for 12th floor office and storage + \$2,855 for garage storage +
\$43,588 parking + \$20,956 for courtroom.

FY17 - 7/16 - \$21.42 sq. ft @ 11,158 sq. ft + \$18.65 sq. ft @ 1057 sq. ft for 12th floor office and storage + \$259.52 garage storage +
11 mos. - \$22.29 sq. ft @ 11,158 sq. ft + \$18.65 sq. ft @ 1057 sq. ft for 12th floor office and storage + \$2,855 for garage storage +
\$45,719 parking + \$22,008 for courtroom.

FY18 - 7/17 - \$22.29 sq. ft @ 11,158 sq. ft + \$18.65 sq. ft @ 1057 sq. ft for 12th floor office and storage +
11 mos. - \$22.73 sq. ft @ 11,158 sq. ft + \$18.65 sq. ft @ 1057 sq. ft for 12th floor office and storage +
\$42,120 parking+ \$20,000 for courtroom. End basement storage.

FY19 - 7/18 - \$22.73 sq. ft @ 11,158 sq. ft + \$18.65 sq. ft @ 1057 sq. ft for 12th floor office and storage +
11 mos. - \$23.19 sq. ft @ 11,158 sq. ft + \$18.65 sq. ft @ 1057 sq. ft for 12th floor office and storage +
\$42,120 parking + \$20,000 for courtroom.

Printing & Advertising - Includes printing of brochures, envelopes and advertising.

FY11 & FY13 high due to printing MRPC brochures, legal notice publications, advertising, printed envelopes.

FY16 - based on 4 year average plus 6%.

FY17 - 6% increase over FY16.

FY18 - based on 4 year average plus 6%.

FY19 - 6% increase over FY18.

Prof. & Tech. Services Outside Vendor- Includes court reporting, translation services, expert witnesses in major litigation and accountants.

Line item fluctuates greatly from year to year. FY14 high due to large litigation matters with non-English as first language witnesses.

FY15 based on 4 year average plus 12%. Increase due to large litigation matters with non-English as first language witnesses.

FY16 - based on 4 year average plus 6%.

FY17 - 6% increase over FY16.

FY18 - based on 4 year average plus 15%.

FY19 - 15% increase over FY18.

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IT Prof/Tech Services

FY14 - includes funds for Westlaw, CLEAR and rebuilding ADRS and ongoing maintenance and projects.

FY15 - includes funds for Westlaw, CLEAR and rebuilding ADRS and ongoing maintenance and projects.

FY16 - includes funds for Westlaw, CLEAR and rebuilding ADRS and ongoing maintenance and projects.

FY17 - includes funds for new internal database project (LDMS), Westlaw, CLEAR and ADRS necessary maintenance.

FY18 - includes funds for LDMS database project (\$200,000), Judicial ITD service fees (\$150,000), Westlaw, CLEAR and any ADRS necessary maintenance.

FY19 - includes funds for LDMS maintenance (\$30,000), Judicial ITD service fees (\$150,000), re-building of LPRB public website (\$50,000), Westlaw and CLEAR.

Computer & System Services

FY14 - includes funds for SharePoint enhancements, dictaphone services.

FY15 - includes funds for SharePoint enhancements, dictaphone services.

FY16 - includes funds for SharePoint enhancements, dictaphone services.

FY17 - includes funds for SharePoint enhancements, dictaphone services.

FY18 & FY19 - includes funds for SharePoint enhancements, dictaphone services.

Communications - Includes postage, telephone, toll-free line, language line, delivery services.

FY14 high due to installation of new telephones and installation of fiber optic cable for data.

FY15 based on 4 year average plus 12%. Increase due to use of fiber optic cable for data.

FY16 - based on 4 year average plus 6%.

FY17 - 6% increase over FY16.

FY18 - based on 4 year average plus 3%.

FY19 - 3% increase over FY18.

Travel In-State - Reimbursement of employee travel expenses.

FY12 includes employee bus passes previously paid in purchased services.

FY13 & FY14 increased 6% over FY12 & FY13.

FY15 increased 6% over FY14.

FY16 & FY17 increased 6% each year.

FY18 & FY19 increased 6% each year.

Travel Out-Of-State -

FY12 & FY13 - allows for 2 employees to attend 3 conf, and 1 misc. trip.

FY14 - 10% increase to allow for witness travel. Allows for 2 employees to attend 3 conf. and 1 misc. trip.

FY15 - 10% increase to allow for witness travel. Allows for 2 employees to attend 3 conf. and 1 misc. trip.

FY16 & FY17 - 10% increase each year to allow for witness travel. Allows for 2 employees to attend 3 conf. and 1 misc. trip.

FY18 & FY19 - 10% increase each year to allow for witness travel. Allows for 2 employees to attend 3 conf. and 1 misc. trip.

Employee Development - Includes memberships, conferences, training expenses and service fees.

FY16 - based on 4 year average plus 6%.

FY17 - 6% increase over FY16.

FY18 - based on 4 year average plus 10%.

FY19 - 10% increase over FY16.

Supplies - General office supplies and furniture under \$2,000.

FY14 is 6% increase over adjusted FY13 amount of \$35,792.

FY15 is 6% increase over adjusted FY14 amount of \$38,530.

FY16 is 6% increase.

FY15 & FY16 These FYs high due to Finance accounting error. Various items should have been debited against Computer Services and Furniture and Equipment totaling approximately \$10,000 (FY15) and \$12,000 (FY16).

FY17 is adjusted amount.

FY18 is 15% increase over adjusted FY17 amount of \$42,000.

FY19 is 15% increase over adjusted FY18 amount.

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Equipment Rental

FY16 & FY17 includes funds for mail machine lease

FY18 & FY19 includes funds for mail machine lease

Repairs - Misc. equip repairs & service contracts for copiers, printers and furniture.

FY16 - based on 4 year average plus 6%.

FY17 - 6% increase over FY16.

FY18 - based on 4 year average.

FY19 - 6% increase over FY18.

Other Operating Costs - Includes Board Member and Board mtg expenses, DEC seminar expenses, indirect costs, insurance, bank searches, shredding, notary renewals, witness expenses

FY15 - based on 4 year average plus 6%.

FY16 - based on 4 year average plus 6%.

FY17 - 6% increase over FY16.

FY18 - based on 4 year average plus 6%. Also includes one time costs to (a) upgrade OLPR security (\$10,000) and (b) Audio upgrades to Judicial courtroom (\$20,000).

FY19 - based on 4 year average of two prior fiscal years plus 6%.

Equipment Capital

FY19 includes estimated funds for purchase of three (3) new commercial copiers.

Equipment Non-Capital

FY14 includes funds for new furniture.

FY15 includes funds for new furniture and printers/scanners.

FY16 & FY17 includes funds for new furniture and printers/scanners.

FY18 includes funds for new furniture, printers and 10 personal scanners for use in conjunction with LDMS. Each scanner is approx. \$2,400.

FY19 includes funds for new furniture, printers and scanners.

FY18 - FY19 Footnotes

All line items except payroll, rent, data processing, outstate travel and furniture increased by 6% per year.

OLPR Dashboard			
4/3/2017			
	Total Files	Total Lawyers	
Total Open Matters	504	385	
New Files YTD	274		
Closed Files YTD	249		
Files Opened in March 2017	92		
Files Closed in March 2017	100		
Public Matters Pending	32		
Panel Matters Pending	9		
Matters Pending with the DEC's	93		
Advisory Opinion Requests YTD	547		
Advisory Opinion Requests Declined YTD	25		
Total Files Over 1 Year Old	122	77	
Matters Pending Over 1 Year Old w/o Charges	40	30	
Matters Pending Over 2 Years Old w/o Charges	1	1	
Matters Pending Over 3 Years Old w/o Charges	0	0	
		Discipline YTD	Total # Lawyers
		Disbarred	1
		Suspended	3
		Reprimand & Probation	1
		Reprimand	0
			Total # Files
		Private Probation	4
		Admonition	21

All Files Pending as of 4/3/17

Year/Month	SD	DEC	REV	OLPR	AD	PROB	PAN	SUP	S12C	SCUA	REIN	RESG	TRUS	Total
2011-12									1					1
2013-05										1				1
2014-01								1		1				2
2014-05								1						1
2014-06								2		1				3
2014-07								2	2	1				5
2014-08								2						2
2014-09								2						2
2014-11								1						1
2014-12								1						1
2015-01				1				2	2	2				7
2015-02								2	1					3
2015-03				6			1	2						9
2015-04							1	1	1	2				5
2015-05				2		2		2						6
2015-06				2				2		1			2	7
2015-07				1				1		1				3
2015-08				2		1								3
2015-09				2		1		3						6
2015-10				1	2	1	1	2						7
2015-11				4				4						8
2015-12				2									1	3
2016-01				1				1						2
2016-02				5		1	2	6		1			2	17
2016-03				12	1		2	2						17
2016-04				10	2									12
2016-05				18				2		1			1	22
2016-06			2	18				2						22
2016-07				22	1	1		2						26
2016-08			1	32						1				34
2016-09		1	1	15	1		2							20
2016-10		2	1	21	1	1								26
2016-11		9	1	27						1	2			40
2016-12		18	1	19										38
2017-01		15		22			1							38
2017-02		26		20										46
2017-03	17	22		16								3		58
Total	17	93	7	281	8	8	10	48	7	14	2	3	6	504

Files Over 1 Year Old as of 4/3/17

Year/Month	OLPR	AD	PROB	PAN	SUP	S12C	SCUA	TRUS	Total
2011-12						1			1
2013-05							1		1
2014-01					1		1		2
2014-05					1				1
2014-06					2		1		3
2014-07					2	2	1		5
2014-08					2				2
2014-09					2				2
2014-11					1				1
2014-12					1				1
2015-01	1				2	2	2		7
2015-02					2	1			3
2015-03	6			1	2				9
2015-04				1	1	1	2		5
2015-05	2		2		2				6
2015-06	2				2		1	2	7
2015-07	1				1		1		3
2015-08	2		1						3
2015-09	2		1		3				6
2015-10	1	2	1	1	2				7
2015-11	4				4				8
2015-12	2							1	3
2016-01	1				1				2
2016-02	5		1	2	6		1	2	17
2016-03	12	1		2	2				17
Total	41	3	6	7	42	7	11	5	122

	Total	Sup. Ct.
Sub-total of Cases Over One Year Old	104	47
Total Cases Under Advisement	18	18
Total Cases Over One Year Old	122	65

ALL FILES PENDING & FILES OVER 1 YR. OLD REPORTS STATUS KEY	
SD	Summary Dismissal
DEC	District Ethics Committees
REV	Being reviewed by OLPR attorney after DEC report received
OLPR	Under Investigation at Director's Office
AD	Admonition issued
ADAP	Admonition Appealed by Respondent
PROB	Probation Stipulation Issued
PAN	Charges Issued
SUP	Petition has been filed.
S12C	Respondent cannot be found
SCUA	Under Advisement by the Supreme Court
REIN	Reinstatement
RESG	Resignation
TRUS	Trusteeship

By SUSAN HUMISTON

2016 year in review: Public discipline

Public discipline in professional responsibility cases is imposed not to punish the attorney, but to protect the public, the profession and the judicial system, and to deter future misconduct by the attorney and others. As of December 15, 2016, 42 attorneys were publicly disciplined in 2016, with discipline ranging from a reprimand to disbarment. This number is on the high end of an "average" year for public discipline, as compared to 2015's record year, where 65 attorneys were publicly disciplined.

Disbarments

Six attorneys were disbarred through December 15, 2016. In a typical year, a handful of attorneys are disbarred, with the high being 15 in 1998. The attorneys disbarred were:

■ Paul Jody Edlund, who misappropriated \$175,000 from a client, failed to communicate with the client, and failed to cooperate with the Director's investigation;

■ Pamela L. Green, who pleaded guilty and was sentenced in federal court to one year and a day, for felony mail

fraud relating to her misappropriation of funds from a vulnerable client, and also engaging in the additional misconduct of entering into an improper and unfair business transaction with the same vulnerable client;

■ Dale Allen Hansen, who misappropriated \$10,000 in client funds, made false statements to his client and opposing counsel to conceal the misappropriation, made a false statement to the court through an associate and

failed to correct that false statement, failed to communicate with a client and knowingly issued trust account checks on insufficient funds, in addition to other misconduct;

■ Timothy J. Oliver, who pleaded guilty and was sentenced to 41 months in prison for felony wire fraud relating to his scheme to defraud a company, and his theft from that company, of \$500,000;

■ Paul Roland Rambow, who violated over the course of 19 matters most of the professional conduct rules, including misappropriation of approximately \$1,400 in client funds, forgery of client settlement checks and medical reimbursement checks, failure to maintain required books and records, false statements to the Director and an ethics investigator, failure to cooperate with the investigation, violation of multiple court orders, improperly billing clients, multiple failures of communication and diligence on client matters, taking unauthorized actions on behalf of clients after termination, release of confidential client information, engaging in a conflict of interest, and engaging in the unauthorized practice of law; and

■ Ronald Resnik, who violated numerous rules over the course of 13 matters, including forging signatures on settlement checks, converting client funds, stipulating to settlement without client consent, falsely notarizing a client's signature, making false statements to clients, opposing counsel and the court, failing to provide competent representation, failing to act diligently and to communicate with clients, failing to return unearned fees, failing to account for fees, and failing to cooperate in the Director's investigation.

The common thread, obviously, is misappropriation of client funds. Abusing your trust account responsibilities by converting client funds to your own use will always lead to serious discipline whether or not you have paid the client back.

Suspension

Through December 15, 2016, 28 attorneys were suspended for periods spanning 30 days to five years. This number ties with three other years as the second most suspensions behind

2015's 47 suspensions. Paul Hansmeier was suspended for four years for bringing frivolous lawsuits relating to copyright infringement, lying to the courts, and failing to comply with court orders. On December 14, 2016, Mr. Hansmeier was indicated in federal court in Minnesota for wire fraud, conspiracy to commit money laundering, and conspiracy to commit and suborn perjury. The criminal charges arise out of copyright infringement cases and include conduct that was part of the lawyer disciplinary matter, as well as alleged additional conduct.

Michael John Riehm was suspended for five years following his felony first-degree assault conviction for stabbing another with a steak knife while out to dinner, and engaging in an improper fee-splitting arrangement. The Riehm case is notable for the court's affirmation that respondents in a disciplinary action cannot condition their admission of facts in the petition on the court's imposition of a specific discipline. Oftentimes, respondent and the Director's Office will stipulate to recommend to the court a particular level of discipline. In those cases, the Director's Office requires the respondent to withdraw his answer and unconditionally admit all allegations in the petition. Because the court has plenary authority over lawyer licensure, the court retains ultimate authority to impose whatever disposition it believes is appropriate in light of the admitted facts, notwithstanding the recommendation of the parties.

Almost every year an attorney will be suspended for failure to file personal income tax returns. 2016 was no different: Kevin O'Connor Green was suspended for 30 days for failing to timely file 10 years of tax returns. Another case of potential interest is the matter of Duane A. Kennedy from Rochester. Mr. Kennedy received a public reprimand in 2013 for engaging in a conflict of interest and failing to communicate a settlement offer in a criminal case until a client resolved his outstanding attorney fee balance. Mr. Kennedy was suspended in 2015 for 30 days for suggesting that his client might not testify against a criminal defendant in exchange for a monetary settlement of a related civil action.



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In 2016, Mr. Kennedy was suspended again for 30 days for practicing law while suspended, holding himself out as authorized to practice while suspended, and failing to follow court rules regarding notification to clients and the courts regarding his suspension. While unusual, the Director's Office does see attorneys on serial public matters.

Public reprimands

Through December 15, 2016, eight attorneys have received public reprimands (five reprimands only, three reprimands and probation). A public reprimand is the least severe public sanction the court generally imposes. Reprimands are appropriate for rule violations that are more than "isolated and non-serious" (conduct which would warrant a private admonition) but not so serious that suspension is needed to protect the public and deter future misconduct. Two notable reprimands come to mind from 2016.

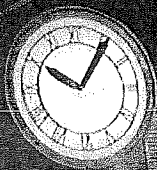
Debra Elise Altschuler was employed

as in-house counsel at a local company pursuant to an in-house counsel license, as she was admitted to practice in New York and Connecticut, but not Minnesota. In May 2014, she left in-house employment for employment at a local law firm, at which time her in-house counsel license terminated. Ms. Altschuler thereafter engaged in the unauthorized practice of law in Minnesota for the period of May 2014-June 2015 because she was not licensed in Minnesota. She received a reprimand for her unauthorized practice of law.

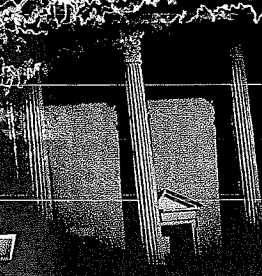
Robert Stoneburner received a public reprimand based upon his gross misdemeanor conviction for interference with a 911 call during a domestic dispute, which was evidence that Mr. Stoneburner had engaged in conduct prejudicial to the administration of justice, in violation of Rule 8.4(d), MRPC. Conversely, although Mr. Stoneburner was also convicted of the gross misdemeanor crime of domestic assault-fear, the court held that the referee did not clearly err

when he determined the Director had not proven, by clear and convincing evidence, that Stoneburner's conviction for that offense involved a "criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects," in violation of Rule 8.4(b), MRPC.

The OLPR maintains on its website ([lprb.mncourts.gov](http://prb.mncourts.gov)) a list of disbarred and currently suspended attorneys. You can also check the public disciplinary history of any Minnesota attorney by using the "Lawyer Search" function on the first page of the OLPR website. While it is always disheartening to see the number of attorneys that engage in serious professional misconduct, it is important to keep these numbers in context. Currently, Minnesota has approximately 28,000 licensed attorneys, with approximately 25,000 attorneys engaged in active practice. Thank you to the thousands of Minnesota lawyers who uphold the integrity of the legal profession every day, and Happy New Year. ▲



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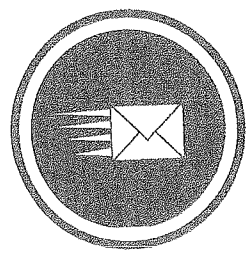
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By SUSAN HUMISTON

Private discipline in 2016

In 2016, 115 files were closed by the Office of Lawyers Professional Responsibility (OLPR) with the issuance of an admonition, a form of private discipline issued for professional misconduct that is isolated and non-serious.¹ This number, coincidentally, is the same as the number of admonitions issued in 2015. Additionally, 17 lawyers were placed on private probation for rule violations, as compared to 12 lawyers in 2015. Private probations, which must be approved by the board chair, are generally appropriate for attorneys with multiple non-serious violations, who may benefit from supervision.

The following sampling of admonitions is offered to highlight common issues that lead to private discipline.

Neglect and non-communication

As in prior years, the most common rules violated are Rule 1.3 (diligence) and Rule 1.4 (communication).² The required diligence and communication involved in each representation will depend upon the nature and scope of the representation.

One example of conduct that violated both rules occurred in a real estate matter. Following a closing, the attorney was responsible for recording the real estate transaction with the county recorder's office. Counsel failed to do so for more than a year. When the client learned of this fact, he called counsel, who promised to take corrective action within the week. Notwithstanding this promise, counsel failed to record the transaction for

an additional four months, and did not keep the client apprised of the further delay. The attorney received an admonition for violating Rule 1.3, MRPC ("A lawyer shall act with reasonable diligence and promptness in representing a client"), and Rule 1.4(a)(3), MRPC (which requires counsel to "keep the client reasonably informed about the status of the matter").

An additional example of neglect that gave rise to an admonition occurred when an attorney failed to file a required pre-trial statement at least five days prior to a court-ordered settlement conference. Counsel did not file the required statement, and the court cancelled the settlement conference and set the matter down for hearing. Counsel was issued an admonition for violation of Rule 1.3, MRPC.

Fee arrangements

Every year attorneys are disciplined for improper fee agreements. Since 2011, it has been unethical to describe an advance fee as "nonrefundable."³ Notwithstanding this fact, several attorneys received discipline for describing their fee as nonrefundable. Variations on this claim also subject attorneys to discipline. For example, claiming "All flat fees will be nonrefundable once substantial services have been performed" also violates Rule 1.5(b)(3).

The ethics rules also require that in order for a flat fee to be considered an attorney's property upon payment (and not required to be placed in trust until earned), a written fee agreement meeting the requirements of Rule 1.5(b)(1) must be in place. Several attorneys violated this rule in 2016. While most had some form of written fee agreement, the agreements failed to include all five notice provisions as required by the rule, and accordingly, admonitions were issued.

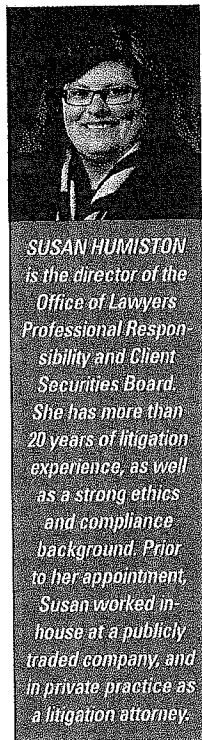
Improper fee agreements really frustrate me, because fee agreements are so important (they form the basis for the attorney-client relationship) and because improper agreements can be easily avoided with careful attention to the rules. Due to the number of rule

violations on this subject, in 2017 I'm committed to providing additional resources for attorneys concerning retainer agreements—through additional materials posted on the OLPR website, and an on-demand CLE webcast through Minnesota CLE. When in doubt, you can also call the Office for an advisory opinion regarding fee agreements.

Another issue somewhat related to fees that I was surprised to see come up was financial assistance to clients in the form of advances against lawsuit proceeds. Rule 1.8(e) prohibits an attorney from providing financial assistance to a client in connection with pending or contemplated litigation unless the assistance falls within three specifically enumerated exceptions. For example, in one case, an attorney handling a medical malpractice matter provided modest cash advances in the several months before the case was resolved to assist the client with basic living expenses. Advances against future settlements for living expenses do not fall within the exceptions in the rule, and an admonition was issued.

Return of client files and property

Upon termination, an attorney is obligated to surrender papers and property belonging to the client and must refund any advance fees or expenses not earned or incurred.⁴ In one case, a client met with counsel to determine whether there was a basis to contest the client's deceased father's will. The client paid an advance retainer, which the attorney placed in trust. The attorney performed some work, and invoiced that work against the advance fee. The client thereafter declined to move forward with the representation as it would likely be cost-prohibitive. At the time of termination, one half of the advance retainer remained in trust. Thereafter, the client contacted counsel over a several month period requesting a refund and a copy of the file, and finally threatened to file an ethics complaint if the file and remaining fees were not returned. It was not until after the threat of a complaint was made that the file and unearned fees were returned.



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Professional debt

An attorney's failure to pay a debt related to the practice of law is prejudicial to the administration of justice and a violation of Rule 8.4(d), MRPC. In some instances, public discipline can result from such a failure. This past year, an attorney received an admonition for failing to pay an outstanding debt arising from an appraisal the attorney hired for a matter.⁵

Conclusion

Private discipline is just that—private.⁶ Only the complainant and respondent attorney will know of the disposition. Unless an attorney provides written authorization, the Office does not disclose private discipline to third parties. Fortunately, most attorneys who receive admonitions often have no further disciplinary issues. However, if an attorney engages in further misconduct, please note that prior private discipline may be relevant to the appropriate level of discipline for subsequent conduct, and may be disclosed if future proceedings result in public proceedings.⁷ ▲

Notes

¹ Rule 8(d)(2), Rules of Lawyers Professional Responsibility (RLPR).

² Minnesota Rules of Professional Conduct (MRPC).

³ Rule 1.5(b)(3), MRPC ("Fee agreements may not describe any fee as nonrefundable or earned upon receipt but may describe the advance fee payment as the lawyer's property subject to refund.").

⁴ Rule 1.16(d), MRPC; see also Rule 1.15(c)(4).

⁵ The OLPR does not want to serve as a collection agency for creditors, so Office policy is to generally defer consideration of professional debt complaints until a judgment has been obtained; however, discipline has been imposed for instances of failure to pay an undisputed law-related debt.

⁶ Rule 20(a), RLPR. Note, Rule 20 addresses in detail the circumstances under which the OLPR may disclose information to third parties and others involved in the lawyer regulation system.

⁷ Rule 19(b)(4), RLPR.

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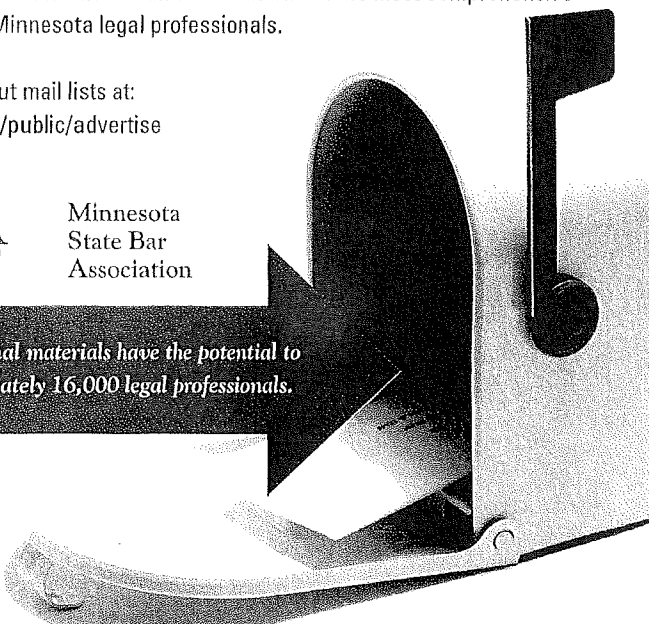
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Professional Responsibility

By SUSAN HUMISTON

Your duty to report

Imagine the following scenario: Counsel at a motion hearing is unusually discourteous, interrupting opposing counsel and talking over the court. The motion is argued, not particularly competently, and submitted. Following the hearing, counsel experiences what appears to be a serious medical emergency, and medical and bailiff personnel are called. Shortly thereafter, counsel and the court learn from court bailiffs that counsel registered almost four times the legal limit on a breathalyzer. What are the ethical issues presented by this scenario?

What do the rules say?

Rule 8.3 provides that "[a] lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the appropriate professional authority."¹ Let's take this rule in parts.

First, what do you know? The rules define "knows" as "actual knowledge of

the fact in question. A person's knowledge may be inferred from circumstances."² Here, several lawyers (the judge and counsel in attendance) have actual knowledge of breathalyzer results disclosed by law enforcement bailiffs and the unprofessional conduct during the hearing. Second, at least two rules are potentially implicated by appearing in court extremely intoxicated, namely, Rule 1.1 (competence) and Rule 8.4(d) (engaging in conduct that

is prejudicial to the administration of justice). Third, is a substantial question of fitness presented? The rules define "substantial" as a "material matter of clear and weighty importance."³ I think few will disagree that choosing to appear at a contested hearing so intoxicated that you are several times over the legal limit to drive suggests the presence of a chronic illness and a substantial question of fitness.

Rule 8.3 then requires a report, but to whom? The rules says "appropriate professional authority." The rule itself does not explain to whom this refers but the comments indicate that "[a] report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances."⁴ The judicial code provides a bit more guidance (and discretion) to judges in situations such as this:

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.⁵

Barriers to reporting

I recognize that few people want to report a peer or other lawyer to disciplinary counsel. Throughout life we are taught not to tattle. Reporting involves some exposure, even when confidential. The subject of the report is going to know who made the report because our Office does not accept anonymous reports, except in a few circumstances. You will most likely become a fact witness, and will be obligated to take time to answer questions and provide evidence, if needed. This is difficult, particularly in small communities where lawyers know each other. The above scenario is even more complex because what you really want to happen is for the attorney to get help, not call them out in a way that may lead to discipline. Often too, I think attorneys hope someone else will

take care of it for them. I get it. The profession gets it, as evidenced by the rules preamble:

Virtually all difficult ethical problems arise from the conflict between a lawyer's responsibilities to clients, the legal system and the lawyer's own interest in remaining an ethical person while earning a satisfactory living.⁶

This duty, however, is non-discretionary and belongs to all attorneys with the requisite knowledge. A self-regulated profession relies in part upon such reports in order for the disciplinary/regulatory authority to fulfill its obligation to investigate and address matters that may present a risk to the public or the profession. The rule is narrowly tailored and tied to the seriousness of the issue. Because the rule is non-discretionary, failure to report that which is required to be reported is itself an ethical violation by the non-reporting attorney and can lead to discipline. The classic case is *In re Himmel*, an Illinois case. In *Himmel*, the Illinois Supreme Court suspended for a year an attorney who failed to report his client's prior counsel's misappropriation of funds.⁷

Minnesota does not have any public discipline cases involving an attorney's failure to report under Rule 8.3. However, this fact should not lessen the seriousness with which you approach your ethical obligation. I know many Minnesota attorneys take this obligation seriously, as evidenced by the numerous advisory opinion requests received by the Office involving whether a particular factual scenario requires reporting. Please take this duty seriously. Also note that, as the text of the rule makes plain, not all professional misconduct creates a mandatory obligation to report. You are not obligated to report rule violations that do not raise a substantial question as to another attorney's honesty, trustworthiness, or fitness. You are free to do so, of course, but just recognize that you are doing so because you have chosen to, not because you have an obligation to do so.



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Professional Responsibility

What about my own conduct?

There is a common misconception that the ethics rules require self-reporting. That is not the case. No rule requires a lawyer to report his own misconduct. However, your duty to report another's conduct may implicate your own misconduct, e.g., failure to adequately supervise another.⁸ There also may be many good reasons why individuals may choose to self-report.

Confidentiality

One final note on confidentiality is appropriate. The rule does not require an attorney, when reporting, to disclose information that Rule 1.6 requires or allows a lawyer to keep confidential.⁹ The comment advises a lawyer in this position, however, to encourage a client to consent to the disclosure "where prosecution would not substantially prejudice the client's interest."¹⁰

Conclusion

Thank you to the attorneys and judges in Minnesota who take seriously your Rule 8.3 obligation. No one relishes reporting on another lawyer, and it can place the reporter in a very uncomfortable and even untenable position. Your ethical obligation requires it of you, as does, sometimes, your moral obligation, as presented in the above scenario. Even if the duty to report was not clear, I would hope that all attorneys would reach out to get a similarly situated lawyer assistance through a lawyer assistance program like Lawyers Concerned for Lawyers. Any questions regarding your duty to report under the professional ethics rules can be directed to the Office's Advisory Opinion line, (651) 296-3952. ▲

Notes

- ¹ Rule 8.3, Minnesota Rules of Professional Conduct (MRPC).
- ² Rule 1.0(g), MRPC.
- ³ Rule 1.0(m), MRPC.
- ⁴ Comment [3], Rule 8.3, MRPC; see also Comment [1], Rule 8.3, MRPC, referencing "disciplinary investigation."
- ⁵ Rule 2.14, Minnesota Code of Judicial Conduct.
- ⁶ Preamble [9], MRPC.
- ⁷ *In re Himmel*, 533 N.E.2d 790 (Ill. 1988).
- ⁸ Rule 5.3, MRPC.
- ⁹ Rule 8.3(c), MRPC.
- ¹⁰ Comment [2], Rule 8.3, MRPC.

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Jerry is one of a few lawyers who are dual MSBA Board Certified as a Civil Trial Specialist and as a Labor and Employment Specialist. He has been selected as a Super Lawyer every year since 2003.

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